

**Appendix CC Memorandum: Assessment of the
Existing Environment for Taharoa
Ironsands Limited Central and
Southern Blocks Fast-track Project**

MEMO

To Taharoa Ironsands Limited

From Stephanie de Groot

Matter 1051377

Date 19 June 2025

Subject: **Assessment of the Existing Environment for Taharoa Ironsands Limited's (TIL) Central and Southern Blocks Fast-track Project**

1. The application seeks the necessary resource consents to continue mining activities within the Central and Southern Blocks of the Taharoa Mine (**Application**) and associated ship-loading activities under the Fast-track Approvals Act (**FTAA**).
2. Existing operations are authorised by two coastal permits (authorising the existing mooring and pipeline in the coastal marine area), five discharge permits, a water permit to dam and divert the Wainui Stream to create a water supply reservoir (Dam), a water take permit, and a regional land use consent to undertake mining operations (**Existing Consents**).
3. The Existing Consents were due to expire in December 2020. On 13 July 2020 TIL made an application (APP142035) to the Waikato Regional Council (**WRC**) for new resource consents to replace the Existing Consents (and continue mining activities within the Central and Southern Blocks and associated ship-loading activities). Since then, the Council has exercised its discretion under section 124 of the Resource Management Act 1991 (**RMA**) to allow TIL to continue to operate until a decision is made on the application and all appeals are determined. This position continues to apply, and in accordance with section 95 of the FTAA will continue to apply until the Fast-track application (**Application**) is finally determined.
4. The purpose of this memorandum is to identify what comprises the 'existing environment' against which the Application is assessed. Given there have been mining activities at the Site for many years and the Existing Consents provide for certain built infrastructure, particularly the Dam, and for rehabilitation of mined areas, it is important to be clear about the extent to which that existing infrastructure should be considered as part of the environment that is being considered affected by the Application.
5. In summary:
 - (a) The 'environment' for the purposes of section 104 of the RMA consists of the environment at the time that the Application is determined including any permitted activities that might be established in the future and already consented activities.
 - (b) In accordance with clause 17(1) of the FTAA, section 104 of the RMA is a matter that an Expert Panel must take into account. RMA case law relating to what is the "existing environment" is therefore applicable to the Application.
 - (c) Case law establishes that the on-going effects of activities authorised by regional consents should be excluded for the purposes of considering and evaluating the effects of the application on the environment aside from in some circumstances.
 - (d) In this case, this means that regional consents should be treated as having expired, so that the 'environment' against which the Project is assessed:
 - (i) Includes the effects of TIL's past activities including all steps required under the consent to rehabilitate the site.

- (ii) Assumes the activities authorised under the Existing Consents do not continue and therefore excludes the future effects of those activities.
- (e) In practice this means the 'environment' for the purpose of the assessing the environmental effects or impacts of the project includes the condition of the land at the end of the term of the regional resource consents.
- (f) The condition of the land at the expiry of the Existing Consents will be as contemplated by the conditions of those consents, including the required rehabilitation works. Specifically:
 - (i) Progressive recontouring, and other rehabilitation activities required by the Land Management and Rehabilitation Plan and Site Closure Plan will have been completed.
 - (ii) Planting (as contemplated by the Land Management and Rehabilitation Plan) will be in place.
 - (iii) The Dam and associated infrastructure will have been removed and consequently the water level in the lake will have dropped to pre-dam levels.
 - (iv) The water take and discharge will have ceased, but the environment will still be acclimated to the presence of the water take and discharge.
 - (v) The cessation of mining and removal of existing infrastructure is likely to have initiated adverse effects on some aspects of ecology on the site, particularly around the Dam in the Wainui Stream.

6. We have set out further detail below.

The 'environment' for the purposes of section 104 of the RMA consists of the environment at the time of the Decision including any permitted activities that might be established in the future and already consented activities

- 7. Section 104(1)(a) of the Resource Management Act 1991 (**RMA**) prescribes that a consent authority must take into account the actual and potential effects on the environment of allowing the activities to which the application for consent relates. The courts have conceptualised the "environment" as the environment that may be affected by an application for consent, including both the immediate locality and the surrounding area which could be adversely affected by the proposal.¹
- 8. In accordance with clause 17(1) of the Fast-track Approvals Act, section 104 of the RMA is a matter that an Expert Panel must take into account when determining a resource consent application under the Fast-track Approvals Act, including section 104(1)(a) which requires the decision maker on a resource consent application to "have regard to...any actual and potential effects of the activity on the environment." It follows that RMA case law relating to what is the "existing environment" is applicable to the Application.
- 9. *Queenstown Lakes District Council v Hawthorn Estate Limited* is the leading relevant authority on this issue. The Court of Appeal has highlighted that the "environment" embraces the current state of the environment and the future state of the environment as it might be modified by permitted activities (activities that can be undertaken as of right) and by resource consents which have been granted, where it appears likely that those resource consents will be implemented. The existing

¹ *Queenstown Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299 (CA).

environment may include permitted activities, which a decision-maker has no control over. In undertaking its assessment, the decision-maker must take a 'real world' approach.²

Case law establishes that activities authorised by expiring regional consents should not be relied on as part of the 'environment' except in certain circumstances; their effects should be excluded for the purposes of considering and evaluating the effects of the application on the environment

10. TIL's activities authorised by the Existing Consents cannot be relied on as part of the existing environment for the following three reasons:

- (a) *Hawthorn* involved land use consents granted under the district consenting framework. These consents are included as part of the existing environment because, if they are implemented, the activity exists in perpetuity due to district land use consents having no expiry date.
- (b) In contrast, resource consents granted under a regional consenting framework have expiry dates and are not guaranteed renewal. The High Court in *Ngāti Rangi Trust v Manawatu-Whanganui Regional Council* has treated these consents as being contextually different to district land use consents because they have no permanency.³ In the context of considering an application for replacement water take permits as part of a hydroelectric power scheme, the Court concluded:
 - (i) the existing environment cannot include the effects caused by activities for which a renewal consent is sought;
 - (ii) Effects caused by activities for which a renewal consent must be excluded "*unless it would be fanciful or unrealistic to assess the existing environment as though those structures authorised by the consent being renewed did not exist*" (the Court cited a passage from Environmental and Resource Management Law about this exception); and
 - (iii) the existing consents for the operation of the hydroelectric power scheme should have been treated by the Environment Court⁴ as having expired when it determined the resource consent application under appeal.
- (c) Given the longevity of TIL's mine it is useful to consider if the exceptions to this general principle apply: might it be fanciful or unrealistic to consider the existing environment as though existing infrastructure does not exist now (due to the consents expiring)? We consider that it is not appropriate to rely on these exceptions because:
 - (i) The High Court did not include the water takes (and associated flow rates) for a hydroelectric power scheme to be part of the environment when assessing replacement resource consents.⁵ It did not consider it fanciful or unrealistic to ignore these water permits despite the hydroelectric power scheme being in place for nearly 100 years and despite recognition of existing takes in the relevant regional plan.
 - (ii) The Existing Consents provide for a bond for the removal of the Dam (if required). This condition indicates the Council expects that the Dam will not be kept in perpetuity and expect its removal at some point (unless of course, that position is modified through consenting). The bond also provides for the removal of all infrastructure associated with the mine, such as the pipeline.

² *Queenstown Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299 (CA).

³ *Ngāti Rangi Trust v Manawatu-Whanganui Regional Council* [2016] NZHC 2948.

⁴ *New Zealand Energy Ltd v Manawatu-Whanganui Regional Council* [2016] NZEnvC 59.

⁵ *Ngāti Rangi Trust v Manawatu-Whanganui Regional Council* [2016] NZHC 2948.

- (iii) Although the operations have been long established, the Existing Consents were not obtained for the maximum duration of 35 years, and therefore are not authorised in perpetuity.

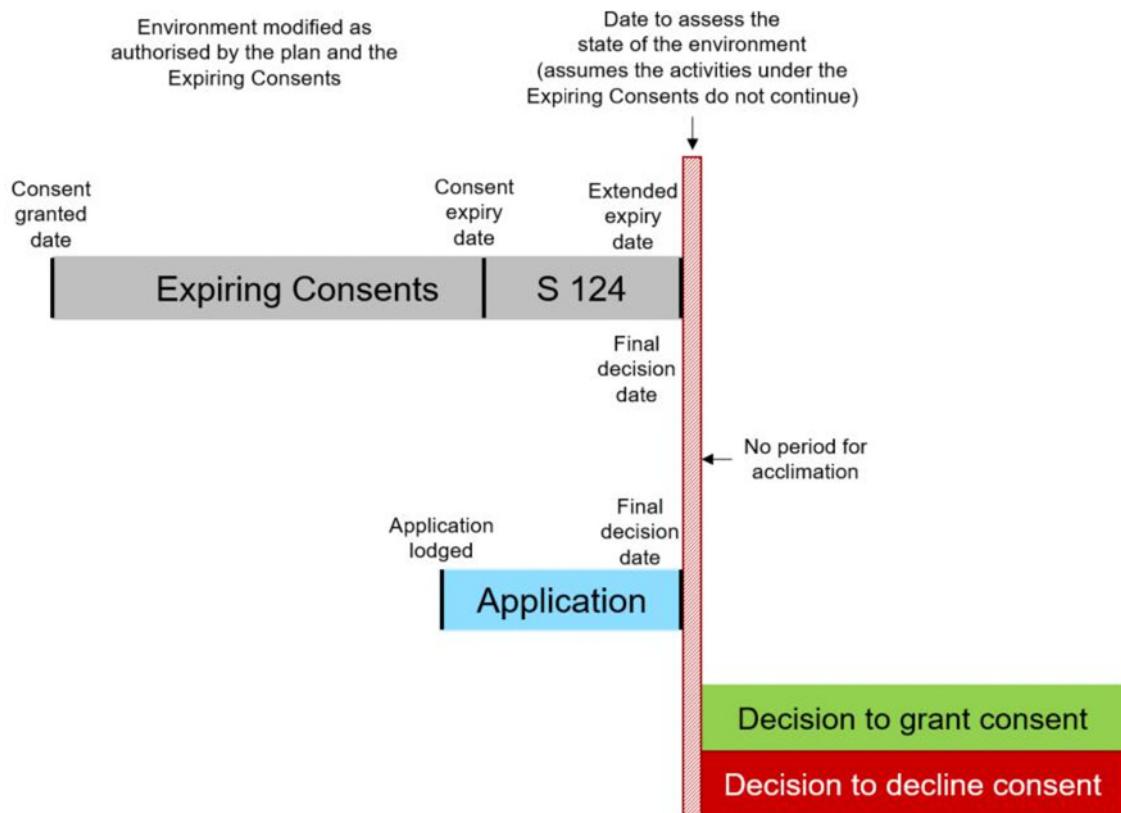
This means that the ‘environment’ includes the effects of TIL’s past activities and excludes the future effects of activities that rely on the Existing Consents

11. In light of case law, when assessing the effects of the application on the environment the decision-maker must consider the environment to:
 - (a) include the effects on the environment of TIL’s past activities (as part of the existing environment):
 - (i) undertaken as permitted activities e.g. the felling of production forestry;
 - (ii) authorised by a district land use consent without an expiry (we understand these to be limited);
 - (iii) authorised by regional resource consents that are being implemented (e.g. the Eastern Block and Pit 1 Block);
 - (iv) authorised by regional resource consents granted but not yet implemented (e.g. the Te Mania Block);
 - (v) existing, lawfully established activities operating under existing use rights which can and continue to meet sections 10A or 20A of the RMA, provided that there is no change to the scale or intensity of the activity (again, we understand these to be limited, and not applicable to the activities operating under the Existing Consents);
 - (vi) authorised by the Existing Consents until their expiry at the date the current application is finally determined; and
 - (b) exclude the on-going effects on the future state of the environment of TIL’s activities that are authorised under the Existing Consents (as those consents cannot be assumed to continue and cannot be considered part of the existing environment).
 12. For completeness, the decision-maker would not assess the effects of the application on the environment as it was historically (before TIL or humans) because that would be inconsistent with *Hawthorn* and the RMA as it would not be assessing effects of the application on the environment as it is, including the activities which were previously authorised and have been undertaken. That would be an irrelevant assessment.
 13. This approach was accepted by the Independent Commissioners who considered TIL’s application to re-consent the mine on behalf of WRC. The Commissioners considered that the ‘environment’ includes “an environment where remediation and site closure has been implemented” (albeit that the Commissioners adopted a different approach to the consideration of the status of rehabilitation).
 14. In terms of rehabilitation, there is no express requirement in the Existing Consents for rehabilitation works to be implemented within a specific timeframe prior to expiry and therefore these works can be completed towards the end of the consent term.
 15. If the Application is granted, there will be no need for TIL to complete all of the rehabilitation and site closure works. Therefore, the approach taken to conceptualise of the existing environment is conservative insofar as it assumes rehabilitation has been completed (but not acclimatised) despite that this may not ever eventuate. This approach is consistent with the principle set out in *Ngati Rangi*

that the environment for the purpose of a renewal application generally should not include the effects of the activity for which the renewal is sought.

In practice this means the state of the environment that is relevant is the environment at the date a decision is made (being the date that the Existing Consents are likely to expire)

16. In practice this means that the state of the environment relevant to the assessment is as it is when the decision is made, modified by past activities (permitted and authorised under the Existing Consents) and assuming the activities authorised under the Existing Consents do not continue. This is illustrated by the diagram below.



17. In broad terms the effects of the application should be assessed against an environment that could be described in the following way.

- A land form that is heavily modified and affected by past lawful activities for some years (i.e. elevated lake levels and associated wetlands and marginal terrestrial habitats).
- No ongoing water take and discharge, but an environment that has acclimated to the presence of such water takes and discharges.
- No Dam and related infrastructure present, as it is assumed to have been removed on the date of the decision. Consequently, the water level in the lake would have dropped to approximately pre-dam levels.
- A land and water form modified both by the presence of the Dam over the years in reliance on the Expiring Consents and by the subsequent removal of the Dam, but not a land and water environment which has adapted in any way to the new water level regime.
- All rehabilitation works required under the Existing Consents would have been completed, including recontouring and planting in accordance with the Land Management and Rehabilitation Plan. Planting would be in a state where it is newly established. The Land Management and Rehabilitation Plan contemplates that some rehabilitation will be undertaken progressively over time, so some areas could be more established.