BEFORE AN EXPERT PANEL **FTAA-2503-1035**
TEKAPO POWER SCHEME

Under the	**FAST-TRACK APPROVALS ACT 2024**
In the matter of	an application for replacement resource consents in relation to the Tekapo Power Scheme
By	**GENESIS ENERGY LIMITED**
	Applicant

JOINT MEMORANDUM OF COUNSEL FOLLOWING THE CONVENER'S CONFERENCE

23 June 2025

MAY IT PLEASE THE PANEL CONVENER:

1. As directed by the Panel Convener at the convener's conference on 13 June, and by Minute 4 (dated 16 June), this memorandum of counsel is filed on behalf of:

   (a) Genesis Energy Limited (**Genesis**);

   (b) Canterbury Regional Council (**CRC**); and

   (c) Te Rūnanga o Arowhenua, Te Rūnanga o Waihao and Te Rūnanga o Moeraki (**Waitaki Rūnaka**).

Relevant documents have been provided

2. Genesis has provided the IBEP and the updated conditions directly to CRC and Waitaki Rūnaka. These documents are also now available on the EPA website.

3. Further, the EPA has advised that while not on the website CRC has had access to the IBEP since it was lodged by Genesis via its portal.

Process for narrowing the issues with CRC

4. As foreshadowed in the joint memorandum dated 12 June, and during the convener's conference, Genesis and CRC have now agreed a process to commence shortly for them, and experts, to meet as required to resolve or narrow issues. In summary:

   (a) Agree the principles and directions / scope or the discussions to ensure alignment.

   (b) Discuss key legal issues and planning issues to ensure clarity of positions.

   (c) CRC to provide Genesis with specific condition drafting with comments added where substantive changes are sought.

   (d) Expert discussions are arranged (via teams) to promptly discuss those issues and see if they can be resolved. If they can be resolved the planners work with the experts to agree condition wording. If not, the planners will provide separate Genesis and CRC condition drafting with succinct expert explanation.

(e) The intent is to provide joint memoranda even if agreement is not reached to efficiently put information before the Panel.

5. The one overarching issue remaining between CRC and Genesis concerns the compensation proposed through the indigenous biodiversity enhancement programme (**IBEP / Kahu Ora**).

6. CRC technical advisors have now reviewed the substantive application as lodged. There are some other remaining issues that CRC sees benefit in further discussion occurring between Genesis and CRC. These concern:

   (a) Groundwater (particularly groundwater monitoring);

   (b) Hydrology (principally metering);

   (c) Lake water quality (ongoing monitoring);

   (d) Aquatic ecology (particularly native fisheries); and

   (e) Avifauna.

7. CRC's issues identified through the technical review will be set out, with drafting changes (if appropriate), and reasons, for Genesis by 26 June 2025. If issues remain these matters will be added to discussions in the week of 30 June 2025.

8. The IBEP was prepared by a working group with representatives from DOC, Waitaki Rūnaka and the generators. Any changes proposed to the IBEP will need to be agreed with DOC and Waitaki Rūnaka and Meridian (with this consent process being unable to require those working group members to agree to any changes). Ultimately, it is anticipated that the relevance and appropriateness of the IBEP, and the extent to which any changes can be proposed or required will be matters for the panel to decide.

9. The panel convener, in Minute 4, seeks resolution of the issues, via alternative dispute resolution processes "prior to the commencement of s 53". There is no requirement for that in the FTAA and complicating the process runs the risk of undermining the purpose of the FTAA. As discussed at the conference Genesis will endeavour to complete discussions with CRC promptly. In doing so the parties will endeavour to resolve issues where they can but the process does not rely on resolution of issues. That is for the panel to address, as is normal for a decision-making body.

10. The convener also seeks joint memoranda. That is also the parties desire going forward with the panel but requires the agreement of the parties to deliver within the timeframes.

11. An initial meeting was held on 18 June (via Teams) between Genesis legal and planning, CRC legal and planning and Waitaki Rūnaka legal to agree scope and focus on the relevant matters. The timeline that the parties will apply going forward is set out below. To be clear these are matters being discussed between the parties as we work towards the proposed project overview and issues conference (addressed below) and are intended to be presented to the panel, as appropriate, at that time.

Date	Proposal	Attendees	Methods/facilitation
25 June	CRC to provide its position on the existing environment for assessment		Letter on CRC letterhead, provided to Genesis and Waitaki Rūnaka
26 June	CRC and Genesis meet to discuss the existing environment (if required)	Genesis legal and planning, CRC legal and planning, Waitaki Rūnaka legal	Meeting via Teams
26 June	CRC to provide its detailed issues related to the IBEP matters identified through its technical review (with specific drafting amendments proposed, where appropriate)	Relevant CRC experts	Letter on CRC letterhead
26 June to 1 July (by 11am)	Expert discussions in relation to identified technical issues	Relevant experts if required: (a) Groundwater (b) Hydrology (c) Lake water quality (d) Aquatic ecology; and (e) Avifauna.	Expert discussions via Teams The output is a joint report on the identified issues before the meeting ends
27 June to 1 July	Parties discuss the IBEP	Genesis legal and planning, CRC legal and planning,	Discussion via Teams

Date	Proposal	Attendees	Methods/facilitation
		Waitaki Rūnaka legal	
1 July (afternoon)	Planners' discussion	Expert planners	Expert discussion via Teams The output is an annotated version of the condition set identifying agreed changes and where not agreed the issue difference and, where practicable, proposed drafting options
3 July	Discuss outstanding matters before the project overview and issues conference	Genesis legal and planning, CRC legal and planning, Waitaki Rūnaka legal	Meeting via Teams
7 July (TBC by the panel)	Project overview and issues conference	Panel and all parties	Via Teams

Timeframes for the panel

12. Genesis, CRC and Waitaki Rūnaka have suggested an updated timeframe for the panel process (see **Appendix One**), considering guidance from the convener's conference, including that the panel chair will be uncontactable from 18 – 22 August. Those changes are:

    (a) an additional four working days for panel commencement which recognises the process required to produce this joint memorandum necessitated shifting that original proposed date, but keeps it within a similar timeframe to other FTAA projects;

    (b) an additional five working days for the panel to issue draft conditions which accounts for the panel chair being uncontactable for five days, but recognises that the other three panel members could progress matters in their absence; and

    (c) an additional five working days for the panel to issue its decision after receiving comments from Genesis on the draft conditions.

13. With these changes, the total timeframe from comments closing to the decision being issued is 50 working days (a 50% increase in time proposed from Genesis' preference (the statutory timeframes) and a 25% increase in time proposed as agreed by Genesis and CRC in their joint memorandum on 12 June).

14. Despite accepting the timeframes above, Genesis remains of a view that the project, as a controlled activity and with significant agreement reached, is well suited to the shorter statutory timeframe. However, in the interests of meeting the concerns raised by the panel convener for considering the timeframe required, additional time has been proposed. For Genesis, any longer timeframe beyond what is proposed would be inconsistent with the purpose of the FTAA (and FTAA projects of greater complexity / with lesser levels of agreement).[1]

15. Genesis, CRC and Waitaki Rūnaka all agree the extended timeframe (50 working days, with panel commencement on 27 June) will enable them, and their experts, to deliver as required through the process and provide the panel with sufficient time. There may not be agreement but that is not a requirement. Rather the role of the decision-maker is to make the decision. For that the parties agree the panel will have sufficient time.

Legal issues

16. The convener set out a "question trail" in Minute 4. The parties consider that these questions provide a starting point for the panel to consider as it wishes. They are matters that the parties are discussing in line with the timeframes in the memorandum and propose to address with the panel at the project overview and issues conference, see below, so the panel has clarity on them from the start.

[1] In respect of the Bledisloe North Wharf and Fergusson North Berth project (**POAL project**) the associate panel convener directed a decision timeframe of 40 working days from the date that invited comments on the application close. The POAL project involved approvals under two Acts and has a discretionary activity status for the resource consents (the panel will need to decide if consent should be granted). The Tekapo project is solely seeking approval under the RMA and is for a controlled activity. The POAL project also involves complexities not present for the Tekapo project, including a complex Treaty settlement landscape with many overlapping interests and comments being invited from the 21 applicant groups seeking protected customary rights and customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 (per s 53(2)(d). During the conference the Panel Convenor mentioned the Delmore project. In that case there had been no engagement with the Council (here there has been engagement with CRC since 2018 and agreement reached with all other key stakeholders), the activity is non-complying (here it is controlled), the application was for consent and an archaeological authority (here just consent) and the project is within a complex Treaty landscape (here the Rūnaka support the project).

Update from Transpower

17. Transpower has now provided condition drafting that it would prefer to see. That drafting has been provided to Rūnaka for comments and then will be provided to CRC. There is nothing in the drafting provided that alters the time requirements for the process and this matter will be addressed during the project overview and issues conference, see below (by which time it may be resolved).

Project overview and issues conference

18. Genesis, CRC and Waitaki Rūnaka have suggested an agenda for a project overview conference (see **Appendix Two**). The suggested timetable in **Appendix One** provides for the project overview and issues conference to occur five working days after the panel commences. While the conference itself, including the timing and agenda, is a matter for the panel, the proposed agenda has incorporated feedback from the panel convener on what may assist the panel.

Site visit

19. Genesis, CRC and Waitaki Rūnaka have suggested an agenda for a site visit (see **Appendix Three**). The suggested timetable in **Appendix One** provides for the site visit to occur at a time that best suits the panel during the invitation for comments time period. Genesis has existing Health & Safety protocols for site visits and will liaise with the EPA to ensure that the site visit occurs in accordance with the EPA's Health & Safety protocol.

Panel appointment

20. As set out in **Appendix 1** the timetable is based off a panel being appointed and commencing on 27 June 2025. That appointment timeframe is 10 working days from the convener's conference and is longer than the Fast-track average to date.

Dated this 23rd day of June 2025

David Allen / Chelsea Easter

Counsel for the Applicant

Lucy de Latour

Counsel for the Canterbury Regional Council

Ben Williams / Rachel Robilliard

Counsel for Te Rūnanga o Arowhenua, Te Rūnanga o Waihao and Te Rūnanga o Moeraki

APPENDIX ONE: UPDATED TIMETABLE FOLLOWING FEEDBACK DURING THE CONVENER'S CONFERENCE

Step	Date	Comment
Panel commencement	Friday 27 June 2025	10 working days following the convener's conference[2]
Project overview and issues conference	Monday 7 July 2025	See **Appendix Two**
Invite comments from relevant parties	Friday 11 July 2025	Per s 53, 10 working days after panel commencement
Site visit	TBC	To be arranged at a time that best suits the panel during the invitation for comments time period
Comments close	Friday 8 August 2025	Per s 54, 20 working days after the invitation for comments
Genesis may respond to any comments received	Friday 15 August 2025	Per s 55, 5 working days after comments close
Draft conditions issued for comment	Friday 12 September 2025	No timeframe in s 70(1). The parties now propose 20 working days after Genesis' comments (previously 15) to allow a 5 WD uninterrupted holiday for the panel chair
Comments close on draft conditions (excluding applicant) (s 70(2)(a))	Tuesday 23 September 2025	No timeframe in s 70(2)(a). As previously agreed between Genesis and CRC, 7 working days after comments are issued for comment is proposed.
Panel seeks comments from Minister for Māori Crown Relations: Te Arawhiti and Minister for Māori Development	Friday 26 September 2025	No timeframe in s 72(1)).
Comments close on draft conditions for applicant	Tuesday 30 September 2025	Per s 70(4), 5 working days after comments on the conditions close
Minister for Māori Crown Relations: Te Arawhiti and Minister for Māori	Friday 10 October 2025	Per s 72(2), 10 working days after the invitation. Response is optional (and noting in this

[2] To date, the average time for the panel to commence has been 8 working days.

Development provide comment (optional)		case Waitaki Rūnaka support)
Applicant's response to Ministers (if required)	Monday 13 October 2025	Unlikely to be required
Decision release	Friday 17 October 2025	This timeframe provides the Panel with 13 working days after Genesis' comments on the conditions

APPENDIX TWO: SUGGESTED AGENDA FOR PROJECT OVERVIEW AND ISSUES CONFERENCE

Noting the agenda is for the panel to determine once it is constituted.

Item	Speakers	Suggested timeframes
Overview of the application	Genesis – David Allen and Richard Matthews	30 minutes
Content and structure of the proposed conditions	Genesis – Richard Matthews CRC Waitaki Rūnaka	30 minutes 5 minutes 5 minutes
Legal tests under FTAA	Genesis – David Allen	15 minutes
Legal issues in contention	Genesis, CRC and Waitaki Runaka – David Allen, Lucy de Latour and Ben Williams/ Rachel Robilliard	30 minutes
Summary of evidential issues in contention	Genesis and CRC – David Allen, Lucy de Latour and Ben Williams / Rachel Robilliard	15 minutes
Site visit	Genesis – Ellie Watson	5 minutes

APPENDIX THREE: DRAFT PROPOSED SITE VISIT

The site visit remains **draft** (with the agenda/timeframes to be finalised at the project overview conference).

Time	Location	Site	Description
10:00 AM	1	Takapō A Power Station	– Introductions – Morning tea – Genesis H&S briefing and overview of site visit – Walk through Takapō A Power Station – Depart for Site 2
11:00 AM	2	Gate 16 (Lake Takapō dam structure)	– Dam structure – Lake Takapō operations – Upper Takapō River. – Gate operations and water releases – Fish salvage procedures
11:30 AM	3	Takapō Whitewater Trust recreational slalom course.	– Overview of recreational release regime and course operation
12:00 PM	4	Lake Takapō Intake structure and Lake Takapō shoreline.	– Overview of Intake operations
12:30 PM	5	Gate 17, Lake George Scott and spill weir	– Overview of operations through Gate 17, and over spill weir. – View of Takapō riverbed below Lake George Scott.
1:30 PM	6	Fork Stream culvert and Takapō River.	– Example of culvert in operation (noting through that these are not part of the application given PA status, but does indicate the point where significant flow is introduced into the Takapō River). – View of Takapō river flows and environment

Time	Location	Site	Description
2:00 PM	7	Patersons Ponds and Takapō River	– Close-up of the Takapō River environment
2:30 PM	8	Mount Cook Alpine Salmon Farm and Takapō B Headpond and Pukaki Irrigation Offtake structure	– Overview of MCAS operations – Summary of canal flow operations – Example of irrigation structure
3:15 PM	9	Takapō B Power Station	– Overview of Takapō B Power Station – Lake Pūkaki
4:15 PM	10-12	Ohau A, B and C Power Stations	– Visit (drive-by) to show additional generation Takapō water provides
5:30 PM		Site visit concludes	