

10 June 2025

Jane Borthwick

Panel convener for the purpose of the Fast-track Approvals Act 2024 (FTAA)



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Kia ora Jane,

MINUTE OF THE PANEL CONVENER

Advising date for convener conference for Tekapo Power Scheme (FTAA-2503- 1035) (28 May 2025)

Thank you for your minute dated 28 May 2025 regrading Genesis Energy's Tekapo Power Scheme – Applications for Replacement Resource Consents proposal.

Canterbury Regional Council (CRC) can confirm that CRC representatives Susannah Black ([REDACTED]) and Robyn Fitchett

([REDACTED]) will be able to attend the convener's conference on **13 June 2025**.

Please see below CRC's response to the request in the minute referenced above regarding Schedule's 1 and 2.

CRC trust this information will assist the panel convener regarding the decisions under schedule 3 and section 79 of the FTAA.

Please advise if you need any further clarification on any matters raised in this response. We look forward to working with you at the convener's conference.

Nāku iti noa, nā

Robyn Fitchett

Schedule 1 – Matters to consider when preparing for conference

Approvals

[1] The number and range of approvals sought.

Two approvals are sought. One is for activities described in section 14 of the Resource Management Act 1991 (RMA) and the other for activities described in section 15 of the RMA.

- 1) Water permit – to dam, take, divert and use water associated with the operation of the Tekapo PS, which includes:
 - a. the damming of the Takapō River via the Lake Takapō Control Structure (“Gate 16”) to control and operate the levels of Takapō;
 - b. the taking, diversion and use of water from Takapō via the Tekapo Intake Structure for the generation of electricity, and ancillary purposes, at the Tekapo A and B Power Stations;
 - c. the damming of the Takapō River at the Lake George Scott Control Weir to control and maintain water levels in Lake George Scott; and
 - d. the taking, diversion and use of water from the Takapō River via the Tekapo Canal Control Structure (“Gate 17”).
- 2) Discharge permit – to discharge water and associated contaminants associated with the operation of the Tekapo PS, which includes:
 - a. the discharge of water and associated contaminants into the Takapō River from Gate 16 for the purposes of spilling water;
 - b. to bypass Tekapo A, for Lake George Scott water level maintenance and for recreational release purposes;
 - c. the discharge of water and associated contaminants into the Takapō River from the Lake George Scott Control Weir for the purpose of spilling water; and
 - d. the discharge of water and associated contaminants into Lake Pūkaki.

Complexity

[2] The level of complexity will have a bearing on the appropriate frame for decision making and may include:

- (a) Legal Complexity: novel or difficult legal issues -*
- (i) involve untested law or interpretation of statute;*
 - (ii) involve application for multiple approvals;*
 - (iii) interface with two or more statutes; and*

(iv) engage constitutional law and public law.

(b) Evidentiary Complexity: stemming from the volume, type, or technical nature of evidence -

(i) include challenges like managing expert reports or dealing with conflicting factual or opinion evidence; and

(ii) often involve technical or scientific analysis.

(c) Factual Complexity: arises from the volume and nature of evidence -

(i) requires careful management of extensive information or reports, including expert opinion in specialised fields; and

(ii) necessitates analysis if technical, scientific, or highly specialised subject matter are involved.

Table 1, below, provides consideration of these specific matters. CRC note that this proposal is for the continuation of activities which has been occurring for a significant period of time (Tekapo A power station was commissioned in 1951, and Tekapo B in 1977), which provides some insight into effects which have, and which continue to occur, from the proposal.

Table 1: consideration of complexity		
Level of complexity	Specific provision	CRC comment
(a) Legal Complexity: novel or difficult legal issues	(i) involve untested law or interpretation of statute;	While not untested, the application of 'existing environment' provides a key basis for determination of adverse effects arising from the proposal. This is discussed further below under 'Issues [3]'.
	(ii) involve application for multiple approvals;	Two approvals are sought, reflecting activities specified in sections 14 and 15 of the RMA. There are several activities within each approval, as described in [1] above.
	(iii) interface with two or more statutes; and	Setting aside FTAA, the RMA is the primary statute for this proposal. While the consents currently held (subject to continuation) include conditions relating to dam safety, the Building (Dam Safety) Regulations 2022

		<p>are now in effect. As such these regulations manage dam safety while the proposal seeks to manage environmental effects of the damming of water.</p> <p>Within the RMA framework there are then several legislative documents which apply to this proposal:</p> <ol style="list-style-type: none"> 1) National Policy Statement for Freshwater Management 2020 2) National Policy Statement for Renewable Electricity Generation 2011 3) Resource Management (National Environmental Standards for Freshwater) Regulations 2020 4) Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 5) Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 6) Canterbury Regional Policy Statement 2021 <p>The applicable regional plans for classifying the proposed activities are the Waitaki Catchment Water Allocation Regional Plan (WCWARP) (s14) and the Canterbury Land and Water Regional Plan (LWRP) (s15).</p>
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	(iv) engage constitutional law and public law.	The activities have a controlled activity status under the relevant plans. As such constitutional and public law is not anticipated to apply.
(b) Evidentiary Complexity: stemming from the volume, type, or technical nature of evidence	(i) include challenges like managing expert reports or dealing with conflicting factual or opinion evidence; and	<p>CRC acknowledges support for the proposal has been supplied by a number of key parties including:</p> <ol style="list-style-type: none"> 1) Waitaki rūnaka 2) Department of Conservation 3) Fish and Game Central South Island <p>Notwithstanding this, CRC anticipates its experts may disagree on some potential effects and require further consideration of the appropriateness of proposed mitigation. See issues discussed below.</p>
	(ii) often involve technical or scientific analysis.	<p>Ten technical reports (excluding the Treaty Impact Assessment) were lodged supporting the application, each addressing a specific potential effect of the proposal. Topics include:</p> <ol style="list-style-type: none"> 1) Natural character, landscape and visual amenity 2) Hydrology and hydrogeology 3) Aquatic environment 4) Native fish 5) Lakeshore geomorphology and processes 6) Terrestrial invertebrates 7) Herpetofauna 8) Avifauna 9) Vegetation 10) Recreation <p>The technical reports were reviewed by CRC science staff</p>

		<p>when the resource consent applications were lodged under the RMA.</p> <p>Those reports raised a number of questions/concerns which were then the subject of a request for further information.</p> <p>That further information was never provided, with Genesis opting to pursue the FTAA. To date this current proposal has not been reviewed by CRC technical staff to determine if the outstanding matters identified in the RMA process have been addressed as part of this FTAA application. Sufficient time will be needed for technical review of these documents.</p> <p>The application acknowledges the implications climate change and electricity demand over the 35-year duration sought may have on the way in which Genesis manage their power generation. This adds further complexity that needs to be considered when undertaking technical assessments.</p>
(c) Factual Complexity: arises from the volume and nature of evidence -	(i) requires careful management of extensive information or reports, including expert opinion in specialised fields; and	<p>As noted above, the application includes ten technical supporting reports, many of which interrelate and rely on each other's conclusions. Sufficient time should be allowed to read and consider these reports and explore the connections between them.</p> <p>Should the Panel consider environmental flows into the Takapō River should be required as mitigation (acknowledging</p>
	(ii) necessitates analysis if technical, scientific, or highly specialised subject matter are involved.	

		<p>this is not being proposed by Genesis), then significant technical work would need to be undertaken to determine appropriate flow regimes. Should they consider that such a flow regime isn't required then much of the consideration should fall to the proposed compensation and how that fits with effects of the proposal.</p>
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Issues

[3] Issues identified by the applicant and other participants:

(a) during consultation; and

(b) any disputed fact or opinion, or legal issue, that is or is likely to be of consequence to the determination of the application.

CRC identifies the following issues:

Existing environment

Genesis discusses its 'existing environment' approach and notes that this was discussed and agreed with CRC prior to lodging these applications. Following lodgement of their resource consent applications, CRC have further reviewed the information in the application, as well as the memo provided with the application, and note that while CRC agree in principle that the structures forming the WPS are part of the existing environment, CRC questions the extent to which the entire consented operation should form part of the existing environment. In particular the CRC notes that the relevant plans provide for controlled activity status with the matters of control contemplating the need consider flow regimes for the Takapō River as well as other potential effects. This was a matter for discussion between CRC and Genesis during the processing of the resource consent applications and questioned during the request for further information.

The CRC further notes that while no decision regarding the notification of the Genesis resource consent applications (under the RMA) had been made prior to lodgement with the FTAA process, and therefore no submissions received, resource consent applications by Meridian Energy Limited for similar activities further through the Waitaki Catchment have received submissions questioning their similar approach to determining the existing environment. This is therefore likely to be a matter requiring consideration by the Panel.

Spill flows

CRC agrees high flows are part of the environment, however depending on the timing of these high inflows, these events may be buffered by the Tekapo Power Scheme (if the lakes are low) or, if lakes are nearing capacity, the TPS does have an element of control over these spill events as provided for in their High Flow Management Plan (HFMP). As such, CRC interpretation is that the potential effects of these spills should be given consideration as they cannot be completely separated from the operation of the scheme.

Compensation

The CRC considers the activities sought by Genesis to have, and continue to be having, adverse effects, in particular on aquatic and terrestrial ecological values. CRC acknowledges that mitigations are not proposed but rather a compensation package is proffered. Again, while the Genesis resource consent applications were not publicly notified and so no submissions were received, CRC notes that the similar resource consent applications by Meridian Energy Limited have received submissions questioning the scale of compensation proffered through the Indigenous Biodiversity Programme, given the level of existing and continuing potential effects, in particular on aquatic and terrestrial ecological values.

Conditions and activity status

CRC acknowledges the discussion provided by Genesis at section 6.11 of their application and note that further comments in response to that discussion may be required. CRC notes the inclusion of an additional clause to condition (7) of the water permit, which was not circulated prior to lodgement (emphasis added to identify relevant provision).

*The consent holder may take or divert water from Lake Takapō / Tekapo for hydro electricity generation uses until the lake level reaches 701.8 metres above mean sea level (Lyttelton 1937 datum) for hydro-electricity generation uses when the aggregate storage for New Zealand or the South Island is below the relevant trigger level specified in System Operator Contingent Storage Release Boundary identified under Security of Supply Forecasting and Information Policy (as approved under Part 7 of the Electricity Industry Participation Code 2010), **or any subsequent equivalent regulatory arrangement and notice of the reduction in lake level and its expected duration is given to Canterbury Regional Council, Te Rūnanga o Arowhenua, Te Rūnanga o Waihao and Te Rūnanga o Moeraki as soon as practicable.***

CRC is willing to have discussions with Genesis to further understand the implications of this condition, as well as other conditions.

Panel membership

[4] Consider:

(a) the knowledge, skills and expertise required to decide the application under clause 7(1) of Schedule 3

(b) whether there are factors that warrant the appointment of more than four panel members, such as:

(i) the circumstances unique to a particular district or region; or

(ii) the number of applications that have to be considered in that particular district or region; or

(iii) the nature and scale of the application under consideration; or

(iv) matters unique to any relevant iwi participation legislation.

In respect of [4(a)], key skills or awareness that CRC expects would be beneficial to be included within the Panel include:

- 1) Legal and RMA knowledge given the issues raised above.
- 2) Understanding of condition drafting to ensure proposal is issued with conditions that are monitorable and enforceable.
- 3) Given the compensation package proposed primarily focusses on indigenous biodiversity, knowledge of these values.
- 4) Lake processes and hydrology
- 5) Cultural understanding – however acknowledging the support for the application by Te Rūnanga o Ngāi Tahu, Te Rūnanga o Arowhenua, Te Rūnanga o Waihao and Te Rūnanga o Moeraki, CRC are happy for direction on such skills to be provided by these parties.

In respect of [4(b)], CRC does not consider more than four panel members would be necessary.

Further, should recommendations for panel members be required from CRC, CRC delegations are such that recommendations would first need to be determined by CRC's Regulation Hearing Committee.

Tikanga

[5] Iwi authorities and Treaty settlement entities are invited to advise:

- (a) whether tikanga is relevant to any aspect of the applications for approval.*
- (b) how the panel might receive assistance on those matters.*
- (c) the time required to adequately respond.*

CRC notes that letters of support for the proposal have been submitted as Appendix B to the application.

Procedural requirements

[6] Consider and prepare to indicate:

- (a) willingness to engage directly with the panel as necessary to advance progress of the application efficiently (briefings, meetings, conferencing).*
- (b) likelihood of any form of hearing process being required and, if so, time that should be allowed for such process in the time frame allocated by the panel convener. Forms of hearing include:*
 - (i) Disputed fact or opinion or*
 - (ii) Selected topics or issues which the panel seeks clarification (whether disputed or not).*
 - (iii) Proposed conditions.*
 - (iv) Legal issues.*

CRC is willing to engage with the panel as necessary. Given the range of effects which may arise from this proposal, CRC would appreciate indication from the Panel of specific topics so appropriate staff may be made available. As noted above, CRC is happy to discuss specific matters with Genesis in more detail.

CRC has provided comment on proposed conditions, and acknowledge the proposal addresses this feedback, however we still note there are conditions which require further comment from CRC. Given the controlled activity status of the proposal, CRC considers much of the focus of discussions should be ensuring conditions are both appropriate and enforceable.

With respect to any hearing process, CRC considers provision of time for discussion of key matters would be beneficial. In determining how long should be set aside for these, CRC's Consent Hearings Officer has advised they apply a 'rule of thumb' for larger consent hearings of approximately five experts per day. The length of time varies subject

to the number of questions from the Panel and if evidence is taken as read or if for example an executive summary is required to be read.

Anything else?

[7] Is there any other information needed to decide time frames or panel composition?

As discussed above, applications by Meridian Energy Limited for the Waitaki Power Scheme were publicly notified by CRC and have now been referred to Environment Court for decision. Evidence has been circulated by Meridian, with the section 274 parties' evidence due in the coming weeks. All applications can be found at: <https://www.ecan.govt.nz/do-it-online/resource-consents/notifications-and-submissions/applications-being-heard/meridian-energy-limited/>

CRC acknowledges these are separate proposals and do not compete for the same resources in any way. However, there are similarities particularly in relation to proposed Indigenous Biodiversity Enhancement Programme.

Schedule 2: Participants' estimated timeframe

CRC sees merit in determining these dates as a group however in the interest of providing an initial response to this minute, CRC has included timeframes in the table below for the relevant sections CRC will be involved in. For instance, in relation to providing comments on draft conditions, CRC would appreciate 15 working days given there are several CRC staff to consider conditions (technical and compliance). There are other sections that CRC think that the applicant would be better placed to comment on whether the timeframes are suitable. CRC are prepared to work with the applicant throughout the process on conditions which may help expediate this process.

Task	Working days (W/D)	Date:
Panel commencement	N/A	23 June 2025
Invite comment from relevant parties	10 W/D later	07 July 2025
Comments close (s 53 & s 54)	20 W/D later	04 August 2025
Comments close for applicants (s 55)	5 W/D later Applicant to review	11 August 2025
Any other procedural step and evaluation	15 W/D later	01 September 2025
Draft decision is to approve		
Draft conditions to participants (s 70)	5 W/D later	08 September 2025
Participant comments on draft conditions (s 70(2))	15 W/D later Given complexities raised above	29 September 2025
Applicant response to participants on conditions (s 70(4))	5 W/D later Applicant to review	06 October 2025
Draft decision to Ministers (s 72)	5 W/D later	13 October 2025
Response from Ministers (s 72)	10 W/D later	28 October 2025
Applicant response to Ministers (allow)	5 W/D later Applicant to review	04 November 2025
Evaluate	5 W/D later	11 November 2025
Any other procedural step and evaluation	5 W/D later	18 November 2025
Decision release	5 W/D later	25 November 2025