

UNDER the Fast-track Approvals Act 2024 (**Act**)

IN THE MATTER an application for approvals for the Lake Pūkaki Hydro
Storage and Dam Resilience Works – a referred project

BY **MERIDIAN ENERGY LIMITED**
Applicant

**SUBMISSIONS OF COUNSEL FOR MERIDIAN ENERGY LIMITED IN RESPONSE
TO FURTHER (LATE) COMMENTS BY GENESIS ENERGY LIMITED**

30 June 2026

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MAY IT PLEASE THE PANEL

1. Counsel for Genesis Energy Limited (**Genesis**), a trade competitor, have filed a memorandum dated 29 June 2026 asserting an alleged jurisdictional issue and alleged procedural fairness concerns arising from the applicant's 19 June 2026 response to the panel's draft conditions. By Minute 8, dated 29 June 2026, the Panel has treated the memorandum from Genesis as a late comment on the application, has determined to receive and consider it, and has invited the applicant to reply.
2. This memorandum is the applicant's response to the Panel's invitation.
3. At paragraph 2 of their memorandum, counsel for Genesis note that there is no statutory right for an applicant or a person invited to comment under section 53 of the Act to comment on a draft decision. Instead, the opportunity provided under section 70 is to comment on the panel's draft conditions.
4. I agree with the statement of the position under the statute, but not with the interpretation made by counsel for Genesis in the present context.
5. Section 70 directs that before granting an approval, a panel must invite comments on its draft conditions from the parties listed in section 70(1) and must provide an applicant an opportunity to respond to those comments (section 70(4)). Section 70 establishes a sequential process for comments on draft conditions. Minute 7 of the Panel invites sequential comments on draft conditions and comments by the applicant in response to comments by others. Meridian's comments on the draft conditions and on the comments made by others are in accordance with the requirements of the Act and the Panel's directions in Minute 7.
6. There is no direction in the FTAA as to the form that such comments and responses must take. In the present application, Meridian elected to provide its response in the form of tables setting out suggested changes to the Panel's draft conditions (together with brief reasons), supported by legal submissions, formal planning and company evidence, and a technical memorandum from its

consultant engineers. I submit there is nothing wrong with that approach. It is up to an applicant (or a commenting party) to decide the form that its comments on and responses to conditions will take. In the present case, the applicant chose a format intended to give the Panel a clear and helpful response.

7. Genesis asserts that Meridian's response of 19 June 2026 is outside the proper scope of comments on draft conditions and does not assist the Panel in making its final decision.¹
8. I disagree that the response is outside the proper scope of comments on conditions.
9. The Panel's draft conditions include a condition that the lake operating consent should expire on 1 September 2028. Meridian has responded to that draft condition and noted that its application sought consent to 31 December 2028, and further supports that by providing evidence on how an earlier expiry date would affect its ability to operate under the consent and deliver the benefits identified for 2028. The application does not include a proposed condition requiring that the consent expire on 1 September 2028, and the draft decision does not address this matter. I submit Meridian's response on this matter is entirely within scope of section 70, and in accordance with the direction in Minute 7. It is for the Panel to determine whether Meridian's response is of assistance to it in making its final decision.
10. The Panel's draft conditions include a series of conditions addressing the potential for effects on the Tekapo B power station and tailrace structure from the exercise of the lake lowering consent.² The draft conditions are substantially different from those proposed in the application and largely follow the suggestions made by Genesis.
11. The Panel's draft Tekapo B conditions are technical in nature, and Meridian has responsibly considered those conditions in detail. Meridian has suggested a modest number of changes that are supported by expert engineering advice from suitably qualified and experienced engineers with direct experience in

¹ Memorandum of counsel for Genesis dated 29 June 2026, paragraph 2(b)

² Draft conditions 14 - 27

hydraulic structures and the practical implementation of proposed repair works. As with the consent expiry date matter, there is no discussion in the draft decision that addresses the detail of the Tekapo B conditions. Again, I submit Meridian's response on this matter is entirely within scope of section 70 and in line with Minute 7, and that it is for the Panel to determine whether Meridian's response is of assistance to it in making its final decision.

12. As the title of the Damwatch memorandum indicates, *Implementation of Draft Consent Conditions*, the memorandum provides a constructability and implementation assessment. The memorandum does not seek to re-open substantive matters before the Panel. Rather, it provides an expert assessment of the practical feasibility, constructability and operational implications of the draft conditions, and identifies implementation issues that may not be apparent from the condition wording alone. In doing so, it aims to assist the Panel by addressing whether the draft conditions are workable, effective and capable of being complied with in practice.
13. At paragraph 3 of their memorandum, counsel for Genesis cite the applicant's comment on draft condition 22 as an example and raise a complaint about it. The complaint is, respectfully, misplaced. The applicant's comment on draft condition 22 is entirely about the wording and practical implementation of the condition. As explained in the Damwatch memorandum forming part of the applicant's response to the draft conditions, it will be impractical to complete all works described in the Repair Strategy and Associated Works Programme within 12 months of the commencement of the consent and before the lake is lowered. This is because some of those works can only be practicably done as lower lake levels allow. Meridian has therefore suggested alternative wording to reflect that reality and to ensure the condition is workable.
14. At paragraph 5 of the Genesis memorandum, counsel assert that the changes Meridian has suggested to the Tekapo B conditions "go to the substance of the issue in relation to the Temporary Structure and the findings the Panel must have made in its draft decision". I agree the changes go to the substance of the issue regarding the structure in question. That's why the applicant made the response it did. The conditions need to be workable and effective. As to the

implication that the applicant's comments are somehow at odds with the Panel's findings in the draft decision, I can find nothing in the draft decision that supports that submission.

15. At paragraph 7 of the Genesis memorandum, counsel references Genesis' earlier response on access to its land dated 12 June 2026³. The apparent implication is that, unless the Panel agrees to impose consent wording exactly as suggested by Genesis, no access will be given to Meridian to allow it to complete the works the consent would otherwise require, and Genesis will otherwise not be cooperative in allowing the planned work to proceed. As a matter of law, a consent cannot compel a third party to act. If Genesis refuses access for Meridian to undertake the reasonable actions required by the draft conditions (with or without Meridian's suggested amendments) or otherwise acts to frustrate the planned work being actioned, then Meridian would be unable to complete those works. In that event, Genesis would be the author of its own misfortune were the infrastructure to suffer damage caused by the exercise of the consent.
16. As I noted at paragraph 30 of my submissions dated 19 June 2026, the approach the Panel has taken in the draft conditions, subject to the applicant's suggested amendments, is reasonable given Meridian and Genesis have not reached a sensible agreement. For Genesis to assert that it will not allow access to Meridian for the purpose of ensuring Genesis' own asset is protected because the Panel does not agree to the condition wording it proposes, (including the wording of an advice note that appears to unlawfully reserve a discretion to Genesis and the inclusion of a condition that limits the operation of the consent to three months in each year – effectively making the consent fundamentally impractical, as Genesis must know), is difficult to understand.
17. The Panel may wish to consider an advice note stating that, if Genesis refuses reasonable access thereby preventing Meridian from carrying out actions required by the conditions included entirely for Genesis' benefit, then Meridian's

³ Footnote 5 of the Genesis memorandum dated 29 June 2026

non-performance should be excused by the consent authority. I submit that this is how the consent would be interpreted in law in any event.

18. Finally, counsel for Genesis complain at paragraph 7(b) of their memorandum that the applicant's response does not address Genesis' comments on the scope of the application and the suggestion that the consent should be limited to three winter months each year. This matter has previously been raised by Genesis in its comments on the substantive application⁴ and this was responded to at the time by the applicant.⁵
19. In the context of the Panel's draft conditions, where Genesis has continued to assert the view that the consent should be limited to three winter months each year, paragraph 11 of my legal submissions dated 19 June 2026, and Mr Blundell's evidence of the same date (see paragraph 10 in particular) address this issue again. Genesis' comment on this matter is ironic. One could be excused for thinking that, according to Genesis' approach to the way the comments process works, the fact that the Panel's draft conditions don't propose limiting the consent to three winter months in each year suggests the Panel must have concluded such a restriction inappropriate, and accordingly Meridian would be out of scope by raising the topic in its response. Genesis cannot have it both ways.
20. In any event, and for completeness, I again reiterate that Genesis' complaint about scope is misdirected. The application was found to be in scope by the EPA in the exercise of its statutory function under section 46 of the Act. That decision was not challenged. Furthermore, as Mr Blundell explains, the restriction on operating months Genesis argues for is "fundamentally impractical" and would undermine the benefits the proposal is intended to deliver.⁶

⁴ Comments by Genesis Energy Limited dated 8 April 2026, paragraphs 13 - 17

⁵ Applicant's Response to Comments: Submissions of Counsel for Meridian Energy Limited, 15 April 2026, paragraphs 17 – 24; Evidence of Amy Callaghan dated 15 April 2026, paragraph 21

⁶ Evidence of Rory Blundell dated 19 July 2026, paragraph 10

21. For the reasons discussed above, I submit the Genesis memorandum dated 29 June 2026 does not raise valid procedural or jurisdictional matters that need to concern the Panel in the making of your decision under section 81 of the Act.

Dated 30 June 2026

A handwritten signature in blue ink, appearing to read 'S Christensen', written in a cursive style.

Stephen Christensen
Counsel for Meridian Energy Limited