

**SUBMISSION ON RESOURCE CONSENT APPLICATIONS FOR IN-SHORE AND MID-SHORE
SAND EXTRACTION SITE – COASTAL MARINE AREA (OFF-SHORE FROM PAKIRI)**

To: Auckland Council

(aa) **Name of submitter: Te Whanau o Pakiri**, the affected hapū, and whānau that exercise kaitiakitanga and maintain ahikaatanga in the common marine and coastal area where the proposed activity is being considered. This submissions in relation to Te Tiriti o Waitangi, Māori customary interests and applicability of tikanga to marine and marine consent applications.

(bb)

(cc) This is a submission on two resource consent applications by McCallum Bros Limited (the **“applicant”**):

- The first is an application for resource consent for an “in-shore” sand extraction site in the coastal marine area, off-shore from Pakiri (BUN60352951).
- The second is an application for resource consent for a “mid-shore” sand extraction site, also in the coastal marine area, off-shore from Pakiri (BUN60369079).
- (together, the **“applications for consent”**)

I could not gain an advantage in trade competition through this submission.

I wish to be heard in support of my submission.

If others make a similar submission, I would consider presenting a joint case with them at any hearing.

Scope of submission

1. This submission relates to the two applications for resource consent in their entirety.

Nature of submission

2. I oppose the applications for resource consent **in full**.

Reasons for submission

3. My primary reasons for this submission are that the applications for resource consent:

Significant Cultural issues

 - a. Does not take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).in relation to managing the use, development, and protection of natural and physical resources.
 - b. Does not protect our private property rights or acknowledge our treaty rights and associated statutory mineral rights and ownership in the resource.
 - c. Our customary interests are important, tikanga and Te Tiriti now has recognition and status in the laws of Aotearoa when managing resources sustainably.
 - d. Does not allow our kaitiaki to participate effectively in the decision making to promote the sustainable management of natural and physical resources, and therefore will not achieve the purpose and principles of the Resource Management Act 1991 ("**RMA**").
 - e. will not meet the reasonably foreseeable needs of our future generations.
 - f. will not enable the social, economic, and cultural well-being of Pakiri whanau, hapu and hapori most impacted by the activity
 - g. are contrary to the purposes and provisions of the relevant planning documents, including the Auckland Unitary Plan (Operative in Part) ("**Unitary Plan**") and the Regional Policy Statement ("**RPS**"), and including the Hauraki Gulf Marine Park Act 2000 which itself is a RPS under the RMA; and
 - h. are contrary to Part 2 and other provisions of the RMA.
4. Without limiting the generality of the above, additional specific reasons for declining the applications for resource consent are set out below.

Additional reasons for declining the applications for resource consent

5. Pakiri is also one of the last remaining constant indigenous territories in the Auckland region. Our submission is in relation to Te Tiriti o Waitangi, Māori customary interests and applicability of tikanga to marine and marine consent applications. As tangata whenua our relationship with the marine environment is a long held, indisputable "existing interest".

6. Customary interests and tikanga are important and both tikanga and Te Tiriti o Waitangi have elevated status in the law of Aotearoa.
7. tikanga-based customary rights and interests constitute “existing interests” for the purposes of the RMA Act, including kaitiakitanga and rights claimed (but not yet granted) under the Marine and Coastal Area (Takutai Moana) Act 2011.
8. practically expressed values such as mana, whanaungatanga and kaitiakitanga are relevant and have not been appropriately considered by the decision-maker or the applicant.
9. Tikanga is practiced by whānau, hapū and iwi specifically for the protection of te taiao (the environment) and moana (the ocean).
10. The applicant and Auckland Council as consent authority has not informed itself to be able to recognise where tikanga exists, and how it might affect or constrain decision-making.
11. an effective environmental “bottom line” – if the environment cannot be protected from material harm through regulation, then the activity must be prohibited. This stronger protection of marine resources ties in appropriately with the operationalisation of tikanga as an applicable law under the RMA Act, which is a legal framework built upon the philosophy of sustainable management.
12. the Resource Management Act has a responsibility in the coastal marine area with regards to managing threats to marine biodiversity and habitats because of dredging and mining impacts.
13. The applications for resource consent are a non-complying activity under the Regional Coastal provisions of the Unitary Plan to extract sand from and disturb the seabed in the Mangawhai-Pakiri embayment using a (trailing) suction dredge.
14. The application does not consider the climatic changes that have occurred over the past 20 years, or does it consider the future impacts of the lowering of the seafloor and sea level rise on our remaining tribal lands- namely the sand dune reserves, waahi tapu and low-lying coastal flats and our subsistence farm lands prone to future inundation.
15. Pakiri Beach is identified in the Unitary Plan as an outstanding natural landscape.
16. The proposed sand mining is inconsistent with both regional and national directives, including those for the Hauraki Gulf, and including in relation to climate change considerations, protocols and commitments.
17. The proposed sand mining is also contrary to the purpose of the establishment of the nearby Pakiri Regional Park, Te Arai Marine Reserve, and the Goat Island Marine Reserve.
18. The fine, sand at Pakiri “Ngā Oneonehaea” represents a finite, precious resource which is important for the beach and the local environment- it is non-renewable, and is also enjoyed by the greater public, which should not be depleted for private profit. **It is our tāonga**
19. Sand mining causes adverse environmental effects both off-shore and on-shore relating to coastal processes, flora, fauna, seabed, water quality, biodiversity and the on-shore beach system.

20. Recent scientific research has clarified closure depth, effective sand inputs, and the overall annual sediment balance for the near-shore Mangawhai-Pakiri embayment and has concluded that the near-shore sand system is in annual deficit from effective sand inputs, less total sand mining extraction volumes.
21. The nearby beaches have lost significant volumes of on-shore sand reserves and are in a critical state.
22. There are several alternative and sustainable sand supply sources available.
23. The applicant has a poor compliance history and has repeatedly breached many key conditions of its current consents, on and off the water, even after those breaches have been brought to its attention.
24. The applicant has created significant and persistent seabed trenches further off-shore, which they never publicly revealed.
25. Imposing consent conditions on any continuation of sand extraction at the in-shore area, or any new extraction in the mid-shore area, will have no effect because:
 - a. the applicant has repeatedly breached the conditions of its existing resource consent and can be expected to do so in future; and
 - b. Auckland Council, via its Coastal Consents Unit, has not been an effective regulator and has completely failed to monitor and enforce the terms of the applicant's existing consents.
26. Auckland Council under the RMA is to use cultural and biodiversity protection mandates embedded in the Resource Management Act
27. Te Whanau o Pakiri are fighting not only to reclaim their identity and mana, but to maintain control of their customary lands and moana. Te Whanau o Pakiri want to halt years of neglect and environmental degradation, and return Pakiri to a thriving economy and community. We exercise mana whenua, mana moana and kaitiakitanga over Pakiri
28. We expect our Unitary council as partners to have jurisdiction to control and maintain and support the significant marine biodiversity, landscape and cultural values of Pakiri.
29. Te Whanau o Pakiri have had a long intergenerational aspiration for the reservation of the rohe moana to preserve our wāhi taonga, wāhi tapu and other cultural and environmental significance preserved as a taonga moana for our whanau and hapū and the shared benefit for the wider community. Tangata whenua have known for many generations – that there has been significant degradation to our rohe from this continued activity in our waters.
30. The RMA relates to the use of land, air and water and its purpose is to promote the sustainable management of natural and physical resources. This includes the responsibility of councils to undertake coastal planning and to maintain biodiversity within the territorial sea (up to 12 nautical miles offshore) through a Regional Coastal Environment Plan.
31. the Auckland council in the primary role of governance for biodiversity has not provided protections, in line with those set out under the RMA, to have regard to the intrinsic values of ecosystems and the relationship of Māori with ancestral waters and taonga.

32. By supporting this activity, the Auckland council has failed to protect reef and sandy shore systems and the extensive and critical Horse Mussel and Scallop beds that once were found in abundance across the whole embayment of Pakiri. Council has failed to ensure that complete scientific monitoring, in collaboration with tangata whenua and multiple agencies, to inform future integrated marine management solutions for the wider Pakiri - Mangawhai Natural Environment Area
33. There has and continues to be a lack of environmental compliance by the applicant and no enforcement by the authority. Auckland Council has no capacity to effectively enforce protection on our areas of high value.
34. The lack of up to date data provided by the applicant limits the decision makers to make an informed decision. Appropriate surveying has not been carried out. Good understanding of the cumulative effects over time and of the increase in intensity and duration of the proposed and combined activities are not well understood and are based on studies done over 20 years plus. In that that time there have been many technological advanced, such as innovations for 3d modelling interrogation that the applicant should be required to provide. A detailed study is needed before giving a new consent.
35. the McCallum's Brothers offer to withdraw the nearshore application if the mid-shore application is consented, clearly illustrates that they are trying to manipulate the consenting process and the consenting bodies. They are setting up a "choose the lesser evil" scenario when, in fact, any dredging inside the 25m depth contour is inappropriate without a full understanding of the sediment transport processes within the bay (i.e., both options are, or could be, damaging). The series of applications they are making should be challenged on the basis of 'project splitting'.
36. Te Whanau o Pakiri consider this application to be a misappropriation and disrespect to the planning process to make an application for a consent that they clearly don't "need".
37. The Near Shore continuance since September 2020 beyond the expiry date, has given many reasons for parties to challenge Auckland Council as to why they allowed it to continue, the law that allows a current consent holder, to continue beyond the consents completion date, is being abused, and used by McCullums to create their own advantages. This now explains why the Far Shore consent process was bought forward by two years and McCullums late take over of the FS consent application once their two other consents had been lodged and notified. If they had taken over the FS consent earlier they would not have been able to block the many calls for all 3 hearings to have been heard at once, which would have been disadvantageous to McCullums.
38. We encourage Auckland Council demand McCullums to withdraw their In shore applications immediately and terminate the Far Shore application for the reason that the initiator Kaipara Limited has withdrawn and then require McCullums to reapply for the three new consents to be heard simultaneously since they are now the license applicant for all three. Then the combined and cumulative effects can be considered properly.
39. the length of time for the consents sought of 35 years is irresponsible of the authorities to even contemplate granting given impending RMA changes. The Government plans to repeal the Resource Management Act 1991(RMA) and it will be imminently replaced with three new pieces of legislation. That intend to deliver on environmental and development outcomes and give stronger effect to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi (Te Tiriti). The new legislation will better protect and restore the environment and its capacity to provide for the wellbeing of present and future generations, better enable development within natural

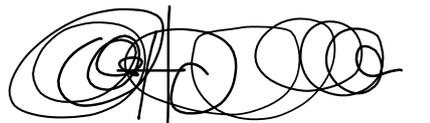
environmental limits, give proper recognition to the principles of Te Tiriti of Waitangi and provide greater recognition of te ao Māori including mātauranga Māori and better prepare for adapting to climate change.

40. We are disappointed at the technical officer's report at how accepting they are of the applicant's interpretation of the Pakiri Sand Study. If nothing else, they should have learnt from the Offshore Expert Caucusing that the applicant's interpretation is not consistent with the interpretation of a few other experts, i.e., there is no certainty.
41. We have issue with the claim and statements made by the applicant advocating that the beach is accreting and building. It is well understood that a beach under stress and in an erosive state will build out in the lower intertidal/shallow subtidal, at the cost of the dune system (in the high intertidal). This science needs to be thoroughly delved into.
42. the mixed and piecemeal recent survey results do not further our understanding of the coastal or sediment transportation processes associated with the Mangawhai – Pakiri seabed and dredged features. Further, it is our view that it is essential that such an understanding is obtained before any further extraction is consented (let alone for 35 years).
43. Current information provides data on the physical effects of the extraction and shows that some sediment movement occurs at depth (which we knew), but we can't determine (from this) what the implications are for the resource or the functioning of the system (offshore - mid shore - near shore - beach).
44. Before any further extraction is consented (let alone a 35-year license), in any of these zones, Te Whanau o Pakiri need to see and understand that the decision makers are informed fully about the whole system effects, both coastal processes and ecology as per best practice coastal morphological modelling methods and have used the tools now available for proper assessment.
45. Morphological assessment will help understand coastal change. They can model the coastal processes explicitly and have high predictive capability. We all need to understand why and how the coast is evolving and how human interventions or climate change might affect the evolution from a combination of evidence inclusive of our mātauranga (expert local hapu knowledge) and some form of predictive model or tool. We wish to see this kind of approach with appropriate interpretation.
46. Decision makers will need a clear understanding of the specific coastal processes active in the Pakiri-Mangawhai area and what are the potential impacts and significance and the factors likely to influence them. Hence the need for morphological modelling to test the levels of uncertainty. A Morphological assessment can look at expected trends, likely future impacts both around applied and nearby, climate change impacts, storm impacts, recovery rates, estuarine change (impacts on Fairy Tern nesting and feeding habitats) and landward flood risk.

Decision sought

47. The decision Te Whanau o Pakiri seek from the Council is that the two applications for consent be declined and activities of this nature be prohibited.

Signature:

A handwritten signature in black ink, consisting of several overlapping loops and a vertical line, positioned above a horizontal line.

Olivia Haddon

Chairperson Te Whanau o Pakiri

Date:

10th December 2021

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