

25 June 2025

Genesis Energy Limited
155 Fanshawe Street
Wynyard Quarter
Auckland

Attention: Ellie Watson

Application of the existing environment to the Genesis Energy Limited Fast Track application

1. Genesis Energy Limited (**Genesis**) has applied for resource consents under the Fast-track Approvals Act 2024 (**FAA**) to enable 'replacement' resource consents for the Tekapo Power Scheme (**TPS**) to be granted (**Application**).
2. The resource consents required are both section 14 water permits and section 15 discharge permits. The relevant activities are classified under both the Waitaki Catchment Water Allocation Regional Plan (**WCWARP**) and Canterbury Land and Water Regional Plan (**LWRP**) as controlled activities.
3. A legal (and factual) question arises in relation to assessing the Application as to the existing environment that should be applied for the purposes of section 81 and clause 17 of Schedule 5 of the FAA (which require the panel to take into account the provisions of Parts 2, 3, 6 and 8 to 10 of the Resource Management Act 1991 (**RMA**)).
4. The existing environment is a matter that has been the subject of some discussion between Genesis and the Canterbury Regional Council (**CRC** or **Council**) in the lead up to the Application being lodged (with Appendix F of the Application containing a legal opinion from Genesis on this question and the CRC response to that).
5. The legal opinion of Genesis opines that "The existing environment for assessment purposes is the current state of the environment including existing environmental processes. The existing structures and associated water takes, uses, diversions, damming and discharges form part of that environment".¹
6. Importantly, the opinion also notes that the inclusion of the existing Combined Waitaki Power Scheme (**CWPS**) (which comprises both the TPS, and the Meridian owned Waitaki Power Scheme) within the existing environment does not mean that the effects of the way water is moved through the system cannot be considered as part of the replacement consent process.²
7. The opinion also records that the controlled activity rules of both the WCWARP and LWRP are clear that effects of the scheme are able to be considered and appropriate conditions imposed to mitigate adverse effects and that "to the extent that the effects of the CWPS can be considered negative, it will be open to the decision-maker, within the matters over which the respective rules reserve control, to consider what

¹ Appendix F to Fast Track Application, paragraph 5(a).

² Appendix F to Fast Track Application, paragraph 5(d).

measures by way of mitigation, offset or compensation may be appropriate to address those effects”.³

CRC position on existing environment for the Genesis Fast Track application

8. CRC agrees that for this particular Application, that the existing environment against which the effects of the proposal must be considered is the current state of the environment, including existing environmental processes. This includes the existing structures as these are permitted activities under the LWRP, along with the associated water takes, uses, diversion, damming and discharges. The Council's reasons for its position are summarised as follows:
 - (a) The existing dam structures are permitted activities under the LWRP.
 - (b) Rule 15A of the WCWARP provides that any activity that is part of the Waitaki Power Scheme, for which a consent is held and is the subject of an application for a new consent for the same activity and is:
 - (i) the use of water for the generation of electricity; or
 - (ii) the taking, damming or diverting of water for storage; or
 - (iii) the taking or diverting of water into canals; or
 - (iv) the taking, damming, or diverting of water to protect the structural integrity of dams, power houses, canals and appurtenant structures;is a controlled activity, provided the activity complies with Rules 2, 3, 6 and 7. In this case the application falls under this controlled activity rule and resource consent must therefore be granted
 - (c) In relation to the associated water takes, uses, diversion, damming and discharges, the Council agrees that assessing the environment as an “Eden” pre-scheme environment, would be fanciful or unrealistic given that (i) the very purpose of the structures is to dam water with its consequential effects and (ii) returning the environment to a pre-scheme environment would itself trigger the need for resource consent.
 - (d) Although only directly relevant to the section 15 discharges, the LWRP (in section 1.2.6 and Policy 4.51) makes it clear that in relation to existing hydro-electricity generation assets that the infrastructure, and associated water takes, use, damming, diverting and discharge of water is to be considered as part of the existing environment. However, as is addressed further below, reductions in any adverse effects on the environment are a consideration relevant to this proposal.
9. While CRC agrees that the existing environment for the purposes of assessing the proposal is the current statement of the environment, it is important to record that CRC does not consider that this means that the ongoing effects associated with the operation of the TPS do not have to be considered. In relation to this the Council's position is:
 - (a) As set out in the original opinion given in support of Genesis's Application, to the extent that the operation of the TPS is having ongoing adverse effects that this is a matter (to the extent that it falls within the matters of control) that does require consideration, including the extent to which measures by way of mitigation, offset or compensation are appropriate to address those effects.
 - (b) This is consistent with the LWRP Policy 4.51 which requires consideration to be given to reductions in adverse effects on the environment and section 1.2.6 of the LWRP which states “When resource consents expire for this infrastructure and associated water abstractions and discharges, the activity must be reassessed as if new even when there is no practical alternative to

³ Appendix F to Fast Track Application, paragraph 5(g).

continuing to use the existing infrastructure. In these cases, rather than debating whether the infrastructure should exist at all, a more useful approach is to focus on improving the efficiency, and reducing the environmental effects, of taking and using the water.”

- (c) It is also consistent with the approach taken by the Environment Court in the *Alexandra District Flood Action Society Inc and Others v Otago Regional Council*⁴ (which is referred to in the Appendix F legal opinion) where the Court applied the current environment as the existing environment but specifically acknowledged that upon ‘renewing’ a resource consent that “a regional council may look at “past effects” of the former activity and (subject to reasonableness, efficiency and other tests we come to later) add conditions to control future adverse effects, and in some cases to clean up the effects of past activities by the consent-holder which were not covered before.”⁵
 - (d) Specifically in relation to the question of the potential provision of flows in the Takapō River, the community expectation at the time Rule 15A was put into the WCWARP through Plan Change 3, was that this was a matter that would be considered through this consent process. Matter of control (a) specifically provides that control is reserved in respect of “flows into the Pūkaki River, the Lower Ōhau River or the Takapō River (above the confluence with the Forks Stream), adverse effects, including effects on Ngāi Tahu culture, traditions, customary uses and relationships with land and water” (noting that no environmental flow and level regime has been established for the Takapō River). The position at the time of the Plan Change 3 decision being made was that provision of an environmental flow regime (in the vicinity of the default minimum flow as set out in Rule 2 of the WCWARP, being the 5 year, 7 day low flow) would not frustrate or negate the granted of consent under the controlled activity pathway.
 - (e) CRC does not have a position on whether there should be a flow in the Takapō River, but rather its position is that this issue needs to be considered through the consenting process. In particular, that the Panel needs to be satisfied that this matter has been taken into account in the context of the Fast Track application.
 - (f) CRC considers that in determining this question, that the compensation proposed by the IBEP, along with the renewable energy benefits of not providing any flows in the Takapō River will all be relevant considerations to be taken into account by the Panel in making a decision on the conditions for this proposal.
 - (g) CRC also specifically acknowledges the Treaty Impact Assessment provided in support of the Application and its acknowledgement that issues in the Waitaki catchment are multi-generational. CRC considers that the question of flows in the Takapō River will likely be an ongoing consideration in future planning and consenting processes.
10. We trust that the above, clarifies CRC’s position on the existing environment and its application to this particular proposal.


Robyn Fitchett
General Counsel

⁴ *Alexandra Flood Action Society Inc v Otago Regional Council* [2005] ELHNZ 328, see [67]-[72].

⁵ *Alexandra Flood Action Society Inc v Otago Regional Council* [2005] ELHNZ 328 at [68].