Technical Memorandum

To:	Expert Panel – Tekapo Power Scheme	**From:**	Dr Rob Lieffering
			SLR Consulting New Zealand Limited
cc:	Daya Thomson, Environmental Protection Authority	**Date:**	1 October 2025
		Project No.	840.030173.00001

RE: Review of Applicant's Proposed Conditions of Consent

Introduction

I refer to the email from Ms Daya Thomson (Application Lead) of the Environmental Protection Authority (EPA) dated 23 September 2025. Ms Thomson's email states that the Expert Panel for the Tekapo Power Scheme application has requested my assistance to review the current version of the applicant's proposed conditions of consent. In particular, the Expert Panel has requested that the focus of my review be on "*ensuring good drafting, as well as workability and enforceability of the conditions*".

Qualifications and Experience

My name is Rob Lieffering. I have a BSc, MSc, and PhD in earth sciences. I am a full member of the New Zealand Planning Institute. I am independent hearings commissioner certified through the Making Good Decisions programme and hold a chair endorsement. I have chaired, and been on, many hearings panels throughout New Zealand.

I am currently a Technical Director working for SLR Consulting New Zealand Limited. Prior to this I worked for Stantec New Zealand Limited, and prior to this I have worked in various roles, including having been the Consents Manager at both the Northland Regional Council and the Tasman District Council. I have been contracted by the Canterbury Regional Council to undertake its biennial audit of consents since 2011 (a total of seven audits), all of which included reviewing consent conditions of 20-40 consent decisions per audit.

Environment Code of Conduct for Expert Witnesses

I confirm that I have read, and am familiar with, the Code of Conduct for Expert Witnesses as set out in the Environment Court's Practice Note 2023. My review of the applicant's proposed conditions has been undertaken in compliance with that Code.

Condition Review Methodology

Ms Thomson provided me with an MS Word version of the applicant's current set of proposed conditions. Prior to reviewing the proposed conditions, I read relevant documentation pertaining to the application on the EPA website, including the following:

- Fast-track Application for Resource Consents and Assessment of Environmental Effects (April 2025)[1];
- Appendix E (Draft plans);
- Legal submissions for Genesis Energy Limited for the project overview conference (22 July 2025);
- Genesis Energy Limited response to RFI 2 and Minute 5 (22 September 2025), including Appendix 1: Tekapo Power Scheme Planning Advice – Richard Matthews (1 September 2025) and Appendix 2: Draft Lake Takapō / Tekapo High Flow Management Plan (September 2025); and
- Minute 6 of the Expert Panel (25 September 2025), including the Memorandum prepared by Ms Christina Robb attached to that Minute.

I also note that Ms Thomson's email of 23 September 2025 makes particular note of the fact that some of the conditions have been subject to detailed discussions and agreement with stakeholders and, as such, "*there is limited scope to revisit certain aspects*". She also referred me to paragraphs 10 and 11 of the applicant's "Response to RFI 2" that outline key considerations that the applicant considers should guide my review and that "*Unnecessary changes may risk undermining areas of consensus, so a careful and considered approach is appreciated*." I confirm that I have borne the above in mind when reviewing the proposed conditions, however I have been specifically asked to focus my review on good drafting, workability, and enforceability of the conditions – this includes those conditions that may have been agreed between the parties. It should be remembered that it is the Expert Panel which has requested my assistance and my role is therefore restricted to making recommendations based on my professional opinion – any changes to the conditions are ultimately the Expert Panel's decision to make.

Ms Thomson has advised me that the Expert Panel's expectations regarding the format of my review is by way of "Track Changes" and "Comments" in the MS Word version of the proposed conditions provided to me. My review is included in the attached MS Word document with the file name "Appendix 1 - Draft Tekapo Consent Conditions 22 September_RL Review"- the review consists of recommended changes, comments, and questions that the Expert Panel may wish to consider as part of its consideration of this application. Ms Thomson has confirmed that a detailed analysis of the recommended changes and/or questions I may have on conditions need not be repeated in this Memorandum.

I have reviewed relevant parts of the applicant's response to RFI 2 which relate to conditions that have not been agreed with the Canterbury Regional Council and provide my comments on those below.

I have also reviewed the recommendations of Ms Robb in respect of conditions and provide my comments on those below.

[1] Note: I have read relevant sections but confirm I have not read the entire document, nor all the appendices given the limited time available to me to undertake this review.

Matters in Disagreement between the Canterbury Regional Council and the Applicant

The applicant's response to RFI 2 and Minute 5 includes discussion on matters that cannot be agreed between the Canterbury Regional Council and the applicant. I make the following comments regarding these matters.

Job Title Reference

I agree with the applicant that the conditions should include reference to the Chief Executive of the Canterbury Regional Council as other positions/roles in the Council can change over time. I note that the applicant's proposed conditions include reference to "Chief Executive (or delegated nominee) Canterbury Regional Council" and I agree with those words being used.

I have, however, noted numerous conditions which require documents/notification to be provided to just "the Canterbury Regional Council" and all such references should be amended to refer to the Chief Executive (or delegated nominee) Canterbury Regional Council. Alternatively, a separate condition (or advice note) could be included that would apply to all consents/conditions which clarifies that where reference is made to notification and/or documentation needing to be provided/submitted to the Canterbury Regional Council that this means the Chief Executive Officer (or their nominee).

Condition 7 in the Water Permit

I do not have any views on whether advanced notice should be provided if lake levels are required to be reduced below those specified in condition 5 as provided for in condition 7.

However, I consider it appropriate to include a time limit on providing notice when the lake level is reduced below those specified in condition 5. The applicant prefers to leave this notice period to '*as soon as practicable*' whereas the Canterbury Regional Council considers this notice should be provided '*within 24hrs*'. Mr Matthews notes that "*In any event, a notification such as this should be expressed in terms of working days to avoid situations that might arise over weekends or on public holidays creating difficulties for confirming notification*".

Using the words 'as soon as practicable' is less certain than including a specific timeframe. It is common to use both 'as soon as practicable' together with a maximum specified timeframe (i.e. an outer bound of time). I therefore recommend that condition 7 includes a maximum timeframe within which the notice must be given and agree with Mr Matthews that this should be in terms of working days rather than hours – I do not have any firm views on what an appropriate timeframe should be and is a matter the Expert Panel could canvas with the parties.

Macrophyte and Turbidity/Clarity Monitoring, Condition 15 of Schedule One, and Groundwater Monitoring

These are matters for the Expert Panel to consider and decide. The disagreements do not relate to specific wording of conditions.

Minute 6

Ms Thomson provided me with Minute 6 issued by the Expert Panel which includes a memorandum prepared by Ms Christina Robb which reviewed the Indigenous Biodiversity Enhancement Programme. Minute 6 makes particular reference to paragraph 19 of Ms Robb's memorandum which relates to conditions of consent.

I have read Ms Robb's recommendations and make the following comments (these are also included in the attached MS Word document).

Condition 29

I agree with Ms Robb's suggested additions to condition 29(d) and (e).

Condition 30

In respect of condition 30, Ms Robb recommends an addition clause be included that would require the consent holder to seek feedback on the Strategic Plan from "*other parties*" who are also working to enhance biodiversity in the Waitaki catchment. I note that condition 29 requires the Strategic Plan to be prepared in consultation with Te Rūnanga o Arowhenua, Te Rūnanga o Moeraki, Te Rūnanga o Waihao, and the Department of Conservation so these entities will have opportunities to provide comments during its preparation. However, Section 4.4 of the IBEP included with the application states that "*Kahu Ora will take note of other parties that are delivering conservation, enhancement and management within the catchment to consider alignment across complementary work programmes*", but it does not state who those other parties are.

If the Expert Panel considers it appropriate that other parties are given the opportunity to provide comment on the Strategic Plan by way of a new clause then such a clause should specify the parties by name, otherwise the condition would be ambiguous and unenforceable.

Condition 33

Ms Robb recommends an additional clause be added to condition 30 which would require the consent holder to "*Respond to, where appropriate, any feedback on the programme that has been received from other parties working on biodiversity in the Waitaki catchment*."

Condition 33 requires the consent holder to prepare an Annual Plan and does not require that Plan to be provided to any parties for comment – Ms Robb's recommended wording suggests that there is a requirement for feedback on the Annual Plan. If the Expert Panel considers Ms Robb's recommended clause to be appropriate then it must also include a requirement that the consent holder invites comments on the Annual Plan and, more importantly, the clause(s) should specify the parties by name, otherwise the condition would be ambiguous and unenforceable.

General

There are numerous conditions which require the consent holder to prepare plans 'in consultation' with various entities – this includes the Strategic Plan under condition 29. I have included comments throughout the attached MS Word document regarding these conditions. If consultation is required with external organisations, then the conditions should also include a requirement for the consent holder to provide the Canterbury Regional Council with evidence of the consultation. Ideally such consultation leads to consensus in terms of the contents of the plan/document, however that is not always the case. I recommend that such conditions include a requirement that the consent holder provides the Canterbury Regional Council with information on any recommendations made by the external organisation that have not been accepted by the consent holder, including an

explanation why the recommendation(s) has not been accepted. An example of the type of wording that could be considered is:

> *The [name of plan/document] must be prepared in consultation with [organisation name(s)]. In the event that consent holder does not accept any of [organisation name]'s recommendations in respect of the contents of the [name of plan/document] then the consent holder shall provide a copy of these recommendations, including any supporting comments from [organisation name] regarding the basis of the recommendations, and an explanation why the recommendation(s) has not been accepted, to the Chief Executive (or delegated nominee) Canterbury Regional Council with the [name of plan/document].*

I note that condition 18 of Schedule One includes such a requirement in respect of comments that must be sought from the Central South Island Fish and Game Council which requires "…*any comments from Central South Island Fish and Game Council not adopted, with reasons why, must become an appendix to the FSMP and be provided to the Canterbury Regional Council*".

Dr Rob Lieffering

Technical Director, SLR Consulting New Zealand Limited

Attachments Review comments and recommended changes to the applicant's proposed conditions contained.