BEFORE THE HEARING PANEL APPOINTED BY THE CENTRAL OTAGO DISTRICT COUNCIL

Under the	Resource Management Act 1991
In the Matter	of RC250077 being an application to undertake mining at Sandy Point Queensberry
By	**AWA KOURA MINING LIMITED** Applicant
Submitter	**R AND P FEE**

Opening Legal Submissions for **R and P Fee**
Submitter 06

Dated: 30 October 2026

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MAY IT PLEASE THE PANEL

INTRODUCTION

1. These submissions are presented for Roderick and Philippa Fee (submitter 06).

2. The Fees own 79 River Ridge Road. Their house is situated on a river terrace directly across the Clutha River/Mata-Au from the land on which the mine is proposed (the application site).

3. The Fees oppose the application and ask the Panel to decline consent.

4. The Fees give evidence themselves. They call Michael Smith, acoustic engineer.

SUMMARY

5. The Fees submit that this is the wrong location for a mine of this nature and scale.

6. For more than two years, the noise of the mine would dominate the sound of the Fees' home through every working day. It would mask the river and birds that give the property its character, and remove any periods of quiet. It would be intrusive, and would change how the Fees use their home.

7. For more than two years, a working mine would sit in the main outlook from their home, representing what the applicant's own landscape architect, Mr Moore, describes as *"a significantly adverse change to their current visual amenity".*

8. Dust from the mining activity has the potential to be significant if it is not well managed. The applicant's conditions leave the key dust controls to a management plan, for which there is no objective, and the plan is not yet prepared and could take effect without any review by the District Council through a deemed certification condition.

9. The District Plan permits mining only at a small scale, where its effects are minimal. Above that scale it requires the effects of a mine to be judged in the location where it is proposed. This mine is hundreds of times larger than the permitted scale. It is proposed in an area of established rural living. The noise of this mine would be continuous, intrusive and dominant at the Fees' home.

10. The District Council's reporting planner recommends refusal because of the noise effects on neighbours. The Fees agree with that recommendation, and say that refusal is also justified on other grounds.

THE FEES AND THEIR HOME

11. The Fees' home sits on the terrace about 25 to 30 metres above the application site, looking west over its central part. The mining would come within about 500 metres of the house.

12. The Fees' home, including the outdoor living areas, is oriented directly facing the application site. They face that way for the views to the Clutha River/Mata-Au and the mountains beyond.

13. The Fees' property runs down to the Clutha River/Mata-Au, and includes a terrace on the river edge where the Fees regularly walk, picnic and relax.

14. The river is central to how the Fees use their property. They improved the track from their house down to the river and cleared it of gorse and blackberry so that it could be a place to sit at the end of the day. Mrs Fee walks the dogs there most days. The family picnics there. The river setting is a large part of why the Fees bought the property.

THE APPLICATION SITE

15. The application site lies within an area of established rural living. Numerous rural properties with dwellings lie to its west and south, and two dwellings lie directly to its north.[1] Across the river, River Ridge Road, where the Fees live, is a settled rural residential community. As Mr Moore acknowledges, the terraces there "*have become significantly more settled and domesticated with subdivision into smaller rural lots*".[2]

16. The application site itself is a working lifestyle farm. It has consent for an eight-lot rural subdivision, with a building platform on each lot. That development would continue the established pattern of rural living in this locality. The mine would be

[1] Section 42A report, [17].
[2] Moore, [10].

an activity of an intrusive nature, introduced into this established rural living environment.

THE DECISION FRAMEWORK

17. Consent for the mining activity is required as a discretionary activity, principally because the mine far exceeds the Plan's limits on extraction and on the number of people engaged.[3] The Panel may grant or refuse consent, and may impose conditions.[4] It must have regard to the effects of the activity and to the relevant provisions of the District Plan and other higher order statutory policy documents, and any other matter the Panel considers relevant and reasonably necessary to determine the application.[5] Discretionary status carries no presumption in favour of consent. The Panel weighs the effects, the District Plan's provisions and the other relevant matters together.

THE ADVERSE EFFECTS ON THE FEES

Noise

18. Mr Smith, an acoustic engineer, has assessed the effects of the proposal on the Fees and on the wider environment. The assessment starts with the existing environment: the nature, character and level of sound at the Fees' property. The Plan requires that approach. Policy 12.4.2 directs regard to the characteristics and amenity values of the locality, and Policy 4.4.2(b) seeks development that is compatible with the surrounding environment, including the amenity values of adjoining properties. Both require the effects of the mine to be judged against what is there now. These policies are addressed later.

19. Mr Smith assesses the existing environment as a soundscape. That is an "*acoustic environment as perceived or experienced and/or understood by a person or people, in context*". It is more than a sound level. It includes which sounds are heard, how often, how they are valued, and how they fit the place.[6] Mr Smith describes the existing environment at the Fees' property as "*a rural soundscape of the river, birds and wind in vegetation, with distant traffic on the Luggate-Cromwell Road in the*

[3] Standards 4.7.6.J.b and 4.7.6.B.b.i; Rule 4.7.4.i; section 42A report, [22] and [27].
[4] Resource Management Act 1991, ss 104B and 108.
[5] Section 104(1)(a), (b) and (c).
[6] Smith, [16].

background". While it "*is not free of human sound*", "*nor is it dominated by it*". The river is its characteristic sound.[7] Mr Styles, the District Council's noise reviewer, expects the area to have "*long periods of time free from anthropogenic noise, other than road traffic noise*".[8] The Fees describe the same environment. They wake to birdsong, and hear traffic on State Highway 6 only as a distant, steady background sound. Otherwise they hear birds and low-key rural activity.

20. Background sound levels at the Fees' property have been assessed as generally in the range of 35 to 40 dB L_{A90}.[9] L_{A90} measures the steady background: the level present 90 per cent of the time, between passing sounds. The applicant's own acoustic report describes it as "*the stable background sound level that dominates 90% of the time*".[10]

21. Mining noise is predicted at 45 to 46 dB L_{Aeq} at the notional boundary of the Fees' home. Five of the seven modelled mining locations will produce that noise level at their home. Each location represents about five months of mining: about 25 months in all.[11]

22. During this time, mining noise at the Fees' home would be 5 to 11 dB above the L_{A90} background noise levels, through every working day, for more than two years. Mr Styles expects that "*the mining noise will be dominant and will mask many of the natural sounds in the environment, including the Clutha River and birdsong*", and that "*The constant noise during mining will remove any periods of quiet or peacefulness*".[12] Mr Smith says the mine would become "*part of the everyday sound of the property during working hours*", and that plant noise "*would be intrusive*" in the western outdoor area "*throughout working hours*".[13] Even Mr Shanks, the applicant's acoustic expert, accepts that mining noise "*would be clearly audible above the background sound*", and that it will mask the river and birdsong.[14]

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[7] Smith, [12] and [71].
[8] Styles Group, noise peer review (24 September 2026), section 9.4.
[9] Mr Smith, for the Fees, measured typically 35 to 40 dB L_{A90} at the property. Mr Shanks, the applicant's acoustic expert, measured 35 to 42 dB L_{A90} at positions representative of River Ridge Road. Mr Styles estimated 34 to 38 dB L_{A90}. Smith, [33]; Shanks, [18]; Styles, section 8.0.
[10] Marshall Day Acoustics, Noise Assessment (5 December 2025), section 4.0.
[11] Shanks, [33] and Table 1; Smith, [52].
[12] Styles, section 9.1. His threshold of 45 to 50 dB L_{A10} is about 43 to 48 dB L_{Aeq}. The levels predicted at the Fees' notional boundary fall within it: Smith, [52].
[13] Smith, [64] and [65].
[14] Shanks, [10] and [67].

23. On the river terrace of the Fees' property, mining noise would be louder still. It is predicted at up to 54 dB L_{Aeq}.[15] Mr Smith measured a background of 45 dB L_{A90} by the river at midday.[16] Mining noise there would be up to about 9 dB above that background, and "*clearly audible where the Fees use that land*".[17] None of the proposed conditions limits noise on the terrace. The applicant's proposed condition 8 applies only at the notional boundary of the dwelling. Noise on the terrace could exceed the modelled levels without breaching any condition.

24. The Fees are among the worst affected. They would receive the highest noise levels, for longer than any other receiver.[18] The noise would be continuous, intrusive and dominant, and industrial in nature. It would differ in character, regularity and duration from the rural sounds they hear now.

25. The applicant says the modelling is a worst case.[19] It says so because the model places all plant at ground level rather than in the pit, and assumes all plant operating at once.[20] At the Fees' home the modelled noise is not a worst case. Mr Walker, the applicant's operator, confirmed at the hearing yesterday that the pit will be no more than 3 metres deep. Plant working at that depth will be close to ground level, so the model's ground-level assumption builds in little or no extra noise. Furthermore, the screen and its feed excavator are the dominant noise sources of the mining activity, and they run whenever the mine does. When fewer machines are working, noise would be only 1 to 2 dB lower. Mr Smith will say that a change of that degree is barely perceptible, and that the mine would be just as prominent at the lower level. The modelling assumes wind carrying sound towards the receiver. In this valley, that is not an exceptional condition. The prevailing wind is westerly to north-westerly, from the application site towards the Fees' property. The Fees' property will often be downwind of the mining. The modelled levels are therefore what the Fees will experience on a typical working day.

26. The applicant says the Panel can have "*a high degree of confidence*" that actual noise will not exceed the predictions.[21] That assertion lacks foundation. Nothing in

[15] Smith, Table 4.
[16] Smith, Appendix A, Table A1.
[17] Smith, [68].
[18] Styles, section 9.2; section 42A report, [203]. The Fees' home is directly opposite the centre of the application site.
[19] Applicant's submissions, [29] and [30].
[20] Shanks, [20]; Walker, [27], [28] and [31]–[33].
[21] Applicant's submissions, [31].

the proposed conditions holds the applicant to its predictions of 45 to 46 dB L_{Aeq} at the Fees' home. Condition 8, as now proposed, allows 53 dB L_{Aeq} at the notional boundary of any dwelling where written approval has not been given, at any time. At 53 dB, noise from the mine would be 7 to 8 dB more than the 45 to 46 dB L_{Aeq} modelled at the Fees' home. Mr Smith will say that noise from the mine at that level would likely be heard inside the Fees' home with the windows open, and would entirely dominate the acoustic environment in the outdoor amenity areas. The applicant's proposed consent conditions would therefore allow considerably more noise than the applicant has assessed, with significantly worse effects.

27. The applicant says the noise complies with the Plan's noise standard, and that compliance raises a presumption that the noise is appropriate.[22] That is wrong. The District Plan standard is a maximum for permitted activities. Compliance determines whether consent is required. It does not measure the effect. Every witness accepts that compliance is not the end of the assessment.[23] The courts have said that noise can comply with a plan standard and still be unreasonable. The assessment is of the effect of the noise on amenity.[24] Under this Plan, the test for noise from an activity that is not permitted is set by Policy 12.4.2. This is addressed in detail later in these submissions.

28. At the modelled levels, the noise will significantly diminish the amenity of the Fees' outdoor living areas whenever the mine is operating. It will be dominant and intrusive in the western outdoor area, their principal outdoor living space, throughout the working day.[25] The Fees expect the noise to be intrusive and

[22] Applicant's submissions, [22]–[26] and [32].

[23] Mr Styles: the standards were written for permitted activities, "*not activities that require consent*" (Styles, section 2.0). The reporting planner agrees (section 42A report, [71]). Mr Smith: compliance "*does not describe the effect*" (Smith, [73]). Mr Shanks: the assessment "*is not solely a matter of meeting the District Plan standards*" (Shanks, [41]). Mr Sycamore: compliance is "*relevant but not determinative*" (Sycamore, [48](a)), although he later says that compliance "*alone is enough*" (Sycamore, [54]). The two statements cannot be reconciled.

[24] *Brooks v Western Bay of Plenty District Council* [2011] NZEnvC 216 at [43] and [88]–[89]. The Environment Court recorded that compliance with district plan noise standards "*does not preclude the Court from determining that [the noise] nevertheless exceeds a reasonable level*", and accepted that there was "*an amenity issue at large in this proposal which cannot be defined or addressed purely by the application of a noise standard*". See also *Auckland Shooting Club Inc v Auckland Council* [2019] NZEnvC 57 at [21] ("*the issue is one of effect not of standards*"). *Harewood Gravels Co Ltd v Christchurch City Council* [2018] NZHC 3118 at [107]. The High Court there recorded that the key issue before the Environment Court was not whether the quarry would comply with the noise standard, but whether its noise changed the ambient noise level, and the effect of that change on amenity.

[25] Smith, [65]; Styles, section 9.1.

impossible to ignore when they use their outdoor areas and the river frontage. Their opinions are important; the High Court has said that the evidence of those who live with the effects, "*not overstated, must be prime evidence*".[26]

29. Mr Smith expects the mining noise to change how the Fees use their property. Over the life of the mine, they would use the western outdoor area less on weekdays, and spend less time outdoors or at the property generally. The courts give weight to effects of this kind. In *Harewood Gravels*,[27] the High Court said that, for noise "*omni-present in daylight hours, or almost so*", even a "*reasonably annoyed*" resident reflects "*a more than minor effect*".[28] It also recognised that, once consent is exercised, residents may have no practical remedy other than to "*shift the axis of their home lives*", for example by confining their use to parts of their properties, "*or leaving the area*".[29] The Fees would be in the same position if consent is granted.

30. The noise may not stop at 5 pm. The applicant has amended condition 7 so that the plant it modelled is confined to 8 am to 5 pm on weekdays.[30] The condition still provides that "*all other works may occur outside of these hours*". Those other works are not identified, and their noise has not been assessed. They could take place in the evenings and at weekends, when background levels are at their lowest and people are most likely to be outdoors at home. Mr Smith considers that "*any noise generating activity beyond these hours is unlikely to be reasonable*".[31] The Fees agree. They would have no respite from the mining noise.

Visual effects

31. For the duration of mining, a working mine would sit in the main outlook from the Fees' home. The Fees designed their house, its deck and its outdoor areas around that outlook. The mine would be a significant adverse change to the visual amenity of their home.

[26] *Harewood Gravels*, at [226].
[27] *Harewood Gravels Co Ltd v Christchurch City Council* [2018] NZHC 3118.
[28] *Harewood Gravels*, at [319].
[29] *Harewood Gravels*, at [317]. See also [81], recording the Environment Court's finding that residents were "*no longer able to occupy and use their environment as they once used to do*".
[30] Applicant's proposed condition 7.
[31] Smith, [70].

32. The applicant's landscape architect, Mr Moore, assessed the visual effects on neighbouring homes only in his evidence for this hearing. He assesses the effect on the Fees' home as moderate to moderate-high for 24 months. No property he assessed has a longer period of effects at that level.[32] Mr Moore's own expert opinion is that residents across the river, who include the Fees, "*will regard visible mining activity as a significantly adverse change to their current visual amenity, even on a relatively short-term basis*".[33] The Fees agree.

33. Little can be done to mitigate the visual effect while mining is under way. Mr Milne, the District Council's landscape reviewer, records that screen planting "*will be ineffective from most vantage points due to the moving nature of the proposal*", and identifies rehabilitation as the key mitigation.[34] Mr Moore expressed a similar view at the hearing yesterday. Rehabilitation takes effect only after mining has moved on.

34. On visual impacts, the applicant submits that there is no right to a private view.[35] The Fees do not claim a right to a view, and do not say the mine would block one. Their concern is the change in visual amenity. They accept that what they see may change under the approved subdivision of the application site,[36] but that change would be consistent with the rural living already established in the area. The houses the subdivision would add are of the same kind as those already in the landscape. A working mine would be of a different nature, character and appearance. It would remove the pasture cover, reshape the landform, and bring plant, stockpiles and machinery into view.

Dust effects

35. The applicant says that dust is not a live issue.[37] It remains a live issue for the Fees. The Fees have sought advice on dust from Mr Richard Chilton, Technical Director – Air Quality at Tonkin & Taylor Ltd. His letter of 27 October 2026, reviewing the applicant's proposed dust conditions, is attached as Appendix F. Mr Chilton has not given evidence, and his letter is not a statement of evidence. It reviews information

[32] Moore, [24](b), [29] and [26]–[40].
[33] Moore, [45].
[34] Milne, landscape peer review (26 June 2026), p 5.
[35] Applicant's submissions, [58]–[59].
[36] RC230386.
[37] Applicant's submissions, [6].

already before the Panel, and raises technical points about monitoring and enforceability. The applicant can respond in reply, so no issue of fairness arises.

36. As Mr Chilton identifies, the applicant's proposed dust conditions have notable problems. Most of the controls that determine whether dust is actually managed (trigger levels, monitor type and responses) sit in the dust management plan (**DMP**), not in the conditions, and the DMP can be deemed certified and amended over time. The conditions are also weaker than the Regional Council air permit in several respects, set out in Appendix A.[38] The dust conditions are addressed in more detail later. Appendix B sets out the dust conditions the Fees seek if consent is granted, although they say it should not be.

37. Dust has the potential to be a significant issue at this site if it is not well managed. The application site is open, the valley is dry and windy in summer, and River Ridge Road is downwind in the prevailing north-westerly.[39] The Fees' property is downwind in the same conditions. Dust is not only an amenity issue. Fine particulate matter (PM10), which the proposed conditions monitor, also affects health.

38. Mr Iseli, the District Council's dust reviewer, considers that "*careful application of best practice dust controls would be required to prevent significant adverse effects at neighbouring properties*", and that their effectiveness "*will be strongly dependent on the site management practices*".[40] The reporting planner relies on "*strict conditions of consent*".[41] Relying on strict adherence to the conditions, and on diligent day-to-day management, for more than three years on an open site in a dry and windy valley is a risky proposition.

39. Most of the proposed dust conditions prescribe methods, such as watering, speed limits and stockpile heights. Only one sets an outcome. Condition 26 prohibits objectionable or offensive dust beyond the application site boundary.[42] That is a standard condition, but it will be difficult to enforce here. A breach requires proof that the dust came from the application site. The applicant's operator, Mr Walker, accepts that "*It is not going to be easy to distinguish our dust from the background*

[38] Appendix F, section 2.3.
[39] SES dust peer review (28 May 2026), p 3; Appendix F, section 5.
[40] SES review, p 5.
[41] Section 42A report, [89] and [90].
[42] Proposed condition 26.

environment."[43] That will be hardest on dry, windy days, when background dust is high and the mine is likely to emit most.

40. The applicant's dust assessment does not consider the Fees' use of the river terrace. It discounts effects within 350 metres of the application site because most dwellings, "*where people would be expected to be present for any extended periods of time*", are further away.[44] The Fees use the whole of their land, including the river terrace, which Mrs Fee visits most days. They use it most in summer, when the ground is driest and the winds strongest. Their land at the river is 164 metres from the application site.[45] Mr Iseli says diligent dust control is generally necessary within 250 metres of mining, particularly where the receptor is downwind in the prevailing wind.[46] The terrace is within that distance, and downwind in the prevailing westerly to north-westerly winds. The dust controls[47] are framed around dwellings, and would not protect it.

41. Dust from the mine therefore has the potential to be a significant adverse effect at neighbouring homes, and on the river terrace the Fees use daily. Whether that effect is avoided would depend on day-to-day site management, and on controls that the proposed conditions do not fix.

THE PLANNING FRAMEWORK

42. The application site is in the Rural Resource Area. Section 4 of the Plan sets out the objectives, policies and rules for that zone. Section 12 sets out district-wide provisions, including for noise.

43. The applicant's case rests primarily on one proposition. It says the Plan anticipates mining in the Rural Resource Area, so neighbours must expect the noise and amenity effects of this mine.[48] The proposition runs through the whole of its case. Its submissions say that "*the temporary effects of gold mining form part of the anticipated RRA character*", that the noise of extractive activities is "*anticipated by the Plan as existing in the RRA"*. It says Section 2.3.2 of the Plan "*explicitly*

[43] Evidence of Daniel Walker, [34].
[44] WSP, Technical Air Quality Assessment (April 2026), section 3.4.
[45] WSP, Table 3-1.
[46] SES dust peer review, p 4.
[47] Proposed conditions 20 and 24.
[48] Legal submissions for the applicant (22 October 2026) (applicant's submissions), [8]–[19], [22], [32], [52], [55], [63] and [75].

anticipates gold mining over a 3 year term within the RRA", and that the need for consent "*simply acknowledges that effects may require site specific management*".[49] Mr Sycamore says mining "*is anticipated in the RRA*". He reasons that it "*will have noise effects, albeit of limited duration. That is what residents can expect. For this reason I consider that the predicted noise is not unreasonable.*" Mr Shanks treats the noise standard as a strong guide to acceptable noise "*regardless of the existing environment*". Mr Moore says that whether the effects are adequately mitigated "*to a large extent depends on whether the Panel finds that the District Plan anticipates mining occurring in the Rural Resource Area*".[50]

44. The proposition on which the applicant relies misinterprets and misapplies the Plan. The Plan permits mining in the zone only at a small scale. Above that scale, it treats the effects of mining as potentially significant, and requires them to be assessed in the place proposed. The Plan framework for the Rural Resource Area is necessarily addressed next.

District Plan - Introductory and issue statements

45. Section 4.1 of the District Plan, the introduction to the Rural Resource Area chapter, records that "*the character of the landscape is an important element in making Central Otago an attractive place to live in and to visit. For many people it is the reason they reside and recreate here*".[51] It sets out why activities locate in the rural area: among them, because they rely on its resources, such as farming; because they "*need a large open space where they can generate effects without significantly affecting more sensitive activities*"; because people "*wish to enjoy the lifestyle opportunities offered by its open space, landscape and natural character amenity values*"; and because mineral extraction must occur "*directly adjacent to where the deposit occurs*".[52] The issue statements for the zone also refer to these activities. Issue 4.2.4 records that mineral development "*has the potential to have significant adverse effects … if not appropriately controlled*".[53] Issue 4.2.15 records that lifestyle development "*can … bring positive benefits to the district's rural communities and this must also be recognised*".[54]

[49] Applicant's submissions, [17]–[19].
[50] Sycamore, [24], [40] and [60]; see also [44] and [71]. Shanks, [41]. Moore, [45].
[51] Section 4.1.
[52] Section 4.1, reasons i, iii, iv and v.
[53] Issue 4.2.4.
[54] Issue 4.2.15, explanation.

46. The applicant relies on Section 2.3.2 to say that the Plan "*explicitly anticipates*" gold mining in the zone. Section 2.3.2 describes the district's landforms and geology.[55] It records that alluvial gold mining "*may occur over a wide area, but generally for short duration (typically 2-5 years)*".[56] It does not say that the effects of such mining are acceptable wherever it occurs.

47. The introductory and issue statements are not objectives, policies or rules. They describe the district and its issues, but they have no regulatory effect. They recognise mining. But they also recognise rural living, and the open space and natural character of the rural environment.[57] The applicant cannot rely on the references to mining and set aside the rest.

Objectives and policies

48. The objectives and policies for the zone are framed around effects. None expressly provides for mining.

49. Objective 4.3.3 seeks to maintain and where practicable enhance "*rural amenity values created by the open space, landscape, natural character and built environment values*" of the rural environment.[58] Policy 4.4.2(b) seeks "*Development which is compatible with the surrounding environment including the amenity values of adjoining properties*".[59] Its explanation describes the open space and natural character of the rural environment as "*a significant resource of the District*".[60]

50. Policy 4.4.8 seeks to ensure that the effects of activities, including noise and dust, "*do not significantly adversely affect the amenity values and privacy of neighbouring properties*".[61] Its explanation says that such effects "*must therefore be controlled*".[62] The Plan controls them through the standards in Rule 4.7.6, including those that limit the scale of mining (addressed later at [56]).[63]

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[55] Sections 2.1 and 2.3.2.
[56] Section 2.3.2(ii).
[57] Section 4.1, reason iv; Issue 4.2.15, explanation; Policy 4.4.2, explanation.
[58] Objective 4.3.3.
[59] Policy 4.4.2(b).
[60] Policy 4.4.2, explanation.
[61] Policy 4.4.8.
[62] Policy 4.4.8, explanation.
[63] Policy 4.4.8, cross-reference; Method 4.5.6.

51. Read together, these provisions have a consistent focus: the effects of activities on the amenity values of the rural environment and of neighbouring properties. They require development to be compatible with the surrounding environment, and require that effects such as noise and dust do not significantly adversely affect the amenity values of neighbouring properties.

How the rules work

52. An activity that meets the standards is permitted. The Plan tells us that this is because the standards "*will ensure that adverse effects on the environment are kept to a minimum*".[64] An activity that breaches one of the standards listed in Rule 4.7.4.i is discretionary, because "*Breach of the standards listed in these rules can have significant adverse effects on the environment.*"[65] Consent is required so that those effects can be assessed in the place proposed.

53. An activity the Plan contemplates in a given zone is not necessarily appropriate everywhere in that zone. For example, a rural dwelling may need consent in the RRA, and may be refused if its effects in a particular location are unacceptable.[66] Those effects are not ignored because rural living is anticipated in the RRA zone. Similarly, the effects of a mine in a particular location of the RRA cannot be ignored because mining is anticipated in the zone. The courts have said the same. In *Brooks*, the Environment Court accepted that a shooting range "*can reasonably be expected to occur in a rural locality*", but held that "*its suitability for the location chosen requires an evaluation under Section 104 of the Act*".[67] In *Harewood Gravels,* the High Court said: "*The fact that a quarry is 'generally acceptable' does not mean all quarries are acceptable in all locations.*"[68] And, in *Yaldhurst*: that quarrying is a rural productive activity "*does not mean that it is necessarily appropriate at this location*".[69]

54. The applicant says that "*Mining cannot occur in any other zone. Residential activity can.*"[70] Rural living is one of the uses the Plan provides for in the zone, and the Fees'

[64] Rule 4.7.1.i and reason.
[65] Rule 4.7.4.i and reason. The rule cross-refers Policies 4.4.2 and 4.4.8, among others.
[66] Rule 4.7.3.vii and matter of discretion 1; Policy 4.4.2(g).
[67] *Brooks*, at [23]; see also [41].
[68] *Harewood Gravels*, at [312]; see also [258].
[69] *Yaldhurst Quarries Joint Action Group v Christchurch City Council* [2017] NZEnvC 165 at [45].
[70] Applicant's submissions, [19].

home is lawfully established. Section 4.1 recognises that mineral extraction can occur only where the deposit is. It does not follow that a mine may establish wherever a deposit is found, whatever its effects.

How the rules treat mining

55. Mining is mentioned in the objectives and policies only in the explanations to Policies 4.4.6 (how it can adversely affect the soil resource) and 4.4.9 (the reverse sensitivity policy). The Plan provides for mining through its rules.

56. Rule 4.7.1 permits an activity that meets the standards in Rule 4.7.6.[71] Two of those standards limit the scale of mining.

    (a) The first is the extraction and displacement standard 4.7.6.J.b. It permits extraction of up to 2,000 m² or 3,000 m³ from any one site. The Plan's reason is that "*Earthworks for mining … can have significant adverse effects*", while small scale activities have effects that "*are generally minimal*".[72]

    (b) The second is the staffing standard 4.7.6.B.b.i. It permits no more than three people to be engaged in an activity "*of a commercial, industrial or manufacturing nature*". The Plan's reason is that such activities "*have the potential to significantly compromise the amenity values of the rural environment, and in particular, landscape values and the lack of obtrusive noise*". Above that scale, "*adverse effects have the potential to become significant*".[73]

57. Breach of either standard triggers a requirement for a discretionary resource consent.[74] The reporting planner identifies the breach of both standards as reasons consent is required here.[75]

58. Above the permitted scale, the Plan treats the effects of mining as potentially significant, and the location of the mine becomes central to whether they are acceptable.

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[71] Rule 4.7.1.i.
[72] Standard 4.7.6.J.b and reason.
[73] Standard 4.7.6.B.b.i and reason.
[74] Rule 4.7.4.i.
[75] Section 42A report, [22].

59. This mine is about 250 times the permitted area and about 500 times the permitted volume.[76] The Court of Appeal has said that where an application involves a departure from a plan, "*the extent of the departure will almost invariably be a relevant factor in the determination of the application*".[77] The departure here is large. The question is whether the adverse effects of a mine of that scale are acceptable in this location, in a receiving environment "*predominantly characterised by rural and residential activities*".[78]

Noise in the Rural Resource Area

60. The Rural Resource Area noise standard sets 55 dBA L_{10} by day and 40 dBA L_{10} at night, at the notional boundary of any dwelling.[79] With limited exceptions, the same limit applies across the whole zone, whatever the existing sound levels of a locality. The Plan's reason is that the standards reflect "*the historic noise levels permitted in the District*".[80]

61. The Plan accepts that some rural activities will at times be loud, and may exceed the standard or disturb neighbours. Where it does so, it points to the temporary, short or seasonal nature of that noise:

    (a) Frost fans and bird scarers are taken out of the general noise limits and given their own, so as "*not to unduly restrict seasonal agricultural operations*".[81]

    (b) "*seasonal rural activities (eg cropping or bird scaring)*" may exceed the normal noise standards "*but are tolerable because of their temporary nature*".[82]

    (c) Policy 4.4.9 asks newcomers to accept the noise of rural activities, "*particularly those of a short duration or seasonal nature*".[83]

[76] Section 42A report, [22].
[77] *Norwood Lodge Ltd v Upper Hutt City Council* CA37/06, 4 July 2006, [11].
[78] Section 42A report, [170].
[79] Standard 4.7.6.E(a).
[80] Standard 4.7.6.E, reason.
[81] Standard 4.7.6.E(a) provisos and (b)–(c), and reason.
[82] Issue 12.2.2, explanation.
[83] Policy 4.4.9; see also Issue 4.2.15, explanation, (f).

62. The applicant relies on Policy 4.4.9 to say that residents must accept the noise of mining as a normal part of rural life.[84] The policy does not apply here. It asks "*new developments locating near*" existing rural activities to accept their effects.[85] Here the homes are established and the mine is the new activity, as Mr Sycamore accepts.[86] The policy is directed at rural activities "*particularly those of a short duration or seasonal nature*". Its explanation names mining among established operations whose effects "*often cannot be readily avoided*". It does not address a new mine proposed among established homes.[87]

63. Each of these provisions accepts rural noise because it is temporary or seasonal, or comes from an established rural activity. None accepts the noise of a new activity that would continue through every working day for more than two years. The reporting planner considers it unlikely that a permitted activity would generate noise comparable to the mine, "*which would be constantly at a high level over an extended duration of time*".[88] The Fees agree.

64. The noise standard (4.7.6.E(a)) is for permitted activities. Activities that meet it, and the other standards, are permitted because their effects are "*kept to a minimum*".[89]

65. For an activity that is not permitted, the Plan sets the test in Policy 12.4.2. That is a district-wide policy in Section 12. It implements Objective 12.3.2, which is "*To avoid, remedy or mitigate the adverse effects of noise on the District's amenity values and the health and wellbeing of the District's people*".[90] The policy provides that:[91]

> *To determine the suitability of noise generating activities in any given locality by having regard to:*
>
> *a. The specific characteristics and amenity values of the locality from which the noise originates, and*
>
> *b. The sound pressure level of the proposed activity, and*

[84] Applicant's submissions, [48]–[52].
[85] Policy 4.4.9 and explanation; Standard 4.7.6.E, reason.
[86] Sycamore, [39].
[87] Policy 4.4.9, explanation.
[88] Section 42A report, [71].
[89] Rule 4.7.1.i, reason.
[90] Objective 12.3.2.
[91] Policy 12.4.2.

> *c. The frequency that the noisy activity takes place, and*
>
> *d. The length of time that the noise continues, and*
>
> *e. Any special characteristics of the noise, to ensure that the adverse effects of noise on other activities and the natural and physical resources of the locality (including cumulative effects) reflect standards acceptable to the community.*

66. Policy 12.4.2 is concerned with two things. The first is the locality: its specific characteristics and amenity values. The second is the noise: its level, how often it occurs, how long it continues, and any special characteristics. The Panel must have regard to both. The aim is that the adverse effects of the noise "*reflect standards acceptable to the community*".[92]

67. Under matter (a) of the policy, the existing environment of the locality is raised. The policy refers to "*any given locality*" because the same noise may be suitable in one place and not in another. The locality where an activity is proposed and its soundscape is therefore a fundamental, front and centre part of the assessment the policy requires.[93] Matters (b) to (e) of the policy concern the noise itself, its level, frequency, duration, and special characteristics.

68. Applying the policy here: the locality here is an established rural living area. Its soundscape is one of river, birds and wind, with distant traffic. Mining noise would significantly alter that soundscape in an adverse way. It would mask the river and birds and introduce regular and continuous industrial type noise. The noise would be 5 to 11 dB above the background (although the proposed conditions would allow up to about 18 dB above it, at a limit of 53 dB L_{Aeq}), and it would occur every weekday, continuing through the whole working day, for more than two years. The character of the noise would draw attention to it: the rock-on-rock sound of the screen, and the clangs and bangs of heavy plant.[94]

69. Thus, each matter in Policy 12.4.2 points against the mine, which provides a strong signal that its adverse effects on the Fees and their neighbours would not "*reflect standards acceptable to the community*".

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[92] Policy 12.4.2.

[93] In *Yaldhurst*, the Environment Court assessed the values people hold in "*the existing landscape, soundscape and air quality*", and treated "*the effect of change*" to the noise environment as "*fundamental*": at [117](a) and [177].

[94] Smith, [47], [60] and [61].

70. The applicant's experts refer to the matters in Policy 12.4.2, but they do not properly assess them. Their assessment under the policy focuses unduly on compliance with the district plan noise standard, without taking account of the existing noise amenity of the locality. For example, Mr Shanks treats the District Plan standards as "*a strong guide to what sound pressure level should be considered as a standard that is acceptable to the community*", while Mr Sycamore considers that compliance with the standard "*alone is enough*".[95] The applicant may say that the noise standard (4.7.6.E(a)) represents the community standard that Policy 12.4.2 is concerned with, but that would be an erroneous interpretation of the policy. The policy directs an assessment of whether the noise is suitable in the locality, having regard to matters (a) to (e). If compliance with the standard were the measure, those matters would serve no purpose. The courts have criticised assessments of that kind. In *Yaldhurst*, the Environment Court observed that noise predictions are "*often made by experts based solely on compliance with a specified noise limit*", with "*little if any consideration of the effects of noise characteristics or variability*".[96] The applicant's experts do not undertake the multi-factor assessment that Policy 12.4.2 requires. Their evidence provides no properly considered basis for finding the noise suitable in this locality.

Summary: the applicant's argument and the Plan

71. The applicant's case rests on the proposition that the Plan anticipates mining in the Rural Resource Area, so that neighbours must expect the effects of this mine. The proposition runs through the whole of its case. The analysis above shows why that proposition is wrong. The introductory and issue statements the applicant relies on have no regulatory effect, and recognise rural living as well as mining. The objectives and policies are directed at effects, and protect the amenity values of the rural environment and of neighbouring properties. The rules permit mining only at a small scale, because at that scale its effects are minimal. Above that scale, the Plan treats the effects of mining as potentially significant and requires them to be assessed in the place proposed. For noise, Policy 12.4.2 requires that assessment to be made against the characteristics and amenity values of the locality.

[95] Shanks, [44]; see also [41]. Sycamore, [54]; see also [58].
[96] *Harewood Gravels*, at [118], quoting *Yaldhurst* at [213].

72. In substance, the applicant's argument is an improper extension of a permitted baseline argument. Section 104(2) of the Act allows the Panel to disregard an adverse effect if the Plan permits an activity with that effect.[97] It concerns the effects of what the Plan *permits*. Here the Plan permits extraction of up to 2,000 m² or 3,000 m³, with no more than three people engaged. The effects of an activity of that size bear no comparison with those of this mine, a point the reporting planner acknowledges.[98] An activity that needs consent *is not* part of the baseline. Its effects must be assessed, not disregarded.

73. Mr Sycamore says the baseline is relevant "*to the extent that mining activities are anticipated in the Rural Resource Area*", and that it "*may lead to changes in amenity of the Rural Area*".[99] That uses "anticipation" to stretch the baseline beyond what the Plan permits. Whether the Plan anticipates an activity is a different question. It is answered by reading the Plan's objectives, policies and rules, as is done above.

74. The applicant treats the effects of this mine as effects the Plan has already accepted because mining is "*anticipated*". That conflates what the Plan permits with what it might be said to anticipate. It gives a mine hundreds of times the permitted scale the benefit of a baseline that applies only to mining at a small scale.

75. The consequence is that the applicant has not assessed the effects of this mine in the way the Plan requires. Its experts treat the noise standard as the measure of acceptable noise, and the effects of the mine as part of the expected character of the zone. However, assessed as the Plan requires, against the established character and amenity values of this locality, the effects of this mine on its neighbours are significant and adverse. Not only does the Plan not anticipate a mine with those effects in this location, Policy 12.4.2 counts against it.

OTHER MATTERS

76. The applicant raises several further matters. None of them alters the preceding analysis.

The Fees prioritise rural living

[97] Resource Management Act 1991, s 104(2).
[98] Section 42A report, [34].
[99] Sycamore, [24].

77. The applicant asserts that the Fees assume that residential activity has a higher priority in the Rural Resource Area than noise from primary production.[100] That mischaracterises their position. The Fees accept that they live in a rural area where the noise of primary production can be anticipated. They oppose a mine of this nature and scale in this locality.

The Fees' property is a holiday home

78. The applicant describes the Fees' property as a "*holiday home*".[101] It is one of the Fees' two homes. They are there for weeks at a time, including on the working days when the mine would operate. In any case, Policy 4.4.8 protects the amenity values of neighbouring properties. It does not distinguish between a home occupied all year and one occupied for part of it.

The application site is in transition

79. The applicant says the application site is "*in transition from primary production to lifestyle use*", and that the mine "*is simply the first temporary step in that change*".[102] That description is artificial. The approved subdivision does not depend on the mine. Circumstances may change and it may never be implemented, or the consent may lapse before the mining ends.[103] If it is implemented, the new houses will be of the same kind as those around the application site, and compatible with them. A working mine is a different kind of activity, and is incompatible with that environment.

Primary production

80. The applicant places weight on mining being "*primary production*".[104] Nothing turns on the label. The Plan's objectives, policies and rules for the Rural Resource Area do not use the term. The definition of "*primary production*" in the National Planning Standards does not assist the applicant. This is addressed further in Appendix C.

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[100] Applicant's submissions, [73].
[101] Applicant's submissions, [73] and [74].
[102] Applicant's submissions, [5].
[103] Resource consent RC230386 (eight-lot rural subdivision, granted October 2024) lapses on 2 October 2029.
[104] Applicant's submissions, [8], [35] and [45]; Sycamore, [31] to [33] and [55].

Road Metals

81. Mr Sycamore relies on the *Road Metals* decision to say that mining is anticipated in the zone.[105] In June 2026 a panel of the District Council granted consent for a gravel quarry near Queensberry.[106] The decision is not binding on this Panel, as the applicant accepted at the hearing yesterday. The Panel said there that the policy framework "*does not impose a scale-based ceiling on quarrying*", and that discretionary status "*enables proposals of varying scale to be assessed on their merits through an effects-based lens rather than through prescriptive limits*". It said rural activities may generate noise "*provided these effects are appropriately managed*".[107] The Fees take the same approach, but say here, the contrary applies: the effects on neighbours are significantly adverse and, given the location and the proximity to established rural living, they cannot be appropriately managed. In any case, the facts of the Road Metals proposal differ materially from this application. This is addressed at [84] below and in Appendix D.

Consistent plan administration

82. The applicant says there is a strong public interest in the consistent administration of the Plan, and that departing from the noise limits in the *Road Metals*, *Amisfield, Parkburn* and *Hawkeswood* quarry consents would need a clear planning reason.[108] Implicit in this argument is an assumption that consent should be granted because it was in those other cases.

83. The argument carries little weight. The courts have regularly said that the grant of a consent "*has no precedent effect in the strict sense*", and "*in factual terms no two applications are ever likely to be the same*".[109] An earlier grant may influence a later application, but only to the extent that the two are similar.[110] Consistency of treatment is important "*in the absence of a reason justifying inconsistency*".[111]

[105] Sycamore, [40]–[42].
[106] Road Metals Company Ltd, RC250044, decision (11 June 2026).
[107] Road Metals decision, [108].
[108] Applicant's submissions, [33]–[37]. The applicant relied on the Hawkeswood consent at the hearing.
[109] *Dye v Auckland Regional Council* [2002] 1 NZLR 337 (CA) at [32].
[110] *Dye*, at [32].
[111] *Norwood Lodge*, at [15].

Where a case differs in a way that counts, concerns about consistency "*may be mitigated, may not even exist*".[112]

84. This case differs from each of the consents that the applicant cites and relies on for its consistency argument. At Road Metals, the neighbours who raised noise lived at least 1.5 kilometres from the quarry, predicted quarry noise there was below the existing ambient level, and no submitter attended the hearing.[113] Amisfield was granted by an officer under delegated authority, without a hearing, and provides no basis for comparison with the present application.[114] At *Parkburn*, the nearby houses were built in the knowledge that the quarry operated. At *Hawkeswood*, 26 parties including neighbours gave written approval, and the noise experts reached a consensus on effects.[115] Here the mine is new and is proposed among established homes, with continuous noise well above the existing background. The Fees and most other submitters oppose it, and the noise experts do not agree on whether its effects are acceptable. Those differences are a clear planning reason for not applying the same limits here, and indeed for not granting consent. The earlier consents cited by the applicant do not bind the Panel. They are addressed further in Appendix D.

Other decisions

85. The applicant relies on other decisions of the courts for various other arguments it makes. None assists it. Each is distinguishable on its facts, not relevant to the issues at hand, or supports the Fees. They are also addressed in Appendix D.

Styles' review

86. The applicant asks the Panel to disregard Mr Styles' review.[116] There is no reason to do so. Mr Styles is an independent acoustic expert commissioned by the District Council under section 92(2), and his review forms part of the section 42A report.[117] No expert criticises it. Mr Shanks agrees that mining noise will mask the river, and

[112] *Rodney District Council v Gould* HC Auckland CIV-2003-485-2182, 11 October 2004, at [102]; (2004) 11 ELRNZ 165.
[113] Road Metals, evidence of Gary Walton, [27] and [28]; decision, [020].
[114] RC150052, consent letter (10 April 2015), pp 1 and 3.
[115] Hawkeswood Mining Ltd, combined decision of the Otago Regional Council (RM23.819) and the Central Otago District Council (RC230325), 23 August 2024, at [9]–[11], [14] and [51].
[116] Applicant's submissions, [38]–[47].
[117] Section 42A report, [66].

Mr Sycamore says: "*I accept most of the Styles review.*"[118] The Panel can rely on the review.

Smith evidence

87. The applicant criticises Mr Smith for expressing views on the Plan. It accepts that his measurements and predictions are consistent with Mr Shanks'.[119] His conclusions rest on what would be heard at the Fees' property.[120] The criticism does not affect the weight of his evidence.

THE PROPOSED CONDITIONS

88. The effects of the proposal on this rural living locality are significantly adverse, and the proposal does not achieve the relevant objectives and policies of the Plan. Consent should be declined on those grounds alone. A further reason is that the proposed conditions are inadequate.

89. Conditions must be clear, certain and enforceable.[121] Several of the applicant's proposed conditions are not. Others do not secure the operation on which the applicant's assessment of effects depends. The main deficiencies are set out below. Appendix E addresses the deficiencies in more detail.

90. Condition 8, as amended by the applicant yesterday, allows 53 dB L_{Aeq} at the notional boundary of any dwelling where written approval has not been given, at any time. At 53 dB L_{Aeq}, the consent noise limit is 7 to 8 dB more than the 45 to 46 dB L_{Aeq} predicted at the Fees' home. As noted earlier, at that noise level mining noise would be heard inside the Fees' home and would totally dominate outdoor living. The Panel should assess effects at the levels the conditions permit, not only at the levels predicted. At the levels permitted by the consent conditions they would be entirely unreasonable. If consent is to be granted (the Fees say it should not), the applicant should be held to its predictions, and the limit at the Fees' notional boundary should be the predicted level. However, even then, noise at that level would dominate the Fees' home through every working day for more than

[118] Shanks, [58] and [67]; Sycamore, [48].
[119] Applicant's submissions, [66].
[120] Smith, [43], [62] and [64]–[70].
[121] *Woodstock Quarries Ltd v Canterbury Regional Council* [2026] NZEnvC 128 (conditions "*must be clear, coherent, certain, enforceable and properly justified*", and should "*explicitly state clear performance standards (rather than leaving these to be determined at a later date)*").

two years. A limit at the predicted level would remove the margin by which the conditions exceed the applicant's own assessment. It would not make the noise suitable in this locality under Policy 12.4.2.

91. The applicant says actual noise will be lower than modelled because less plant will be used: no bulldozer, and a second excavator used only 20 to 30 per cent of the time.[122] At the hearing yesterday Mr Walker contradicted that in part, saying there would be three (not two) excavators used in the mining activity. In any case, no condition limits the plant on site, and condition 7 still lists a bulldozer. The conditions would allow more plant than was modelled, so the noise could be higher than the modelled levels. This is a further reason why if consent is granted (the Fees say it should not) the modelled levels must be fixed in the conditions.

92. The noise and visual assessments assume that the mine spends about five months at each location and no more than six months in any one place.[123] No condition requires that sequence. Mining could remain opposite the Fees' home for longer than has been assessed. The significant effects the Fees would experience could therefore continue for longer than the 24 to 25 months on which the applicant's noise and visual assessments are based. Actual effects could be significantly worse than what it has assessed.

93. Condition 7 confines only the listed plant to 8 am to 5 pm on weekdays, and provides that "*all other works may occur outside of these hours provided they comply with the conditions of this consent*". Condition 8 has no night-time limit, although the Plan's night-time standard is 40 dBA L_{10}.[124] As drafted, the conditions would allow unidentified works to generate noise up to the condition 8 limit at the Fees' home at any hour of the night. Should consent be granted (and the Fees say it should not) a low night-time noise limit should be imposed to prevent this.

94. The dust controls depend on water, because the water cart and sprinklers required by conditions 14 and 15 cannot operate without it. The applicant's water permit and air discharge permit from the Regional Council expire on 6 October 2029. The term of this consent is three years of mining and six months of rehabilitation,

[122] Applicant's submissions, [30]; Walker, [27] and [28].
[123] Applicant's submissions, [3]; Shanks, [33] and Table 1.
[124] Standard 4.7.6.E(a).

running from the certification of the management plans, with no fixed start date.[125] Mr Walker said at the hearing yesterday that mining would start within a year of consent being granted. If it starts a year from now, mining and rehabilitation would continue until about April 2031, 18 months after the Regional Council permits expire. Nothing in the conditions requires the consent holder to hold a lawful water supply for dust suppression and grass establishment, or requires dust-generating work to stop when water is not available.

95. Condition 6 requires the consent holder to investigate and act on a complaint only if the complaint "*alleges non-compliance with the conditions of this consent*".[126] A neighbour will not usually know the conditions, or whether they are being met. A complaint that does not allege non-compliance need not be investigated. Where a complaint does allege non-compliance, the only action required is to restore compliance. Section 16 of the Act requires the operator to adopt the best practicable option to keep noise to a reasonable level, even where the noise complies with the conditions.[127] Condition 6 falls short of section 16.

96. The dust controls rely on real-time PM10 monitoring (condition 24) and a wind trigger (condition 20). Condition 24 leaves the trigger level, and what must be done when it is reached or exceeded, to the DMP.[128] Nothing requires work to stop when a trigger is reached. Condition 20 does not stop haul trucks on unsealed roads, which Mr Iseli says "*can be a significant source of dust during dry conditions*".[129] The controls that would stop dust leaving the site are therefore either absent from the conditions or incomplete.

97. The noise conditions have the same weakness. Condition 10 requires the ONMP to include procedures for monitoring noise and for corrective action where monitoring identifies non-compliance. It says nothing of how often noise is to measured, what is reported and to whom, and what must be done in the case of non-compliance. Nothing requires work to stop when monitoring shows the limit exceeded. It is not at all clear what the consequence of a non-compliance would be.

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[125] Proposed condition 3.
[126] Proposed condition 6(c).
[127] Resource Management Act 1991, s 16(1); *Empire Entertainment Ltd v Auckland City Council* [2010] NZRMA 525 (HC).
[128] Proposed condition 24; Appendix F, sections 2.6 and 3.1.
[129] Proposed condition 20; SES review, p 3.

Management plans

98. The conditions require four management plans, including an operational noise management plan (ONMP) and the DMP.[130] None has been prepared in final form. Each is to be prepared after consent is granted and certified by the District Council, and is deemed certified if the District Council does not respond within 20 working days.[131] This is of considerable concern. As it stands, the management plans are the key means by which effects on neighbours will be managed. They could come into effect as the primary means by which to manage effects, without critical review as to whether they in fact achieve this.

99. The conditions do not adequately state what the management plans must achieve. Condition 22 requires only that the DMP be prepared "*with reference to the conditions of consent*". It states no objective for the DMP, such as protecting neighbours from dust, and no matters it must cover. The objective stated for the ONMP is to require the best practical option to minimise noise effects, and to comply with condition 8.[132] The first part restates the duty in section 16 of the Act which applies in any case. The second part references a limit that allows 7 to 8 dB more noise than has been predicted at the Fees' home. It allows for significantly greater adverse noise effects than have been assessed.

100. Clear objectives and parameters for the management plans must be set in the conditions. The certification process can settle detail, but it is not the place to make substantive decisions about how to manage effects, or to what end.[133] If a matter decides whether neighbours are protected, the conditions must fix it.

101. In essence, the applicant is asking the Panel to accept that the effects of the mine will be satisfactorily managed through management plans that do not yet exist, for which the conditions set no clear and enforceable outcomes, and which can be changed at any time and confirmed without critical review through deemed certification. There is too much uncertainty on all of these things.

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[130] Proposed conditions 9–11, 22, 30 and 38.
[131] Proposed conditions 12, 23, 31 and 39.
[132] Proposed condition 10.
[133] *Remediation (NZ) Ltd v Taranaki Regional Council* [2024] NZEnvC 213: "*objectives and parameters to be met must be set in conditions of consent and not left to management plans*"; *Royal Forest and Bird Protection Society Inc v Gisborne District Council* EnvC Wellington W026/09, 7 April 2009, [2013] NZRMA 336: a condition "*can leave the certifying of detail to a delegate … but cannot delegate the making of substantive decisions*".

102. In summary, the proposed conditions would not secure the operation the applicant has assessed. They would allow noise well above the predicted levels at any hour, do not secure the water on which the dust controls depend, and leave the monitoring of noise, the response to exceedances and the control of dust to plans that have not been written, under conditions that set no outcome for the plans to achieve. As they stand the conditions are largely open-ended, with little certainty as to the outcomes that they must achieve to ensure adequate management of effects on neighbours. The Panel cannot be satisfied on this basis that the effects on neighbours will be acceptable.[134] The conditions are a further reason why consent should be declined.

SUMMARY AND CONCLUSION

103. This locality where this mine seeks to establish is a rural living community. A gold mine of this scale is out of place in that community. The Rural Resource Area zoning of the application site does not change that. Even if the Plan anticipates mining in the zone, it does not follow that a mine is acceptable in every location within it.

104. The mine will give rise to significant adverse effects on the neighbouring community, including the Fees. For more than two years, through every working day, plant noise would dominate the Fees' home, at up to 11 dB above the background. It would mask the river and birdsong that give the property its character, and deter the Fees from using their outdoor living areas. The Fees do not claim a right to silence. But noise of this level, character and duration is not reasonable in this locality.

105. For more than two years a working mine would sit in the main outlook from their home. Mr Moore says that the nearest residents, especially across the river, who include the Fees, will regard this visible mining activity as a significantly adverse change to their current visual amenity, even if on a relatively short-term basis. There are no available mitigation measures to reduce this effect.

106. The control of noise and dust would be left to management plans not yet prepared, on which the community will have no say.

[134] A management plan relied on to avoid or mitigate effects should be formulated so that it can be scrutinised before consent is granted: *Guardians of Paku Bay Association Inc v Waikato Regional Council* (2011) 16 ELRNZ 544 (HC).

107. The Act defines "*effect*" to include "*any cumulative effect which arises over time or in combination with other effects*".[135] The noise, visual and potential dust effects on the Fees' home fall on the same home, over the same period, and mostly on the same place: the western outdoor area, which faces the application site, and the river terrace. The noise effect alone would significantly adversely affect the amenity values of their home. The visual effect is also significant in its own right. Dust, if not well managed, adds a risk to health as well as amenity. Individually, each has the potential to be significantly adverse. Together, the effects are greater than any one alone, and are entirely unacceptable in this established rural living area.

108. The applicant relies on the mine being temporary.[136] An effect experienced day in and day out for three years is not temporary and, given its nature and degree, is significant. In any case, the Act defines "*effect*" to include "*any temporary or permanent effect*".[137] A temporary effect must still be assessed.

109. The proposal does not achieve the outcomes the Plan seeks, in Objective 4.3.3 and Policies 4.4.2(b) and 4.4.8 for the Rural Resource Area, and in Policy 12.4.2 for noise. A mine that brings continuous plant noise, a working pit and dust into this community for more than two years is not compatible with it.

110. The modest benefits do not outweigh the significant adverse effects.

111. The Fees ask the Panel to decline consent.

R Wolt
Counsel for Roderick and Philippa Fee

[135] Resource Management Act 1991, s 3(d).
[136] For example, applicant's submissions, [5] and [64]; Sycamore, [15](c) and [71].
[137] Resource Management Act 1991, s 3(b).

APPENDIX A: REGIONAL COUNCIL AIR PERMIT AND PROPOSED DUST CONDITIONS

The table lists requirements of the Regional Council air discharge permit (RM26.315.04) that are not carried into the applicant's proposed conditions.

ORC air permit (RM26.315.04) requirement	CODC proposed conditions
Condition 2(b): overburden and topsoil stockpiles not to exceed 0.6 m	Condition 16 allows 1.5 m for "material stockpiles" (see below)
Condition 2(e): water must be applied to overburden, soil and tailings when dry	Condition 20 contains a similar requirement, but only within the wind speed trigger condition and for the materials named.
Conditions 6(a) and 11(a): PM_{10} monitor must be a near-reference grade device with a heated inlet, identified in the DMP	Condition 24 does not specify the monitor type
Conditions 7(b) and 8: DMP revisions require written acceptance before implementation; annual DMP review reported to ORC; conditions prevail over the DMP	Conditions 22 and 23 require only CODC certification of an updated DMP, deemed certified after 20 working days. No annual review, no certification of amendments before implementation, and no clause that the conditions prevail over the DMP
Condition 10: pre-start meeting with ORC compliance staff	No equivalent
Condition 12(b): ORC notified of each complaint within 24 hours; register submitted annually	Condition 25 requires a register only, provided on request
Condition 3: daily visual monitoring by site staff	No equivalent

APPENDIX B: DUST CONDITIONS SOUGHT IF CONSENT IS GRANTED

1. Without derogating from the Fees' primary submission that consent should be declined, for all the reasons in these submissions including the other appendices, if the Panel is minded to grant consent, the Fees say that the applicant's proposed dust conditions should be amended as follows, in order of importance.

2. PM10 monitoring (condition 24). The condition should specify a near-reference grade monitor with a heated inlet, so that the readings are reliable. It should fix two trigger levels in the condition itself: at 75 µg/m³ (one-hour average) the consent holder must check its operations and increase suppression; at 150 µg/m³ (one-hour average) dust-generating work must stop. The response should be required whatever the source of the dust, so that the trigger cannot be avoided by blaming background dust. Paired monitors, one upwind and one downwind of the active area, would show how much dust the application site itself is adding. Readings should be sent to site staff in real time, so they can act at once. The 350 metre distance in conditions 20 and 24 should be measured to the boundary of each property shown in Appendix 2 to the Regional Council permit, not only to the dwelling, because people use the whole of their land. That would bring the Fees' river terrace within the controls.

3. DMP (conditions 22 and 23). The DMP should be prepared by a suitably qualified air quality practitioner. Deemed certification should be removed. Amendments should be certified before mining can commence. The DMP should be reviewed annually and reported to the District Council. The conditions should prevail over the DMP if the two conflict. These are the same safeguards the Regional Council permit contains. They ensure the DMP is checked, kept current and cannot weaken the conditions.

4. Water (conditions 3 and 14). A condition should be added that mining and rehabilitation take place only while a lawful water supply for dust suppression and grass establishment is held and can be used. Dust-generating work should stop if suppression water, the water cart, the weather station or the PM10 monitor is not available. Without water and working equipment, the dust controls cannot operate.

5. Wind trigger (condition 20). The condition should be extended so that the trigger also stops haul truck movements on unsealed roads, which are a significant source of dust in dry, windy conditions. It should match the Regional Council permit and refer to the same schedule of receptors, so that both consents work the same way.

6. Hours (condition 7). The condition should be amended so that all dust-generating work, not only the listed plant, is confined to the permitted hours. Dust suppression should be allowed at any time.

7. Active area and stockpiles (conditions 13 and 16). The conditions should define "*unrehabilitated*" and the stockpiles covered, so that the limits are certain, and should require stockpile surfaces to be kept damp or vegetated, and wetted when dry, because dust from a stockpile depends more on the condition of its surface than on its height.

8. Weather station (condition 21). The condition should require the weather station to be installed, operated, maintained and calibrated in general accordance with AS/NZS 3580.14:2014, so that the wind trigger is based on reliable data.

9. Reporting and complaints (condition 25, and new conditions). New conditions should require the consent holder to report each year to the District Council on every trigger exceedance and the response taken, so the District Council can see whether the monitoring and responses are happening. Condition 25 should require each dust complaint to be notified to the District Council within 24 hours, with the monitoring and water records for the time. There should be daily visual checks by site staff, and a pre-start meeting with the District Council. The Regional Council permit requires most of these.

APPENDIX C: THE NATIONAL PLANNING STANDARDS DEFINITION OF "*PRIMARY PRODUCTION*"

1. Mr Sycamore relies on the definition of "*primary production*" in the 2019 National Planning Standards: "*any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities*".[138] The Standards post-date the Rural Resource Area provisions in the Central Otago District Plan, which were promulgated in the early to mid 2010s. The definition has no application to the interpretation of the Plan, for the following reasons:

    (a) Legislation does not have retrospective effect. The Rural Resource Area provisions were made in 2008 and 2013. A definition made in 2019 cannot change the meaning they had when they were made.

    (b) The National Planning Standards do not amend a plan of their own force. The council must amend its plan, and the plan is amended only from the date of public notice.[139] The District Council has not inserted the definition into the Plan.[140]

    (c) The National Planning Standards are clear that a definition used in them applies only where the plan uses the term "*in the same context*".[141] The Plan's objectives and policies do not use the phrase "*primary production*" at all.

    (d) The Ministry for the Environment's guidance says that "*The intent of 14. Definitions Standard is not to alter the effect or outcomes of plans*".[142]

    (e) The Plan must be read according to its own text.[143] Its own text limits the scale of mining (see [56] to [58] of these submissions). A definition from another document does not change that.

[138] Sycamore, [31] to [33].
[139] Resource Management Act 1991, s 58I.
[140] Section 18.
[141] National Planning Standards, 14 Definitions Standard, mandatory direction 1.
[142] Ministry for the Environment, Guidance on consequential amendments to policy statements and plans (INFO 926, January 2020).
[143] *Powell v Dunedin City Council* [2004] 3 NZLR 721 (CA).

APPENDIX D: OTHER CASES THE APPLICANT RELIES ON

1. *LRG Investments:* A motel complied with the noise rules, but car movements at night would be "*clearly noticeable*" against a background that fell below 30 dBA. The Court held that general noise standards may not protect the amenity a plan seeks to protect in a particular place. Consent was refused.[144] The applicant cites it to say the district plan noise standard is the appropriate measure here.[145] It is authority for the opposite. The inquiry the Court undertook is the inquiry Policy 12.4.2 requires: whether the general standard protects the amenity values of the particular locality. The applicant's experts measure the noise against the general standard instead (see [70] of these submissions).

2. *Re Meridian:* The applicant cites this case for two propositions: there is no right to a private view, and visual amenity is assessed in the context of the district plan.[146] The Fees accept both. The Court nonetheless found significant adverse effects on views from nearby homes, and removed two turbines because of them.[147] It accepted the significant adverse effects that remained only because a national policy statement required it to recognise and provide for renewable electricity generation.[148] Nothing of that kind arises here. The case provides no support for the applicant's proposal.

3. *Road Metals* (RC250044): A panel of the District Council granted consent in June 2026 for a gravel quarry at Queensberry. The decision is not binding on the Panel. Mr Sycamore relies on it to say that mining is anticipated in the Rural Resource Area.[149] The panel said that the policy framework does not impose a scale-based ceiling on quarrying, and that rural activities may generate noise provided the effects are appropriately managed.[150] The Fees take the same approach. The facts differ. The submitters who raised noise lived on Oliver Road, at least 1.5 kilometres from the quarry. The applicant's acoustic expert calculated worst-case quarry noise there of 35 to 42 dB L_{Aeq} (15 min) with the processing plant operating, below the

[144] *LRG Investments Ltd v Christchurch City Council* C064/98 (11 June 1998), pp 11–12 and 19–21.
[145] Applicant's submissions, [21]–[22].
[146] Applicant's submissions, [58]–[60]; *Re Meridian Energy Ltd* [2013] NZEnvC 59, [112] and [113].
[147] *Re Meridian*, [171], [173] and [177].
[148] *Re Meridian*, [75]–[76] and [544]–[546].
[149] Sycamore, [40] to [42].
[150] Road Metals Company Ltd, RC250044, decision (11 June 2026), [108].

existing average road traffic noise of about 50 dB L_{Aeq}.[151] He considered the District Council's peer reviewer's advice to be broadly aligned with his own assessment.[152] No submitter attended the hearing.[153] The panel found that separation distances and site containment ensured acceptable amenity outcomes for neighbouring properties.[154] Here the nearest part of the mining is about 500 metres from the Fees' home. Predicted mining noise of 45 to 46 dB L_{Aeq} is well above the background of 35 to 40 dB L_{A90}, and the Fees and most other submitters oppose the application.

4. *Parkburn* (RC070216): This consent, granted in 2007 in the Central Otago District under earlier planning documents, extended a quarry that had operated since the 1980s. The decision recognised the aggregate that would be extracted from the quarry as important to the district and the wider Otago region, which the Panel identified as a 'relevant factor' in the decision to grant consent. It also recorded that the nearby houses had been built "*in the knowledge that the applicant's gravel extraction activities were occurring on land to the north*".[155] Here the mine is new, the homes were there first, and the benefits are at best modest.

5. *Amisfield* (RC150052): Little is known about this consent. It was granted by an officer under delegated authority, with no hearing and no reasoned decision. The application appears not to have been notified. It allowed an existing quarry and crushing plant to continue.[156] It provides no basis for comparison with this application.

6. *Hawkeswood Mining Limited* (2024): A joint panel of the Otago Regional Council and the District Council granted consent in August 2024 for an alluvial gold mine at Millers Flat. The decision is not binding on the Panel. It is also distinguishable: 26 parties, including the closest dwellings, gave written approval, 457 of 468 submissions supported the mine, and the noise experts reached a consensus on effects.[157] Here the Fees and most other submitters oppose the mine, and the experts do not agree on whether its effects are acceptable. Consistency is addressed under *Norwood Lodge*, below.

[151] Road Metals, evidence of Gary Walton (10 April 2026), [27] and [28].
[152] Walton, [37].
[153] Road Metals decision, [020].
[154] Road Metals decision, [111].
[155] RC070216, pp 1 and 6–7.
[156] RC150052, consent letter (10 April 2015), pp 1 and 3.
[157] Hawkeswood, at [9]–[11], [14] and [51].

7. *Norwood Lodge*: The applicant relies on it to argue that, because consents were granted for the Road Metals, Parkburn and Amisfield quarries, consent must be granted here if the Plan is to be administered consistently.[158] The Court of Appeal said that each resource consent application must be considered on its merits, and that consistency is relevant "*in the absence of a reason justifying inconsistency*".[159] The case concerned a subdivision refused partly because of its precedent effect, which the Court held to be relevant.[160] The applicant uses the principle the other way round. The courts have also said there is "*no precedent effect in the strict sense*", because "*in factual terms no two applications are ever likely to be the same*".[161] The Road Metals and Parkburn decisions turned on their own facts, as set out above. The main difference is the receiving environment: here, a mine among established homes, with continuous noise well above the existing background. That difference justifies a different result, and no issue of inconsistent administration arises.

8. *Shell* and *Port Otago*: The applicant refers to section 7(c) of the Act.[162] It is not clear what that argument is directed at. *Shell* decided only that section 7(c) does not require every proposal both to maintain and to enhance amenity, which the Fees accept. *Port Otago* was a plan-making case, about the wording of a district plan.[163] Neither bears on whether this mine's effects are acceptable under this Plan. In any event, the Court in *Port Otago* held that "*maintain*" includes "*protect*", in the sense of "*keep safe from harm or injury*". This Plan seeks to "*maintain*" rural amenity values, and Policy 4.4.8 identifies the harm it guards against: significant adverse effects on the amenity of neighbouring properties.[164] That is the harm the Fees would suffer.

[158] Applicant's submissions, [33]–[37].
[159] *Norwood Lodge*, [15].
[160] *Norwood Lodge*, at [5] and [14]–[16].
[161] *Dye v Auckland Regional Council* [2002] 1 NZLR 337 (CA) at [32].
[162] Applicant's submissions, [57] and [64].
[163] *Port Otago Ltd v Dunedin City Council* C004/02 (22 January 2002), [41]–[42] and [49]–[51].
[164] Objective 4.3.3; Policy 4.4.8.

APPENDIX E: DEFICIENCIES OF THE PROPOSED CONDITIONS

1. Conditions must be clear, certain and enforceable. Ministry for the Environment guidance is to the same effect. Conditions "*must be clear, reasonable, and readily interpreted*" and "*must be as certain as possible*", and a management plan "*should not be a substitute for clear performance or environmental standards*". Critical adverse effects should be addressed by conditions before consent is granted, and not left to a future management plan. This appendix supports the points made at [88] to [102] of the submissions. Where a condition carries two numbers, the second is used.

2. Noise (conditions 7 to 12). The limit in condition 8 applies at any time, so there is no night-time limit, and only at the notional boundary of a dwelling, so nothing limits noise on the Fees' river terrace (see [23]). The limit also allows more noise than the applicant has predicted. Condition 8, as amended, allows 53 dB L_{Aeq}, against the 45 to 46 dB L_{Aeq} predicted at the Fees' home. If consent is granted, the applicant should be held to the predicted noise levels at the notional boundaries of neighbouring properties. Condition 7 confines only the listed plant to the stated hours. Mr Smith considers that, outside 8 am to 5 pm on weekdays, all plant on the site should be limited to 30 dB L_{Aeq}(15 min) at the notional boundary, which is at or below the night-time background. The objective of the ONMP is to require the best practical option to minimise noise effects and to comply with condition 8; it sets no measurable outcome for neighbours. The plan is deemed certified after 20 working days, and the conditions do not require the noise measurements taken at commencement to be reported to the District Council or compared with the predicted levels. Mr Shanks accepted at the hearing that attended monitoring is appropriate, but would leave it to the ONMP. The conditions should require it, and should say what must happen if monitoring shows the limit is exceeded. Work should stop until the cause is identified. The consent holder should then decide what measures to adopt, and consider whether the ONMP needs updating, before work resumes.

3. Dust triggers and methods (conditions 14, 15, 18, 19, 20 and 24). Condition 24 leaves the PM10 trigger level, the type of monitor and the response to the DMP. Condition 20 does not stop haul trucks on unsealed roads. Conditions 14, 15, 18

and 19 use narrative standards (water "*as required*", surfaces "*regularly swept*", revegetation "*as soon as practicable*") that set no measurable requirement.

4. Definitions, receptors and enforcement (conditions 13, 16, 21, 26, 27, 28 and 29). Conditions 13 and 29 both limit the active area to 2 hectares, but count different things: condition 13 includes unsealed haul roads, and condition 29 includes pre-stripped areas and windrows. It is therefore unclear what counts towards the limit, and so how much bare ground there may be at any time. "*Unrehabilitated*" (condition 13) and "*material stockpiles*" (condition 16) are not defined, and both the active area and the stockpiles move as mining progresses, so compliance cannot be measured. The conditions refer to "*sensitive receptors*" but, unlike the Regional Council permit, attach no schedule or map of them. Condition 28 ties the works to a Mine Plan marked "*PROVISIONAL ONLY*", and as filed leaves it unclear whether the 40 metre riverbank and 5 metre kanuka setbacks still apply. Condition 21 does not require the weather station to be installed, operated, maintained or calibrated in accordance with any monitoring standard. A breach of condition 26 requires proof that the dust came from the application site (see [39]). The audit in condition 27 occurs only at the District Council's request, and is of compliance with the DMP, not the conditions.

5. Regional Council permit. The dust conditions are weaker than the Regional Council air permit in the respects set out in Appendix A. They do not require a near-reference grade monitor, a DMP prepared by an air quality expert, baseline monitoring before works start, or annual review of the DMP. They allow deemed certification, and do not provide that the conditions prevail over the DMP.

6. Water. Nothing requires a lawful water supply for dust suppression and grass establishment for the whole mining and rehabilitation period, or requires dust-generating work to stop when water is not available (see [94]).

7. Complaints (condition 6). The duty to investigate and act is confined to complaints that allege non-compliance, and the only action required is to restore compliance (see [95]). No time is set for the investigation or the response, beyond a requirement to investigate "*promptly*". Nothing requires the complainant or the District Council to be told the outcome, and the register is provided to the District Council only on request. For noise, condition 10(f) requires the ONMP to include a

procedure for responding to and reporting complaints, but leaves its content to the management plan.

8. Management plans and certification (conditions 9 to 12, 22, 23, 30, 31, 38 and 39). Where conditions rely on a management plan, the conditions must state the objective the plan is to achieve and the matters it must address. A management plan sets out the methods by which those outcomes will be achieved. It is not a substitute for conditions that set them. Certification is an administrative step. The consent authority checks that the methods in the plan will achieve the outcomes stated in the conditions. It is not an occasion to revisit the adequacy of the conditions, or to make further decisions about the effects of the activity. Here, condition 22 states no objective or required content for the DMP, and nothing provides for its amendment or review. The objective in condition 10 for the ONMP (to require the best practical option to minimise noise effects, and to comply with condition 8) sets no measurable outcome for neighbours; the first part adds nothing to section 16 of the Act. Each plan is deemed certified if the District Council does not respond within 20 working days, so a plan could take effect without review.

9. Other conditions (1, 3, 4 and 33). Condition 1 requires "*general accordance*" with the application material without identifying which parts bind the consent holder, and the listed material omits the 2026 noise, air quality and heritage information on which the assessment relies. The term in condition 3 runs from the certification of four plans, which may be certified at different times, so the start and end of the term are uncertain. Condition 33 requires reinstatement "*in accordance with the methodology set out in the application*" without identifying that methodology, and sets no fixed time within which ground behind the pit must be reinstated.

APPENDIX F

Tonkin+Taylor

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27 October 2026
Job No: 110424.0000

Rod and Philippa Fee
79 River Ridge Road
Tarras 9383

Attention: Rod & Philippa Fee

Dear Rod & Philippa

Awa Koura Mining Limited, RC250077 (Sandy Point)
Dust review for the Central Otago District Council hearing

1 Introduction

Tonkin & Taylor Limited (T+T) has been engaged by Roderick and Philippa Fee (submitters 06, 79 River Ridge Road) to provide air quality advice on potential dust effects and dust management associated with the Awa Koura Mining project at Sandy Point.

T+T has considered the following documents from the Central Otago District Council (CODC) hearing repository:

- Memorandum of counsel dated 13 October 2026 and the applicant's proposed conditions (Appendix 1), whose numbering is used in this letter (Memorandum of counsel).
- Evidence of Mr Boughton (dust) dated 12 October 2026, including the Otago Regional Council (ORC) air discharge permit RM26.315.04 and the Anemos Dust Management Plan (DMP) dated 13 October 2026.
- Evidence of Mr Sycamore (planning) and Mr Walker (the applicant), both dated 13 October 2026, including water permit RM26.315.02 and the other ORC consents.
- Groundwater Technical Assessment (Environmental Associates, 19 September 2025, Section 3.0) and the evidence of Mr Heller.
- Technical Air Quality Assessment and draft DMP, WSP, April 2026.
- Dust peer review for CODC by Mr Iseli (Specialist Environmental Services), 28 May 2026.
- Section 42A report (s42A report) dated 24 September 2026, paragraphs [82] to [90] and Appendix 1 (draft conditions).

The author (Mr Richard Chilton) has not visited the site but is familiar with the location. The comments are based on the documents listed above and on his experience with dust management at quarries, earthworks and mining sites.

The scope, set out in the email from Ms Rebecca Wolt (Barrister for the Fees) of 20 October 2026, comprises a technical review of:

- Proposed conditions on the land use consent (Section 2).
- Mitigation and adaptive management measures (Section 3).

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- Water availability for dust suppression (Section 4).
- Separation distance and the location at which dust effects should be assessed (Section 5).
- Uncertainties and other matters (Section 6).

Section 7 summarises and ranks, in order of importance, the recommended changes to the proposed conditions.

This letter report has been prepared in accordance with our letter of engagement dated 12 October 2026.

2 Proposed conditions

2.1 Differences in consent numbering

We note that there are differences in the condition numbering between the dust conditions in the s42A report and the applicant's condition set. In summary:

- Conditions 12 to 20 in the s42A report are the applicant's Conditions 13 to 21.
- The applicant's Condition 22 (updated DMP) is new.
- The s42A report's conditions 21 to 28 are the applicant's Conditions 23 to 30.

The Condition numbering used in this letter is based on the applicant's proposed conditions (memorandum of counsel, Appendix 1), not the draft conditions in the s42A report.

2.2 The role of the two consents

The ORC air permit (RM26.315.04) is the more specific consent for managing dust effects, as ORC has primary responsibility for regulating discharges to air. Notwithstanding this, CODC has responsibility for managing the amenity effects of dust associated with the use of the land for the project and has proposed conditions to manage dust effects. A key question is therefore whether there are gaps between the two sets of conditions that leave aspects of dust amenity effects unmanaged.

The ORC water and air permits were issued on 6 October 2026 for a term expiring on 6 October 2029. The documents reviewed do not explain the reasons for a three-year term. The applicant describes mining as taking up to three years with a further six months of rehabilitation (s42A report, paragraph [178]; proposed Condition 3), so the ORC term is shorter than the activity it is intended to authorise. The shorter term is not explained by rehabilitation falling outside the ORC air permit. Its conditions apply to rehabilitated areas (Condition 2(g) requires prompt revegetation and Condition 4 requires sprinklers on rehabilitated areas until grass is established). The implications are discussed further in Section 4.

2.3 Overall adequacy

The applicant's proposed dust conditions (Conditions 13 to 27) are largely the conditions recommended by CODC's peer reviewer (Mr Iseli) and adopted in the s42A report. They are a reasonable starting point. However, the conditions have two notable issues:

- Most of the controls that determine whether dust is actually managed (trigger levels, monitor type, response actions) sit in the DMP, not in the conditions. Furthermore, the DMP can be deemed certified without Council review (Condition 23) and can be amended over time.
- The CODC conditions are weaker than the ORC air permit in several respects, even though the applicant says it has aligned them (memorandum of counsel, paragraph 6). The gaps are described below.

2.4 Gaps between the CODC conditions and the ORC air permit

Table 2.1 sets out the requirements of the ORC air permit that have no equivalent in the CODC conditions. T+T recommends that each of these requirements be included in the CODC conditions. Mr Sycamore (paragraph 79) says the two councils should rely on the same dust monitors, weather station and DMP. T+T broadly agrees, provided both sets of conditions require the same things and are themselves adequate.

Table 2.1: ORC air permit requirements not carried into the CODC conditions

ORC air permit (RM26.315.04) requirement	CODC proposed conditions
Condition 2(b): overburden and topsoil stockpiles not to exceed 0.6 m	Condition 16 allows 1.5 m for "material stockpiles" (see below)
Condition 2(e): water must be applied to overburden, soil and tailings when dry	Condition 20 contains a similar requirement, but only within the wind speed trigger condition and for the materials named
Conditions 6(a) and 11(a): PM_{10} monitor must be a near-reference grade device with a heated inlet, identified in the DMP	Condition 24 does not specify the monitor type
Conditions 7(b) and 8: DMP revisions require written acceptance before implementation; annual DMP review reported to ORC; conditions prevail over the DMP	Conditions 22 and 23 require only CODC certification of an updated DMP, deemed certified after 20 working days. No annual review, no certification of amendments before implementation, and no clause that the conditions prevail over the DMP
Condition 10: pre-start meeting with ORC compliance staff	No equivalent
Condition 12(b): ORC notified of each complaint within 24 hours; register submitted annually	Condition 25 requires a register only, provided on request
Condition 3: daily visual monitoring by site staff	No equivalent

2.5 Condition 7 (hours of operation)

Condition 7 restricts the hours of operation of only the excavator and screen to 8 am to 5 pm on weekdays (other activities may occur outside these hours, which Condition 7 expressly allows). From a dust perspective, this is a gap because the main dust sources are not the screen (which is a wet process) but are topsoil stripping, placement of tailings and topsoil, levelling and vehicle movements on unsealed surfaces (WSP, Section 2.2; Mr Boughton, paragraph 17).

T+T recommends that Condition 7 be redrafted so that all dust-generating activities are limited to the same hours. Dust suppression (water cart, sprinklers) should be permitted at any time. The DMP (Section 2.2) still describes work for "up to 10 hours per day" and should be corrected to match the condition.

2.6 Condition 16 (stockpile height)

With regard to stockpile height, there are four different heights stated in the applicant's own documents:

- Condition 16: material stockpiles not to exceed 1.5 m.
- ORC air permit Condition 2(b): overburden and topsoil stockpiles not to exceed 0.6 m.
- Mr Sycamore, paragraph 16(h): stockpiles and tailings limited to 0.6 m, which he attributes to Mr Moore (the applicant's landscape architect).

- Mr Boughton, paragraph 32, and Mr Moore's memorandum of 8 May 2026 (to Mr Sycamore): 1.5 m for topsoil, overburden and tailings.

For dust, the height of a topsoil stockpile within the range of 0.6 m to 1.5 m matters less than how it is managed. A 1.5 m stockpile with a crusted or vegetated surface will generate less dust than a 0.6 m stockpile of loose dry soil. T+T therefore considers 1.5 m acceptable from a dust perspective provided it is paired with a condition that stockpiles are kept damp or vegetated (ORC air permit Condition 2(e)).

2.7 Other condition drafting points

The remaining dust conditions are generally appropriate in intent, but several would benefit from tighter wording.

- **Condition 20 (wind speed trigger).** This condition requires stripping, handling and deposition of soil and tailings to stop when the on-site wind speed exceeds 5 m/s (10-minute average), and the wind is blowing towards sensitive receptors within 350 m. The sensitive receptors are those shown on the map in Appendix 2 to the ORC air permit, which the DMP (Section 2.4.2.6) also relies on. The CODC condition should reference the same map or schedule of receptors. Condition 20 does not apply to vehicle movements on unsealed surfaces or to bulldozer work. Vehicle movements over unsealed surfaces are typically the largest source of dust from mining and quarrying sites. T+T recommends that, in winds above the trigger, vehicle movements for hauling material (light vehicles could be exempt) also stop.
- **Condition 20 (averaging period).** The 5 m/s threshold that is widely used as a wind speed trigger is derived from hourly mean wind speeds. T+T would ordinarily recommend that the trigger be applied as a rolling one-hour average rather than a 10-minute average. However, ORC air permit Condition 2(f) already specifies 5 m/s as a 10-minute average. Unless both consents are changed, the practical course is for the CODC condition to align with the ORC air permit. Separately, the applicant's own documents give three different versions of the wind speed trigger: Condition 20 (5 m/s, 10-minute average), DMP Table 2 (10 m/s over two consecutive 10-minute periods) and Mr Boughton, paragraph 27 (5 m/s for more than 20 minutes). The DMP should be corrected to the condition value.
- **Condition 21 (weather station).** Condition 21 (and ORC air permit Condition 9) requires a weather station logging wind speed and direction at one-minute intervals at a minimum height of 6 m, at a location representative of the working area. Neither condition references a monitoring standard. T+T recommends that the condition require the installation, operation, maintenance and calibration of the on-site weather station in general accordance with AS/NZS 3580.14:2014 (Meteorological monitoring for ambient air quality applications), with a mast height of at least 6 m.
- **Condition 24 (PM_{10} monitoring).** The PM_{10} trigger level and the monitor specification should be set out in the condition rather than left to the DMP. This is discussed further in Section 3.1.
- **Condition 22 (DMP).** Condition 22 currently requires only that an updated DMP be provided to CODC for certification. Unlike ORC air permit Condition 6, it does not require the DMP to be prepared by a suitably qualified and experienced air quality practitioner, and there is no clause stating that the conditions prevail if the DMP is inconsistent with them. Both should be added.
- **Condition 25 (complaints).** Condition 25 should require the complaints register to record the PM_{10} monitoring data and water application records for the period of the complaint and require Council to be notified of each dust complaint within 24 hours (as ORC air permit Condition 12(b) does).

- **Reporting of trigger events (new condition).** There is no requirement in either the ORC or CODC consent for the consent holder to report PM_{10} or wind speed trigger exceedances, or the responses taken by site management to those events to the relevant Council. T+T recommends a condition requiring an annual report to Council of all trigger exceedances and the responses undertaken, in part to confirm that the monitoring and the responses are in fact occurring.
- **Condition 26 (objectionable or offensive dust).** This is the only outcome-based condition. Its wording is the same as ORC air permit Condition 13. It is appropriate, but we provide further comment in Section 3.2 on how it can be enforced given the applicant's own statements on background dust.

3 Mitigation and adaptive management

3.1 Key mitigation measures

T+T agrees with Mr Iseli that the proposed approach relies heavily on diligent day-to-day management and that, in a sensitive receiving environment, the key controls should sit in the conditions rather than only in a management plan, because:

- Under the CODC land use consent (Condition 23) the DMP is deemed certified if Council does not respond within 20 working days. The ORC air permit has no deemed certification mechanism, so the same DMP could be deemed certified by CODC while still under review by ORC. The CODC consent should either remove deemed certification or require the DMP to be certified by ORC first.
- Several DMP provisions are inconsistent with the conditions (hours, wind trigger, stockpiles, winter disturbed area), which shows the risk of relying on the DMP as the operative document without a suitable certification process.

T+T considers the following to be critical measures that should be specified in the conditions of the land use consent, with the DMP used to demonstrate how they will be implemented:

- The PM_{10} trigger levels, averaging period and the required responses. The applicant proposes a single trigger of 150 µg/m³ as a one-hour average (Mr Boughton, paragraph 36; DMP Table 2). T+T recommends a two-tier trigger level approach: a first tier trigger level at 75 µg/m³ (one-hour average) at which site operations and mitigation are checked and suppression is increased, and a second tier trigger level at 150 µg/m³ (one-hour average) at which dust-generating activities stop.
- The PM_{10} monitor specification (near-reference grade, heated inlet) and the requirement that the monitor operates and logs continuously throughout any period in which Condition 24 requires monitoring, with data retained and provided to Council on request.
- The wind speed trigger (already in Condition 20), its averaging period and the activities it applies to, including vehicle movements for hauling material.
- Telemetry of PM_{10} and wind speed trigger events to site operators in real time. ORC air permit Conditions 9(d) and 11(c) require automated alarms and electronic alerts, and the CODC conditions should do the same.
- The requirements for water availability for dust suppression (see Section 4).

3.2 Background dust and cumulative effects

Mr Walker's statement (paragraph 34) that Sandy Point is already very dusty in a nor'wester and that it will not be easy to distinguish the mine's dust from background is an important consideration. Notwithstanding this, Mr Walker accepts the proposed dust conditions and PM_{10} monitoring and

does not suggest that a trigger level will not work. However, his statement appears to argue that it may be difficult to attribute trigger events to site activities given dusty environment.

The single PM_{10} monitor proposed in Condition 24 will measure total PM_{10}, which includes background sources of dust as well as the mine's contribution. T+T considers that the relevant question is one of cumulative effects, rather than distinguishing the site's contribution from background sources. Periods of high regional dust in a nor'wester are also the worst case for dust generation on the site, and the site's discharges should not make conditions at neighbouring properties significantly worse at those times. Therefore, if the monitor exceeds the trigger, the need to cease dust-generating activities remains valid whether or not the site is the sole cause of the exceedance. The conditions should make this clear.

Two consequences follow for any potential enforcement:

- Condition 26 (objectionable or offensive dust beyond the boundary) requires the dust to be attributed to the site. In a dusty background this will be difficult.
- The complaints procedure in the DMP (Section 3.6.4) allows the site manager to close a complaint if "no objectionable discharge is identified", which in a dusty background may often be the outcome.

Monitoring can be designed to address this, using methods that are routinely used on quarry and mine sites:

- Paired upwind and downwind monitoring. Two PM_{10} monitors, one upwind and one downwind of the active area (relocated as the active area moves), with the trigger applied to the difference between downwind and upwind concentrations as well as to the absolute downwind concentration.
- Wind-direction filtering. PM_{10} monitoring data should be logged with wind speed and direction so that each exceedance can be assigned to a wind sector, and triggers can be set to apply when the monitor is downwind of the active area.

If these measures are stipulated as consent conditions, cumulative dust effects can be adequately managed even when background dust levels are elevated.

4 Water for dust suppression

The consented consumptive water-take (RM26.315.02, Condition 2(b)) is 20 L/s, 432 m^3/day and 69,120 m^3/year. The whole of the consumptive take is for dust suppression and rehabilitation, with process water recirculated (Groundwater Technical Assessment, Section 3.0). From a dust control perspective, the peak daily volume is the relevant figure.

Based on the available information, T+T considers that the daily take volume is likely to be adequate for dust suppression purposes. The DMP (Section 2.4.2.3) gives an application rate of up to 1 L/m^2 per hour for wet suppression, which in our experience is typically a conservatively high value. Applied over the full 2 ha active area for six hours a day, it equates to about 120 m^3/day, well within the 432 m^3/day limit.

T+T recommends that, if consent is granted, the conditions should:

- require that mining and rehabilitation activities only occur while a water permit authorising sufficient water for dust suppression and grass establishment is held and able to be exercised.
- require that dust-generating activities cease if water for suppression is not available, and that the water cart and sprinkler system are operational (not just available) whenever dust-generating activities occur.

The first point above also addresses the expiry of the ORC consents on 6 October 2029. The three-year mining period plus six months of rehabilitation (Condition 3) necessarily runs past that date. A fixed end date for mining that allows the full rehabilitation period to be completed before 6 October 2029 would also resolve the issue.

5 Separation distance and the location of assessment

WSP (Section 3.4) adopts 350 m as the distance within which sensitive receptors are considered, citing CASANZ guidance adapted from the UK IAQM construction dust guidance (2014). The IAQM mineral dust guidance (2016) is more relevant for mining and uses 250 m for sand and gravel workings and 400 m for other mineral sites. Notwithstanding this, on balance, T+T considers 350 m to be a reasonable screening distance for this site and agrees with Mr Iseli that it is "an appropriate distance for screening purposes". The distance assumes that good practice dust controls are in place.

6 Uncertainties and other matters

T+T notes the following material uncertainties and gaps:

- No site-specific wind data. The assessment relies on data from Wānaka Airport, about 7.5 km to the northwest, and an assumption about valley channelling (WSP Section 3.2). T+T considers this a reasonable approach for the assessment.
- The assessment treats the dusty background as reducing the significance of the mine's contribution (Sections 4.1.1 and 4.1.2). T+T disagrees and considers that the relevant question is one of cumulative effects. Mr Iseli notes local sources "will contribute to cumulative effects".
- The DMP is written around the ORC air permit and reporting to ORC. It does not reference the CODC conditions, as Condition 22 requires. If consent is granted, Condition 22 should require the DMP to be updated to address the CODC conditions and to provide for reporting to CODC.

7 Summary of recommended condition changes

Table 7.1 summarises the changes to the applicant's proposed conditions that T+T recommends from a dust perspective. These changes are ranked in order of importance (the first change being the most important).

Table 7.1: Summary and ranking of recommended changes to the applicant's proposed dust conditions

Condition	Recommended change
24	Specify a near-reference grade monitor with heated inlet; set two-tier trigger levels (75 µg/m³ and 150 µg/m³, one-hour average), and the responses to each, in the condition, including that a response is required regardless of the source of the exceedance; require paired upwind and downwind monitoring with a differential trigger; require real-time alerts to site staff; define "receptor" as a dwelling and its curtilage
22 and 23	DMP to be prepared by a suitably qualified and experienced air quality practitioner; conditions prevail over the DMP; remove deemed certification (or require ORC certification first); annual review reported to Council; amendments certified before implementation; DMP to address the CODC conditions
3 and 14	Mining and rehabilitation only to occur while a water permit for dust suppression and grass establishment is held and able to be exercised, or fix an end date that allows rehabilitation to be completed before 6 October 2029; dust-generating activities to cease if suppression water, an operational water cart, the weather station or the PM_{10} monitor is unavailable

Condition	Recommended change
20	Extend the wind speed trigger to vehicle movements for hauling material and bulldozer work, or require demonstrated wet suppression in those conditions; align the trigger and averaging period with the ORC air permit; reference the same schedule of receptors; correct the DMP to match
7	Extend the hours restriction to all dust-generating activities, with dust suppression permitted at any time
13	Define "unrehabilitated"; resolve the 2 ha versus 4 ha winter inconsistency; require interim stabilisation of areas awaiting grass
16	Define the stockpiles covered (topsoil, overburden, initial stockpile, tailings); align the height with the ORC air permit; require surfaces to be kept damp or vegetated and wetted when dry
21	Require the weather station to be installed, operated, maintained and calibrated in general accordance with AS/NZS 3580.14:2014, with a minimum mast height of 6 m
New	Annual report to Council of all PM_{10} and wind speed trigger exceedances and the responses undertaken
25	Notify Council of each dust complaint within 24 hours; record monitoring and water application data with each complaint; submit the register annually
New	Daily visual monitoring; pre-start meeting with Council

8 Applicability

This report has been prepared for the exclusive use of our client Rebecca Wolt, Barrister, with respect to the particular brief given to us and it may not be relied upon in other contexts or for any other purpose, or by any person other than our client, without our prior written agreement.

Tonkin & Taylor Ltd

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