

BEFORE THE FTAA-2510-1120 – LAKE PŪKAKI EXPERT PANEL

Under the Fast-Track Approvals Act 2024 (the *FTAA*).

In the matter of the deliberations and final decision of the Expert Panel appointed under section 50 and Schedule 3 of the FTAA for the **Lake Pūkaki Hydro Storage and Dam Resilience Works** referred project requiring:

- (a) Resource consents under sections 13, 14 and 15 of the Resource Management Act 1991 to enable the operation of Lake Pūkaki below the current normal minimum level of 518.0 m above mean sea level (m RL), for a three-year period through 2028, and for civil works at Pūkaki Dam to improve the structure's resilience to wave action during lower lake operational levels; and
- (b) Authority under section 53 of the Wildlife Act 1953 to catch and relocate native lizards.

Expert Panel

Kitt Littlejohn
(*Chair*)

Tim Vial
(*Member*)

Dr Kaley Crawford-Flett
(*Member*)

Tony Cussins
(*Member*)

John Isleli
(*Member*)

**(DRAFT) Record of Decision of the Expert Consenting Panel
under Section 87 of the
Fast-Track Approvals Act 2024**

Dated [insert] July 2026

DECISION: *THE APPLICATION IS APPROVED SUBJECT TO CONDITIONS*

Date of Decision:

XX July 2026

Date of Issue:

Xx July 2026

**Comments received
under Section 53 of the
FTAA:**

8 April 2026

**Details of any hearing
under Section 57 of the
FTAA:**

No hearing was held.

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Panel's Draft Decision and Reasons

[DRAFT IN PROGRESS]

**REASONS FOR DECISION MADE BY THE PANEL: FTAA-2510-1120 –
LAKE PŪKAKI HYDRO STORAGE AND DAM RESILIENCE WORKS**

[Opening whakatauki]

Panel's Draft Decision and Reasons

PART A: EXECUTIVE SUMMARY

- 1 Meridian Energy Limited (**Meridian** or, the **Applicant**) owns and operates the Waitaki Power Scheme, which includes the Lake Pūkaki Dam and its associated water intake and diversion infrastructure. Through the operation of that infrastructure, Meridian manages water stored in Lake Pūkaki to enable the hydro generation of electricity which is exported to the National Grid. The amount of water able to be taken from Lake Pūkaki for this purpose, expressed as a minimum lake level of meters above mean sea level (m RL), is regulated by rules in the Waitaki Catchment Water Allocation Plan (**WAP**).
- 2 This is an application by Meridian for a referred project to enable the operation of Lake Pūkaki below the currently regulated ('normal') minimum level of 518.0 m RL, down to no less than 513.0 m RL, for a three-year period through until late 2028 (**Application**)¹.
- 3 The Application also seeks consent to place rock rip-rap on the lower slopes of the upstream face of the Pūkaki Dam and abutments to provide better protection from wave action during lower lake operational levels. Activities associated with these civil works regulated by sections 13 and 15 of the Resource Management Act 1991 (**RMA**), namely rock placement on the bed of a lake, discharges of dust to air and of sediment etc to land and water, are also proposed. As there is a possibility of killing or injuring protected native lizards during these civil works, an authority has also been sought under the Wildlife Act 1953 (**WA**).
- 4 The Application was referred by the Minister under section 21 of the FTAA for processing under the FTAA on 14 August 2025. On 11 February 2026 an expert panel was appointed to determine the Application (**Panel**).
- 5 The Panel has assessed the Application applying the relevant statutory criteria within the purpose and context of the FTAA².
- 6 The Panel received comments from commentators and a response to those comments from the Applicant. The Panel has carefully reviewed all of that information in evaluating the Application.
- 7 The Panel has applied the statutory tests in the following provisions in determining and approving the Application:
 - a. Schedule 5, clause 17 - criteria and other matters for assessment of resource consent applications.
 - b. Schedule 7, clause 5 - the criteria for assessment of an application for a wildlife approval.

¹ For the purposes of this decision the 'Application' includes an application for approval to handle wildlife under the Wildlife Act 1953.

² Legislation Act 2019, s 10; and FTAA, ss 10 and Schedules 5 and 7.

- 8 Having considered all relevant matters the Panel finds that the Project meets the purposes of the FTAA and the RMA.
- 9 The Panel therefore grants approval for the Application subject to the conditions in **Appendix A**.
- 10 This decision is made in accordance with section 87 of the FTAA. This decision covers all the approvals sought under the substantive application. This decision document includes:
 - a. The decision – throughout and summarised in Part N;
 - b. The reasons for the decision – throughout and summarised in Part N; and
 - c. A statement of the principal issues in contention and the Panel’s findings on those issues,

PART B: OVERVIEW OF THE APPLICATION AND PROCEDURE

Application

Applicant

- 11 The applicant is Meridian Energy Limited, the owner and operator of the Waitaki Power Scheme (**WPS**), which includes the Lake Pūkaki Dam and its associated water intake and diversion infrastructure. Through the operation of that infrastructure, Meridian manages water stored in Lake Pūkaki to enable the generation of electricity which is exported to the National Grid.
- 12 The WPS is a nationally and regionally significant component of New Zealand’s electricity supply infrastructure. It is New Zealand’s largest and most flexible hydroelectricity power scheme and plays an important role in the electricity system and economy. It consists of eight power stations (two owned by Genesis Energy and six owned by Meridian), commissioned between 1935 and 1985, together having an installed capacity of 1,761 MW, being ~32% of New Zealand’s installed hydro capacity.

Site and surrounding environment

- 13 Lake Pūkaki is a modified natural lake whose water levels are managed as part of the WPS. Located approximately 10 kilometres (km) north of Twizel in the Mackenzie Basin, it is New Zealand’s largest hydro storage lake and provides an average of 4,485 GWh of stored water, being 44 % of New Zealand’s total hydro storage capacity.
- 14 Lake Pūkaki water levels have been controlled since the early 1950’s, when it was raised by 9 m via a low dam. In the late 1970s, water from Lake Tekapo was directed into Lake Pūkaki via the Tekapo Canal and during this time Lake Pūkaki was raised by a further 37 m with the construction of the Pūkaki high dam (referred to as the Pūkaki Dam).
- 15 Lake Pūkaki is a 15km long glacial lake fed by natural inflows and diverted inflows, which include snow melt, in particular from the Tasman and Hooker Rivers, as well as from Lake Tekapo via the Tekapo Canal and Tekapo B Power Station. It covers an area of approximately 179 square kilometres and reaches a depth of 107 m.

- 16 The outflow of water from Lake Pūkaki is generally into the Pūkaki Canal via the Pūkaki Canal inlet (Gate 18). To pass flood flows when the lake level is high, for recreational flows in accordance with consent requirements, and for gate testing, flows can also be released as necessary into the Pūkaki River via the spillway situated within the Pūkaki Dam (Gate 19).
- 17 Lake Pūkaki is a Statutory Acknowledgement Area. The Mackenzie Basin is also recognised as an Outstanding Natural Landscape in the Canterbury Regional Policy Statement (**CRPS**) and in Plan Change 13 to the Mackenzie District Plan (**MDP**).
- 18 Lake Pūkaki is an important gateway to Aoraki Mt Cook National Park. The mountain ranges surrounding the basin include Aoraki/Mount Cook, the Ben Ohau Range and the Two Thumb Range. The Mackenzie Basin includes Lake Pūkaki and Lake Tekapo (among other smaller high-country lakes), all of which accentuate the openness and vastness of this landscape. The braided Tasman River flows into Lake Pūkaki at its northern end.
- 19 The Pūkaki Dam is located at the southern end of the lake where the Pūkaki Canal begins. Constructed in 1977, the Pūkaki Dam is made up of two structures separated by a rock ridge in the centre. Both dams are earth-fill structures with a maximum height of approximately 61 m and a total crest length of 1.7 km. The upstream face of the dam is protected from wave damage by a layer of rip-rap sitting on bedding material. The downstream face is protected from erosion by a layer of coarse gravel. The rip-rap protection extends along the lake edge for approximately 1.8 km.

Resource consents

- 20 The Panel has reviewed all the documentation and the further information provided by the Applicant and the participants and confirms that the Application requires resource consents under sections 13, 14 and 15 of the RMA for the following activities:
 - 20.1 To disturb and deposit material on the bed of a lake as part of the rock armouring works (section 13);
 - 20.2 To take and use water for hydroelectricity generation via the operation of Lake Pūkaki below 518 m RL (section 14);
 - 20.3 To discharge dust to air during rock armouring works (section 15); and
 - 20.4 To discharge contaminants (including sediment-laden water, dust, and incidental hydrocarbon discharges) to land and water during rock armouring works (section 15).
- 21 Under the WAP, the consent status of these activities varies. We accept the advice of the Canterbury Regional Council³ to the effect that the section 13 consent and the second of the two section 15 consents are discretionary, while the discharge to air consent is non-complying, and the section 14 take and use of water consent is prohibited.
- 22 We find it appropriate to 'un-bundle' the civil works aspects of the Application from the water take aspect, with the overall status of the former components therefore being

³ CRC s53 comments, S Black, CRC Principal Consents Planner, 27 March 2026.

assessed as non-complying⁴.

- 23 Normally, the RMA prevents applications for prohibited activities being made or consent for them being granted⁵. However, the FTAA entitles an authorised person to seek approval for a prohibited activity in its substantive application⁶, and directs a panel to simply “take into account” that prohibited activity provision, but not treat it as requiring the application for it to be declined⁷. In these circumstances, we find it reasonable to treat the water take activity akin to a discretionary activity, albeit with its RMA prohibited activity status being a further factor to take into account in our overall consideration of it under section 81 FTAA.
- 24 For the resource consents, Schedule 5, clause 17 sets out the criteria for their consideration namely, the purpose of the FTAA, the provisions of Parts 2, 3, 6, and 8 to 10 of the RMA that direct decision making on resource consent applications (but excluding section 104D), and the relevant provisions of any other related legislation.
- 25 The relevant rules for which the Application requires consent are set out in **Appendix B**.

Approvals relating to a wildlife approval under the Wildlife Act 1953

- 26 The Application also seeks approval under section 53 of the Wildlife Act 1953 (**WA**) to (accidentally) kill, or catch and relocate native lizards observed to be inhabiting the stockpiles of rocks to be used for the rock armouring works.
- 27 Schedule 7, clause 5 of WA sets out the criteria for consideration of an application for a wildlife approval namely, the purpose of the FTAA, the purpose of the WA and the effects of the project on the protected wildlife in question, and any specific information and requirements relating to the protected wildlife.

Procedure

- 28 The following matters of procedure are relevant for this decision.

Meetings and site visits

- 29 The Panel convened a project overview briefing conference with the Applicant and a number of its specialist advisers on 1 April 2026 in person in Twizel. The Panel found the briefing very helpful and is grateful to the Applicant for arranging it.
- 30 After the briefing conference, on 2 April 2026, the Panel undertook an extensive site visit which included a walkover of key parts of the Lake Pūkaki dam and a drive around its immediate surrounds. On 3 April, the Panel undertook a visit to the Tasman Delta.
- 31 A summary of the project overview briefing and site visits is set out in Panel Minute 4

⁴ Clause 17(b) of Schedule 5 of FTAA excludes from consideration section 104D of the RMA with the effect that one of the ‘gateway’ tests for non-complying activities does not have to be passed for an application to be considered for approval under section 104B of the RMA.

⁵ Section 87A(6) RMA.

⁶ Section 42(5) FTAA.

⁷ Section 81(3)(a) and clause 17(3) and (4) of Schedule 5 FTAA.

dated 10 April 2026.

- 32 Much of the Panel's other correspondence, deliberations and decision-making occurred over email following review, drafting and commenting on drafts of further information requests, this decision report and the conditions. Notwithstanding this, the Panel met on the following occasions:
- a. 18 February 2026– introductions and discuss administration, project briefing, site visit etc;
 - b. 1 – 3 April 2026 – discuss comments received, project briefing, site visit, application materials etc;
 - c. 28 April 2026 - discuss comments received and Applicant responses; further information required;
 - d. 28 May 2026 – discuss further information received and decision process;
 - e. Xxx
 - f. Xxx

Invitations to comment

- 33 The Panel determined the parties from whom comments on the Application would be sought in its Minute 2⁸ and the EPA subsequently invited comments on the Application by letter dated 10 March 2026. Responses to this invitation were due on 8 April 2026. Comments were received on time from the following:
- a. Canterbury Regional Council (**CRC**);
 - b. Genesis Energy Limited (**Genesis**);
 - c. The Department of Conservation (**DOC**);
 - d. The Electricity Authority;
 - e. Ka Rūnaka & Te Rūnanga o Ngāi Tahu;
 - f. Minister for Arts, Culture and Heritage & Minister for Treaty of Waitangi Negotiations;
 - g. Minister for Māori Crown Relations;
 - h. Minister for Land Information;
 - i. Minister for Regional Development
 - j. Minister for the South Island;

⁸ Minute 2 dated 9 March 2026.

- k. New Zealand Transport Agency Waka Kotahi;
- l. The Parliamentary Commissioner for the Environment; and
- m. Transpower Limited.

34 In Panel Minute 5, dated 28 May 2026, the Panel accepted a late comment on the Application from the Minister of Energy.

35 In Panel Minute 6, dated 4 June 2026, the Panel accepted late further comments from the Minister for the South Island.

36 The Panel would like to thank all parties who commented for their contributions. The substantive comments received were focussed on practical environmental issues arising from the Application, its future implementation and ongoing impacts in the locality and on people and communities. The fulsome comments provided by the CRC, DOC, Transpower and Genesis have greatly assisted the Panel to evaluate the actual and potential effects of the Application in a thorough way.

Applicant's response to invited persons comments

37 On 15 April 2026 the Applicant provided a detailed response to the various section 53 comments received on the Application.

38 The Panel has considered the Applicant's responses, and, where appropriate, refers to those responses within Section E of this report below.

Further information

39 At the Panel's direction the EPA made one request for further information about the Application under section 67 FTAA. The request was made on 4 May 2026 and sought information in relation to air quality (dust management) issues from the Applicant and the CRC, information about the Tekapo B tailrace from the Applicant and Genesis, and information about power system management from the Electricity Authority.

40 The Panel has been greatly assisted in its task by the timely and detailed responses to these information requests.

Conditions

41 The Application included a detailed set of draft conditions for the resource consents sought in the Application.⁹ Several commenting parties, notably the CRC, DOC and Genesis provided suggested amendments to the Applicant's condition proposals. In its response to comments received, the Applicant included various amendments to these conditions to accommodate some of the matters raised by commenting parties.

42 Responses to the Panel's draft conditions, circulated for comment on 5 June 2026, were received on xx June 2026 and the Applicant's response to those comments was received on xx June 2026.

⁹ Refer Part 13 of the AEE.

- 43 The Panel received comments on its draft conditions from:
- a. Xx;
 - b. Xx;
- 44 The Panel also prepared and circulated for comment at the same time a draft set of conditions for the proposed Wildlife Act authority. These draft conditions were based substantially on those proposed by the Applicant after considering comments received on its draft conditions included as Appendix B to its report provided under section 51(2)(c) FTAA dated 23 March 2026.
- 45 The Panel has considered all comments received on the draft conditions as required under section 70 FTAA and amended the conditions where appropriate. The Panel has addressed these comments in Part K: Conditions below.

Hearing

- 46 The Panel determined not to hold a hearing.

Approach to determination

- 47 The Panel is mindful of the emphasis on time limited decision-making in the present process, the purpose of the FTAA in section 3 - to facilitate the delivery of infrastructure and development projects with significant regional or national benefits - and the procedural principles in section 10 FTAA that require the Panel to take all practicable steps to use timely, efficient, consistent, and cost effective processes that are proportionate to the Panel's functions, duties or powers.
- 48 To this end, the Panel has endeavoured to conduct its processes efficiently, focussing on the issues in contention identified through the detailed information exchange process provided under the FTAA. It has also endeavoured to avoid repetition in completing its reasons for this decision, cross referencing and adopting analysis and assessments of others where appropriate and relying on the expert evidence and opinions provided to it in accordance with the Code of Conduct for Expert Witnesses.¹⁰

Timing of the Panel decision

- 49 In accordance with the panel convenor minute dated 12 February 2026 the time frame for the Panel to issue its decision documents under sections 79 and 88 is 3 July 2026.

PART C: LEGAL CONTEXT

Legal context for a referred project under the FTAA

- 50 In accordance with section 42 an authorised person¹¹ for a referred project may lodge a substantive application with the EPA. The substantive application is required to follow

¹⁰ Refer Appendix C.

¹¹ FTAA, sections 4 and 42

the process set out in sections 43 and 44. The Applicant lodged the substantive application on 5 November 2025.

- 51 The EPA decided that the Application was complete and within scope¹² on 26 November 2025. The EPA made a recommendation on whether there were competing applications or existing resource consents for the same activity on 9 December 2025.¹³ The EPA then provided the Application to the panel convenor and at the same time requested a report from the Ministry responsible agency¹⁴ under section 18 FTAA. A report was received on 12 August 2025.¹⁵

Decisions on approvals

- 52 Section 81 FTAA states:

81 Decisions on approvals sought in substantive application

- (1) A panel must, for each approval sought in a substantive application, decide whether to—
 - (a) grant the approval and set any conditions to be imposed on the approval; or
 - (b) decline the approval.
- (2) For the purpose of making the decision, the panel—
 - (a) must consider the substantive application and any advice, report, comment, or other information received by the panel under section 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90;
 - (b) must apply the applicable clauses set out in subsection (3) (see those clauses in relation to the weight to be given to the purpose of this Act when making the decision);
 - (c) must comply with section 82, if applicable;
 - (d) must comply with section 83 in setting conditions;
 - (e) may impose conditions under section 84;
 - (f) may decline the approval only in accordance with section 85.
- (3) For the purposes of subsection (2)(b), the clauses are as follows:
 - (a) for an approval described in section 42(4)(a) (resource consent), clauses 17 to 22 of Schedule 5;
 - (b) for an approval described in section 42(4)(b) (change or cancellation of resource consent condition), in relation to a condition of a coastal permit specified under section 186H(3) of the Fisheries Act 1996, clauses 20 to 22 of Schedule 5;
 - (c) for any other approval described in section 42(4)(b) (change or cancellation of resource consent condition), clause 23 of Schedule 5;
 - (d) for an approval described in section 42(4)(c) (certificate of compliance), clause 27 of Schedule 5;
 - (e) for an approval described in section 42(4)(d) (designation), clauses 24 and 25 of Schedule 5;
 - (f) for an approval described in section 42(4)(e) (concession), clauses 7 to 9 of Schedule 6;
 - (g) for an approval described in section 42(4)(f) (land exchange), clauses 29 to 33 of Schedule 6;
 - (h) for an approval described in section 42(4)(g) (conservation covenant), clauses 45 and 46 of Schedule 6;
 - (i) for an approval described in section 42(4)(h) (wildlife approval), clauses 5 and 6 of Schedule 7;

¹² FTAA, section 43

¹³ FTAA, section 47

¹⁴ The Ministry for the Environment is the responsible agency for section 18.

¹⁵ Treaty Settlements and other obligations (Section 18) report ([FTAA-2503-1036 Lake Pukaki Hydro Storage and Dam Resilience Works - Section 18 Report](#)).

- (j) for an approval described in section 42(4)(i) (archaeological authority), clauses 4 and 5 of Schedule 8:
 - (k) for an approval described in section 42(4)(j) (complex freshwater fisheries activity approval), clauses 5 and 6 of Schedule 9:
 - (l) for an approval described in section 42(4)(k) (marine consent), clauses 6 and 7 of Schedule 10:
 - (m) for an approval described in section 42(4)(l) (access arrangement), clauses 7, 9, and 10 of Schedule 11:
 - (n) for an approval described in section 42(4)(m) (access arrangement), clauses 8, 9, and 10 of Schedule 11:
 - (o) for an approval described in section 42(4)(n) (mining permit), clauses 19 to 21 of Schedule 11.
- (4) When taking the purpose of this Act into account under a clause referred to in subsection (3), the panel must consider the extent of the project's regional or national benefits.
- (5) For the purposes of subsection (4), if the substantive application was made under section 42(1)(b), the panel—
- (a) must treat the stage of the project to which the application relates as constituting the project; but
 - (b) may consider the regional or national benefits of the whole project, having regard to the likelihood that any later stages of the project will be completed.
- (6) Despite subsection (2)(a), the panel—
- (a) is not required to consider any advice, report, comment, or other information it receives under section 51, 53, 55, 67, 69, 70, or 72 after the applicable time frame; but
 - (b) may, in its discretion, consider the information as long as the panel has not made its decision under this section on the approval.
- (7) To avoid doubt, nothing in this section or section 82 or 85 limits section 7.

Ability to decline consent

- 53 Section 85 FTAA sets out the limited circumstances when approvals must or may be declined.
- 54 Following its consideration of the Application, the Panel has formed the view that, after taking account its proposed conditions, the adverse impacts are not sufficiently significant to be out of proportion to the project's regional and national benefits. The Panel has therefore concluded that the Applicant should be granted the approvals sought. No further comment about section 85 FTAA is required.

Approvals relating to the Resource Management Act 1991

- 55 The relationship of the FTAA with the RMA is outlined in Schedule 5 which provides the consent application process that applies rather than the standard RMA consent application process. Clause 17 states:

17 Criteria and other matters for assessment of consent application

- (1) For the purposes of section 81, when considering a consent application, including conditions in accordance with clauses 18 and 19, the panel must take into account, giving the greatest weight to paragraph (a),
- (a) the purpose of this Act; and
 - (b) the provisions of Parts 2, 3, 6, and 8 to 10 of the Resource Management Act 1991 that direct decision making on an application for a resource consent (but excluding section 104D of that Act); and
 - (c) the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991.
- (2) For the purpose of applying any provisions in subclause (1),—
- (a) a reference in the Resource Management Act 1991 to Part 2 of that Act must be read as a reference to sections 5, 6, and 7 of that Act; and

- (b) if the consent application relates to an activity that is the subject of a determination under section 23 of this Act, the panel must treat the effects of the activity on the relevant land and on the rights or interests of Māori as a relevant matter under section 6(e) of the Resource Management Act 1991; and
 - (c) to avoid doubt, for the purposes of subclause (1)(b), when taking into account section 104(1)(c) of the Resource Management Act 1991, any Mana Whakahono ā Rohe or joint management agreement that is relevant to the approval is a relevant matter.
- (3) Subclause (4) applies to any provision of the Resource Management Act 1991 (including, for example, section 87A(6)) or any other Act referred to in subclause (1)(c) that would require a decision maker to decline an application for a resource consent.
 - (4) For the purposes of subclause (1), the panel must take into account that the provision referred to in subclause (3) would normally require an application to be declined, but must not treat the provision as requiring the panel to decline the application the panel is considering.
 - (5) ...
 - (6) For the purposes of subclause (1), the provisions referred to in that subclause must be read with all necessary modifications, including that a reference to a consent authority must be read as a reference to a panel.
 - (7) Sections 123 and 123A of the Resource Management Act 1991 apply to a decision of the panel on the consent.

56 The Panel has considered clauses 17 and 18 of Schedule 5 FTAA and concluded that the purpose and principles of the RMA in sections 5, 6, and 7 remain relevant to our decision-making.

Approvals relating to a wildlife approval under the Wildlife Act 1953

57 Schedule 7, clause 5 sets out the criteria for assessment of an application for a wildlife approval. Clause 5 states:

5 Criteria for assessment of application for wildlife approval

- (1) For the purposes of section 81, when considering an application for a wildlife approval, including conditions under clause 6, the panel must take into account, giving the greatest weight to paragraph (a),
 - (a) the purpose of this Act; and
 - (b) the purpose of the Wildlife Act 1953 and the effects of the project on the protected wildlife that is to be covered by the approval; and
 - (c) information and requirements relating to the protected wildlife that is to be covered by the approval (including, as the case may be, in the New Zealand Threat Classification System or any relevant international conservation agreement).

58 The Panel has considered clause 5 of Schedule 7 FTAA and concluded that the purpose and principles of the Wildlife Act 1953 remain relevant to our decision-making.

PART D: IWI AUTHORITIES

Section 18 Report for a listed project

59 The Ministry for the Environment provided a report under section 18 in accordance with section 49¹⁶.

¹⁶ Lake Pūkaki Hydro Storage and Dam Resilience Works, Treaty settlements and other obligations (Section 18) report ([FTAA-2503-1036 Lake Pukaki Hydro Storage and Dam Resilience Works - Section 18 Report](#)).

60 The key points of the report included:

- a. a list of relevant Māori groups, including the relevant iwi authority and Treaty settlement entities that must be invited by the Panel to comment on a substantive application under section 53(2) of the Act;
- b. the Ngāi Tahu Treaty settlement that is relevant to this Application; and
- c. cultural redress mechanisms under the Ngāi Tahu Claims Settlement Act 1998 including:
 - the statutory acknowledgement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to Lake Pūkaki¹⁷. Pūkaki is referred to as "*the basin that captures the tears of Aoraki*," a reference to the meltwaters that flow from Aoraki into the lake in the spring.
 - the deed of recognition over Lake Pūkaki which requires that Te Rūnanga o Ngāi Tahu must be consulted on any application for the use or occupation of the lakebed, including the terms and conditions of any rights of use or occupation¹⁸.
 - a one-hectare Lake Pūkaki Nohoanga Entitlement adjoining the lake shoreline near the eastern end of the Pūkaki Dam. Nohoanga entitlements provide seasonal occupation sites for traditional practices of gathering food and other natural resources¹⁹; and
 - acknowledgement of the special association of Ngāi Tahu with taonga species of birds, plants and animals, including kakī/black stilts, pārerā/grey ducks, tara pirohe/black fronted terns, and kāmana/southern crested grebes²⁰.

Substantive application information

61 As outlined in the Application, the Applicant identified and engaged with the following relevant iwi and hāpu through the iwi authority and Treaty settlement entities, respectively:

- Te Rūnanga o Ngāi Tahu
- Te Rūnanga o Arowhenua
- Te Rūnanga o Waihao
- Te Rūnanga o Moeraki

62 Te Rūnanga o Ngāi Tahu and the Waitaki Rūnaka (Te Rūnanga o Arowhenua, Te Rūnanga o Waihao and Te Rūnanga o Moeraki) have an established relationship with

¹⁷ Ngāi Tahu Claims Settlement Act 1998, sch 34

¹⁸ Ngāi Tahu Deed of Settlement and Ngāi Tahu Claims Settlement Act 1998, s 213.

¹⁹ Ngāi Tahu Claims Settlement Act 1998, sch 95

²⁰ Ngāi Tahu Claims Settlement Act 1998, sch 97

Meridian in the Waitaki Catchment. Waitaki Rūnaka speak for mana whenua in this catchment and involve Te Rūnanga o Ngāi Tahu as they deem appropriate.

- 63 Meridian met with the Waitaki Rūnaka and provided an overview of the application, a summary of the technical assessments, and detailed the authorisations sought (resource consents and a Wildlife Act authority).
- 64 Waitaki Rūnaka requested that Meridian provide a summary of the steps that are taken in the electricity system during periods of security of supply pressure, and consider implementing a hydrological measure that would provide confidence that, in the event low lake levels were being used, it was a result of hydrology and not simply due to aggressive utilisation or management choice.
- 65 Meridian provided a response to the information requested by the Waitaki Rūnaka. Meridian's response was being considered by the Waitaki Rūnaka at the date of lodgement of the substantive application.

Comments

- 66 The Panel invited comments from the iwi authority, Treaty settlement entities and other Māori groups with relevant interests in the Application under section 53(2)(b) and (c) and s53(3), respectively:
- Te Rūnanga o Ngāi Tahu
 - Te Rūnanga o Arowhenua
 - Te Rūnanga o Waihao
 - Te Rūnanga o Moeraki
 - Aoraki Environmental Consultancy Limited
- 67 Comments were received from the iwi authority and Treaty settlement entities listed above.

Cultural Association with the Waitaki and Lake Pūkaki

- 68 The Waitaki Catchment holds immense significance for the Waitaki Rūnaka and wider Ngāi Tahu, acting as a unifying awa for all iwi members. The Waitaki lies under the cloak of Ngāi Tahu rakatirataka and is cared for and managed by the Waitaki Rūnaka in a manner consistent with kaitiakitaka.
- 69 Lake Pūkaki and the Waitaki catchment is steeped in cultural and spiritual significance. Pūkaki is one of the lakes referred to in the tradition of "*Ngā Puna Wai Karikari o Rakaihautu*" which tells how the principal lakes of Te Wai Pounamu were dug by the rangatira (chief) Rakaihautu²¹.
- 70 The Treaty Impact Assessment prepared for the consenting of the Tekapo and Waitaki Power Schemes records that Pūkaki was a kāinga nohoanga where weka, pūtakitaki (paradise duck), aruhe (bracken fernroot), and tuna (eels) were gathered.

²¹ Ngāi Tahu Claims Settlement Act 1998, sch 34

Sites from which resources were gathered extended to the base of Aoraki. Tuna were gathered from the wetlands at the head of Pūkaki.

Lake Pūkaki Nohoanga Entitlement

- 71 Te Rūnanga o Ngāi Tahu manages the Nohoanga Entitlements including maintenance and authorisation of use. During the rock armouring access to the nohoanga must be maintained, and the effects of the activity on those using the nohoanga entitlement must be mitigated.
- 72 The Applicant has noted that dust may be an issue for the campground (at times) and has put measures in place. This concern also applies to the nohoanga entitlement which is located adjacent to the campground.
- 73 The Waitaki Rūnaka and Te Rūnanga o Ngāi Tahu have worked with the Applicant to mitigate the effects of the activity on the ability of Ngāi Tahu Whānui to use the Lake Pūkaki nohoanga.

Position of the Iwi Authority and Treaty Settlement Entities

- 74 By supporting the Application, the Waitaki Rūnaka are making a gesture of manaakitaka by enabling the security of supply of electricity that will benefit New Zealand. This position reflects the understanding of the Waitaki Rūnaka that:
- the lake lowering element of the Application during times of electricity shortage is already enabled but is dependent on the actions of Transpower as the System Operator.
 - the Application is necessary for New Zealand's security of electricity supply over the proposed three-year term;
 - the operation and effects of the Application will be temporary in nature;
 - the ongoing meaningful and enduring relationship between the Applicant and the Waitaki Rūnaka provides a platform for addressing any adverse effects, including matters of rakatirataka, kaitiakitaka, whānau ora, and the protection of wāhi tūpuna; and
 - the obligations of the Waitaki Rūnaka to Pūkaki and the Waitaki will be efficiently and effectively met through working with the Applicant.
- 75 Representatives for the Waitaki Rūnaka have worked with the Applicant to agree on changes to the consent conditions.

Statutory requirements

Treaty settlements and recognised customary rights

- 76 Section 7 requires all persons performing functions and exercising powers under the FTCA to act in a manner that is consistent with the obligations arising under existing Treaty settlements and customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

77 The project is not within or adjacent to Customary Marine Title Groups or Protected Customary Rights areas. The proposal is not occurring within or adjacent to the environmental covenant prepared by ngā hapū o Ngāti Porou under section 19 of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

78 However, the Ngāi Tahu Treaty settlement is relevant to the Application.

Effect of treaty settlements and other obligations

79 Because the Ngāi Tahu Treaty settlement applies, section 82 becomes relevant to our decision making. Section 82 provides:

82 Effect of Treaty settlements and other obligations on decision making

- (1) This section applies if a Treaty settlement, the Marine and Coastal Area (Takutai Moana) Act 2011, or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 is relevant to an approval.
- (2) If the settlement or Act provides for the consideration of any document, the panel must give the document the same or equivalent effect through the panel's decision making as it would have under any relevant specified Act.
- (3) The panel must also consider whether granting the approval would comply with section 7.
- (4) In this section, **document**—
 - (a) means any document, arrangement, or other matter; and
 - (b) includes any statutory planning document amended as a result of the settlement or Act referred to in subsection (1).

Ngāi Tahu Treaty Settlement

Statutory Acknowledgement

80 Lake Pūkaki is subject to a statutory acknowledgement under the Ngāi Tahu Claims Settlement Act 1998.

81 A consent authority must, when considering a resource consent for a proposed activity that is within, adjacent to, or affecting a statutory area, provide a summary of the application to the holder of the statutory acknowledgement and have regard to the statutory acknowledgement when deciding whether the holder is an 'affected person' for the purposes of notification decisions under the RMA²².

82 The section 18 report identifies Te Rūnanga o Ngāi Tahu and the Waitaki Rūnaka as having relevant interests in the application and concludes that the process of inviting comment on the application is comparable to the process under the Ngāi Tahu Claims Settlement Act and the RMA of providing those who hold statutory acknowledgements with a summary of the application.

83 The Panel concurs that inviting comments from the Iwi Authority and Treaty Settlement Entities under section 53(2)(c) of the FTAA is comparable to the Ngāi Tahu Claims

²² Ngāi Tahu Claims Settlement Act 1998, ss 208 and 215

Settlement Act and RMA processes. Te Rūnanga o Ngāi Tahu and the Waitaki Rūnaka provided comments on the application.

- 84 The Panel has considered the comments of the Iwi Authority and Treaty Settlement Entities and the statutory acknowledgement for Lake Pūkaki in its decision making.

Deed of Recognition

- 85 Te Rūnanga o Ngāi Tahu have a deed of recognition with the Commissioner of Crown Lands (LINZ) over Lake Pūkaki. The deed of recognition requires the relevant Crown agency to consult with and have particular regard to the views of Te Rūnanga o Ngāi Tahu concerning the management or administration of the statutory area²³.
- 86 The applicant proposes to undertake works on the bed of Lake Pūkaki and holds a deed of grant of easement which allows the rock armouring and other activities to be undertaken by the applicant within the deed of recognition area administered by the Commissioner of Crown Lands.
- 87 The Crown is required to inform Te Rūnanga o Ngāi Tahu of any applications for rights of use or occupation in relation to the statutory area and provide Te Rūnanga o Ngāi Tahu with relevant information to enable it to consider and advise its views to the Crown.
- 88 The section 18 report concludes that the process of inviting comment from Te Rūnanga o Ngāi Tahu on the application under the Act is comparable to the deed of recognition consultation process. The section 18 report further advises that the Panel must have particular regard to the views of Te Rūnanga o Ngāi Tahu relating to its association with Lake Pūkaki to fully comply with the procedural requirements of the deed of recognition²⁴.
- 89 The Panel concurs that inviting comments from Te Rūnanga o Ngāi Tahu on the application under section 53(2)(c) of the FTAA is comparable to the deed of recognition consultation process. Te Rūnanga o Ngāi Tahu provided comments on the application.
- 90 The Panel has had particular regard to the views of Te Rūnanga o Ngāi Tahu relating to its association with Lake Pūkaki in its decision-making.

Nohoanga Entitlement

- 91 The Ngāi Tahu Claims Settlement Act 1998 provides for a one-hectare Lake Pūkaki Nohoanga Entitlement near the eastern end of the Pūkaki Dam.

The Waitaki Rūnaka and Te Rūnanga o Ngāi Tahu have worked with the Applicant to mitigate the effects of the activity on the ability of Ngāi Tahu Whānui to use the Lake Pūkaki nohoanga.

Taonga Species

²³ Ngāi Tahu Claims Settlement Act 1998, s 213

²⁴ Deed of Recognition for Lake Pūkaki, ss 2 and 3

- 92 The Crown has also acknowledged the special association of Ngāi Tahu with taonga species of birds, plants and animals, including kakī/black stilts, pārerā/grey ducks, tara pirohe/black fronted terns, and kāmana/southern crested grebes²⁵.
- 93 While the application seeks an approval under the Wildlife Act 1953 for the handling/relocation of lizards, these species are not included amongst the taonga species in the Ngāi Tahu Claims Settlement Act 1998.
- 94 The section 18 report notes that there are no procedural requirements in relation to the taonga species listed in the Ngāi Tahu Claims Settlement Act 1998 and the approvals sought by the Applicant.
- 95 The Panel has considered the effects of the application on the taonga species identified in the Ngāi Tahu Claims Settlement Act 1998 in its decision-making.

Conditions relating to Treaty settlements and recognised customary rights

96 Section 84 provides:

84 Conditions relating to Treaty settlements and recognised customary rights

- (1) For the purposes of section 7, the panel may set conditions to recognise or protect a relevant Treaty settlement and any obligations arising under the Marine and Coastal Area (Takutai Moana) Act 2011 or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.
- (2) This section applies in addition to, and does not limit, any other powers to set conditions under this Act.

97 Section 84 is relevant to our decision making and developing conditions with regard to the relevant Treaty settlements, especially that of the Ngāi Tahu Treaty Settlement, such that we ought not set conditions that may impact any Treaty settlements.

Conduct of hearings and other procedural matters in the context of Treaty settlements and other arrangements – assessment of application

98 Schedule 3, clause 5 of the FTAA provides:

- (1) This clause applies if any Treaty settlement Act, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, or any other iwi participation legislation, or any Mana Whakahono a Rohe or joint management agreement, includes procedural arrangements relating to the appointment of a decision-making body for hearings and other procedural matters, such as the following:
 - (a) a requirement for iwi or hapū to participate in the appointment of hearing commissioners to determine resource consent applications or notice of requirement lodged under the Resource Management Act 1991;
 - (b) a requirement that notice be given to any person or specified class of person of any steps in a resource management process;
 - (c) any consultation requirements with iwi or hapū;
 - (d) any other matter of procedure for determining a matter granted under a specified Act that corresponds to an approval under this Act.
- (2) The panel convener or panel must—
 - (a) comply with the arrangements in the legislation, arrangement, or agreement referred to in subclause (1) as if they were a relevant decision maker (such as a local authority, department, Crown entity, or board of inquiry); or
 - (b) obtain the agreement of the relevant party under the legislation, arrangement, or agreement to adopt a modified arrangement that is consistent with achieving the purpose of this Act and the other legislation, arrangement, or agreement referred to in subclause (1).

²⁵ Ngāi Tahu Claims Settlement Act 1998, sch 97

- (3) The party referred to in subclause (2)(b) may not unreasonably withhold their agreement to a modified arrangement (as described in that subclause).
- (4) If the panel convener or panel are unable to obtain agreement under subclause (2)(b) (in circumstances where that agreement is not unreasonably withheld) they must stop processing the substantive application and must direct the EPA to return the application to the applicant immediately.
- (5) The panel must also direct the EPA to give written notice to the following that processing of the substantive application has stopped:
 - (a) the relevant local authorities; and
 - (b) if advice or a report has been requested from a person under section 51 and is yet to be provided to the EPA, that person; and
 - (c) if a recommendation has been requested from the relevant chief executive under section 48 and is yet to be made, the relevant chief executive; and
 - (d) if persons or groups have been invited to provide comments under section 35 or 53, those persons or groups.
 - (6) The panel and a person referred to in subclause (5)(b) or (c) must stop processing the substantive application if they receive notice of the stoppage.

99 Overall, the Panel is satisfied that it has complied with all of the procedural requirements in relation to the Ngāi Tahu Treaty Settlement and therefore meets its obligations under Section 7 and Schedule 3, Clause 5 of the FTAA.

Assessment of consent application

100 As noted above clause 17 of Schedule 5 of the FTAA provides the criteria and other matters for assessment of consent applications.

PART E: EVALUATION OF EFFECTS

101 Schedule 5 clause 5(4) requires a consent application to provide an assessment of an activity's effects on the environment covering the information in clauses 6 and 7. These matters include:

- (a) an assessment of the actual or potential effects on the environment:
- (b) if the activity includes the use of hazardous installations, an assessment of any risks to the environment that are likely to arise from such use:
- (c) if the activity includes the discharge of any contaminant, a description of—
 - (i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
 - (ii) any possible alternative methods of discharge, including discharge into any other receiving environment:
- (d) a description of the mitigation measures (including safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect of the activity:
- (e) identification of persons who may be affected by the activity and any response to the views of any persons consulted, including the views of iwi or hapū that have been consulted in relation to the proposal:
- (f) if iwi or hapū elect not to respond when consulted on the proposal, any reasons that they have specified for that decision:
- (g) if the scale and significance of the activity's effects are such that monitoring is required, a description of how the effects will be monitored and by whom, if the activity is approved:
- (h) an assessment of any effects of the activity on the exercise of a protected customary right.

...

- (a) any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects:
- (b) any physical effect on the locality, including landscape and visual effects:
- (c) any effect on ecosystems, including effects on plants or animals and physical disturbance of habitats in the vicinity:
- (d) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations:
- (e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants:
- (f) the unreasonable emission of noise:
- (g) any risk to the neighbourhood, the wider community, or the environment through natural hazards or hazardous installations.

102 The AEE provided a detailed assessment of these matters in Section 8. Participants who commented also raised a range of actual and potential effects of the Application on the environment.

103 From these materials the Panel agrees that the Application will give rise to the following main categories of actual and potential effects on the environment:

- a. Effects on cultural values;
- b. Effects on wetland hydrology;
- c. Effects on groundwater users;
- d. Effects on existing lakeside structures;
- e. Effects on air quality;
- f. Effects on shoreline geomorphology;
- g. Effects on water quality;
- h. Ecological effects;
- i. Landscape and visual effects;
- j. Socio-economic effects;
- k. Effects on Alps to Ocean Cycle Trail and Te Araroa Trail; and
- l. Natural hazards.

104 As the Application also seeks consent to discharge contaminants to water, section 105 of the RMA is engaged and requires an assessment of alternatives to be undertaken (via clause 6(c), Sch 5 of the FTAA).

105 Following the receipt of comments from parties, the Panel observed that many of these actual and potential effects of the Application were not generally in dispute and, subject

to clarifications and conditioning, appeared to be acceptable on the information provided. This information included the expert evaluations, reviews and recommendations to us from a large number of qualified specialists (refer Appendix C). It was apparent also that in relation to several technical areas where differences of expert opinion appeared, that there was useful collaboration in an attempt to narrow the points of difference. We have been greatly assisted by this work.

Approach to effects evaluation

- 106 As the effects issues in dispute became clearer (and fewer) with the exchange of information, the Panel resolved to adopt an efficient approach to the recording of its evaluation of the effects of the Application, with a focus on not regurgitating the AEE and the comments received on it where all of that material is public record.
- 107 We have therefore adopted the following approach to our evaluation of effects:
- a. Effects assessment areas which raised no issues in contention on the papers, or which were not subject to invited comment – for these assessment areas, we have simply summarised the Applicant’s proposals and assessment of effects as set out in the AEE and recorded our findings;
 - b. Effects assessment areas in contention, or which were the subject of invited comments – for these assessment areas the Panel takes a more fulsome approach, summarising the Applicant’s proposals and assessment of effects as set out in the AEE, setting out relevant comments received from invited persons, the Applicant’s response, and finally any further information obtained that is relevant to matters in contention. Following that, the Panel’s overall conclusions on the information provided and its findings are recorded.
- 108 In terms of the relevant receiving environment, the Panel has applied the test in *Hawthorn*²⁶. The environment includes that which presently exists. It also
- ...embraces the future state of the environment as it might be modified by the utilisation of rights to carry out a permitted activity under a district or regional plan or by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.*
- 109 [Other analysis re approach to effects assessment TBC]
- 110 We have also had regard to the relevant planning provisions in considering the effects of the project, as noted in Part H: Planning Framework.
- 111 [Summary and detailed effects assessment TBC]

Effects on cultural values

Summary of Applicant’s Position

112 ...

²⁶ *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 at [84]

113 ...

Comments received and Applicant's response

114 ...

115 ...

Panel assessment and findings

116 ...

117 ...

Effects on wetland hydrology

Summary of Applicant's Position

118 ...

119 ...

Comments received and Applicant's response

120 ...

121 ...

Panel assessment and findings

122 ...

123 ...

Effects on groundwater users

Summary of Applicant's Position

124 ...

125 ...

Comments received and Applicant's response

126 ...

127 ...

Panel assessment and findings

128 ...

129 ...

Panel's Draft Decision and Reasons

Effects on existing lakeside structures

Summary of Applicant's Position

130 ...

131 ...

Comments received and Applicant's response

132 ...

133 ...

Panel assessment and findings

134 ...

135 ...

Effects on air quality

Summary of Applicant's Position

136 ...

137 ...

Comments received and Applicant's response

138 ...

139 ...

Panel assessment and findings

140 ...

141 ...

Effects on shoreline geomorphology

Summary of Applicant's Position

142 ...

143 ...

Comments received and Applicant's response

144 ...

145 ...

Panel assessment and findings

Panel's Draft Decision and Reasons

146 ...

147 ...

Effects on water quality

Summary of Applicant's Position

148 ...

149 ...

Comments received and Applicant's response

150 ...

151 ...

Panel assessment and findings

152 ...

153 ...

Ecological effects

Summary of Applicant's Position

154 ...

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Comments received and Applicant's response

156 ...

157 ...

Panel assessment and findings

158 ...

159 ...

Landscape and visual effects

Summary of Applicant's Position

160 ...

161 ...

Comments received and Applicant's response

162 ...

Panel's Draft Decision and Reasons

163 ...

Panel assessment and findings

164 ...

165 ...

Socio-economic effects

Summary of Applicant's Position

166 ...

167 ...

Comments received and Applicant's response

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169 ...

Panel assessment and findings

170 ...

171 ...

Effects on Alps to Ocean Cycle Trail and Te Araroa Trail

Summary of Applicant's Position

172 ...

173 ...

Comments received and Applicant's response

174 ...

175 ...

Panel assessment and findings

176 ...

177 ...

Assessment of alternatives

Summary of Applicant's Position

178 ...

179 ...

Comments received and Applicant's response

180 ...

181 ...

Panel assessment and findings

182 ...

183 ...

PART F: REGIONAL OR NATIONAL BENEFITS OF THE PROJECT

184 Section 3 of the FTAA states that the purpose of the Act is to facilitate the delivery of infrastructure and development projects with *significant regional or national benefits*.

185 As noted above in Part C section 81(4) FTAA specifically requires the Panel to consider the extent of the project's regional or national benefits.²⁷

186 The assessment of adverse impacts in relation to an approval sought is particularly relevant in the context of a decision to decline an approval. An approval can only be declined if the adverse impacts are out of proportion to regional or national benefits.²⁸

187 There is no specific definition of significant regional or national benefits in the context of listed projects. Section 22 FTAA, which relates to the criteria for assessing a referral application, provides the following:

- (2) For the purposes of subsection (1)(a), the Minister may consider—
 - (a) whether the project—
 - (i) has been identified as a priority project in a central government local government, or sector plan or strategy (for example, in a general policy statement or spatial strategy), or a central government infrastructure priority list:
 - (ii) will deliver new regionally or nationally significant infrastructure or enable the continued functioning of existing regionally or nationally significant infrastructure:
 - (iii) will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment (within the meaning of policy 1 of the National Policy Statement on Urban Development 2020):
 - (iv) will deliver significant economic benefits:
 - (v) will support primary industries, including aquaculture:
 - (vi) will support development of natural resources, including minerals and petroleum:
 - (vii) will support climate change mitigation, including the reduction or removal of greenhouse gas emissions:
 - (viii) will support climate change adaptation, reduce risks arising from natural hazards, or support recovery from events caused by natural hazards:
 - (ix) will address significant environmental issues:
 - (x) is consistent with local or regional planning documents, including spatial strategies:

²⁷ If the application was a referral application – the panel must treat the stage of the project to which the application relates as constituting the project; but may consider the regional or national benefits of the whole project, having regard to the likelihood that any later stages of the project will be completed (section 81(5) FTAA).

²⁸ Section 85(3) FTAA

Summary of Applicant's Position

188 The AEE included a detailed assessment of the potential economic benefits of the Application.

189 [TBC].

Comments received and Applicant's response

190 The Panel received commentary on this assessment from various commenting parties.

191 [TBC].

192 ...

Panel assessment and findings

193 [TBC].

194

PART G: STATUTORY DOCUMENTS

195 The AEE addressed the relevant statutory documents and identified relevant provisions. Rather than repeat all of that, this section addresses the documents of particular relevance to the Application (particularly relevant provisions) and the comments received. The Panel also relies on its conclusions on effects and the conditions we have decided to impose in support of the conclusions reached on relevant planning provisions as relevant to the topic area.

National Environmental Standards

196 The following relevant National Environmental Standards were considered in section 7 of the AEE to determine whether any of their rules were infringed by the Application:

- National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (**NES-CS**); and
- National Environmental Standards for Freshwater (**NES-FW**) 2020.

197 In the case of both of these environmental standards, the Application advised that no consents were required. Neither the CRC, nor any other commenting party, contradicted this advice and we find accordingly.

National Policy Statements

198 The relevant National Policy Statements were addressed in section 10 of the AEE. We agree with the Applicant that they only comprise the following:

- a. National Policy Statement for Renewable Electricity Generation (**NPS-REG**)
- b. National Policy Statement for Freshwater Management 2020 (**NPS-FM**); and
- c. National Policy Statement for Indigenous Biodiversity 2023 (**NPS-IB**).

National Policy Statement for Renewable Electricity Generation

199 The NPS-REG sets out a framework [TBC].

200 ...

National Policy Statement for Freshwater Management 2020

201 The NPSFM sets out a framework under which local authorities are to manage freshwater (including groundwater).²⁹

202 The objective of the NPSFM is to ensure that natural and physical resources are managed in a way that prioritises the:³⁰

- a. health and well-being of water bodies and freshwater ecosystems;
- b. health needs of people (such as drinking water); and
- c. ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

203 This objective reflects the hierarchy of obligations in Te Mana o te Wai.³¹

204 The AEE has assessed the Project against the objective and policies of the NPS-FM, and concludes that any adverse effects generated by the proposed works and discharge on freshwater resources will be low and thus will be consistent with outcomes anticipated under the NPS-FM. We agree.

National Policy Statement for Indigenous Biodiversity 2023

205 The objective of the NPSIB is:

(a) to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and

(b) to achieve this:

(i) through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and

(ii) by recognising people and communities, including landowners, as stewards of indigenous biodiversity; and

(iii) by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and

²⁹ NPSFM clause 1.5.

³⁰ NPSFM clause 2.1.

³¹ NPSFM clause 1.3.

(iv) while providing for the social, economic, and cultural wellbeing of people and communities now and in the future.

206 The Application includes an assessment against the NPS-IB which concludes that overall [TBC].

PART H: REGIONAL AND DISTRICT PLANNING FRAMEWORK

207 An assessment of the relevant statutory plans has been included within the AEE as is required by Schedule 5, clause 5(1)(h).

208 The Panel has reviewed and considered the assessment provided by the Applicant and the comments provided by the Council. We outline the key matters in the following sections (as well as adding further considerations and assessment).

Regional Policy Statement

209 [TBC].

Panel Finding

210

[xxx] Plan

211 The Application includes detailed assessments of each of the components of the Project against the relevant provisions of the xx..

212 A wide range of objectives and policies are relevant, including those contained within chapters:

- ...

Panel Finding

213 [TBC].

214 ...

Conclusion regarding consistency with the regional planning framework

215 For the reasons outlined above, we are satisfied that the Application is [TBC]..

Planning documents recognised by a relevant iwi authority and lodged with the Council

216 An application for a resource consent must include an assessment of the activity against any relevant provisions of a planning document recognised by a relevant iwi authority and lodged with a local authority.³²

³² Schedule 5, clause 5(1)(h) and clause 5(2)(g).

Treaty settlements

217 As noted in Part D, sections 7 and 8 FTAA state:

7 Obligation relating to Treaty settlements and recognised customary rights

- (1) All persons performing and exercising functions, powers, and duties under this Act must act in a manner that is consistent with—
 - (a) the obligations arising under existing Treaty settlements; and
 - (b) customary rights recognised under—
 - (i) the Marine and Coastal Area (Takutai Moana) Act 2011;
 - (ii) the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.
- (2) To avoid doubt, subsection (1) does not apply to a court or a person exercising a judicial power or performing a judicial function or duty.
- (3) In this section, **existing Treaty settlements** means Treaty settlements that exist at the time the relevant function, power, or duty is performed or exercised (rather than only those that exist at the commencement of this Act).

218 The Panel understands³³ that the Ngāi Tahu Treaty Settlement Act (and associated Treaty settlement deed) is of relevance to the Application area.

219 Part D provides an overview of the relevance of this treaty settlement to the Application area. As noted in Part D the Panel directed the EPA to seek comments from the above iwi. The comments received are summarised in Part D.

220 The Panel also directed the EPA to seek comment from the Minister for Treaty of Waitangi Negotiations under section 72 FTAA. No formal comments were received from the Minister.

221 The Panel is not aware of any additional conditions that may be required in order to recognise or protect any relevant Treaty settlement under section 84 FTAA [TBC].

PART I: PRINCIPAL ISSUES IN CONTENTION

222 From the materials provided by the Applicant and the comments received from other participants, the Panel identifies the following principal issues in contention with the Application:

- a. ...
- b. ...
- c. ...

223 The Panel's findings on these principal issues in contention are set out below.

224 [TBC].

³³ Based on the Ministry for the Environment Treaty Settlements and other obligations [section 18 report](#).

PART K: CONDITIONS

FTAA general requirements for conditions

225 Section 81 provides that the Panel must set any conditions to be imposed on the approval. The statutory requirements on what conditions are set is determined by what approvals are being sought.

226 Section 83 must be complied with and provides:

83 Conditions must be no more onerous than necessary

When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion.

227 How the Panel has complied with this section is discussed below in relation to the conditions that have been set.

228 If a Treaty settlement, the Marine and Coastal Area (Takutai Moana) Act 2011, or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 is relevant to an approval then section 82 applies. This section provides:

82 Effect of Treaty settlements and other obligations on decision making

- (1) This section applies if a Treaty settlement, the Marine and Coastal Area (Takutai Moana) Act 2011, or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 is relevant to an approval.
- (2) If the settlement or Act provides for the consideration of any document, the panel must give the document the same or equivalent effect through the panel's decision making as it would have under any relevant specified Act.
- (3) The panel must also consider whether granting the approval would comply with section 7.
- (4) In this section, **document**—
 - (a) means any document, arrangement, or other matter; and
 - (b) includes any statutory planning document amended as a result of the settlement or Act referred to in subsection (1).

FTAA requirements for conditions

Resource consent

229 For a resource consent the following clauses of Schedule 5 apply:

18 Conditions on resource consent

When setting conditions on a consent, the provisions of Parts 6, 9, and 10 of the Resource Management Act 1991 that are relevant to setting conditions on a resource consent apply to the panel, subject to all necessary modifications, including the following:

- (a) a reference to a consent authority must be read as a reference to a panel; and
- (b) a reference to services or works must be read as a reference to any activities that are the subject of the consent application.

Wildlife authority

230 For the grant of a wildlife authority the following clause of Schedule 7 apply:

6 Conditions

- (1) A panel may set any conditions on a wildlife approval that the panel considers necessary to manage the effects of the activity on protected wildlife.
- (2) In setting any condition under subclause (1), the panel must—
 - (a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and
 - (b) where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and
 - (c) take into account, as the case may be, the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife that is to be covered by the approval.

231 Generally speaking, a resource consent condition must:³⁴

- a. be for a resource management purpose, not an ulterior one;
- b. fairly and reasonably relate to the development authorised by the resource consent or designation; and
- c. not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties could not have approved it.

232 The underlying purpose of the conditions of a resource consent is to manage environmental effects by setting outcomes, requirements or limits to that activity, and how they are to be achieved.³⁵

233 Conditions must also be certain and enforceable.³⁶

234 A condition must also not delegate the making of any consenting or other arbitrary decision to any person, but may authorise a person to certify that a condition of consent has been met or complied with or otherwise settle a detail of that condition.³⁷ Such authorisation is subject to the following:

- a. The basis for any exercise of a power of certification must be clearly set out with the parameters for certification expressly stated in the relevant conditions.
- b. This power of certification does not authorise the making of any waiver or sufferance or departure from a policy statement or plan except as expressly authorised under the Act (s 84 of the RMA).
- c. This power of certification does not authorise any change or cancellation of a condition except as expressly authorised under the Act (s 127 of the RMA).

³⁴ *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731 (HL), at 739.

³⁵ *Summerset Village (Lower Hutt) Ltd v Hutt City Council* [2020] MZEnvC 31 at [156].

³⁶ *Bitumix Ltd v Mt Wellington Borough Council* [1979] 2 NZLR 57.

³⁷ *Turner v Allison* (1970) 4 NZTPA 104.

Project conditions

- 235 Following the ongoing engagement between the Applicant and the CRC, there were only a few matters remaining in dispute between them, principally in relation to dust management during rock armouring works. We were generally satisfied with the conditions as proposed by the Applicant (following responses to feedback from invited parties) [TBC].
- 236 A copy of the Panel's draft conditions (with a copy of the draft decision³⁸), was circulated on 5 June 2026 to the invited parties.
- 237 Comments were received from the following parties by xxx indicating no issues with the draft conditions:
- a. ...
 - b. ...
 - c. ...
- 238 Substantive comments were provided by:
- a. ...
 - b. ...
 - c. ...
 - d. ; and
- 239 The Applicant provided its response to the comments made on the draft conditions on 12 June 2026. In summary, its position was [TBC].

240

Conclusion regarding conditions

- 241 We are satisfied that the final consent conditions are appropriate and meet the requirements of sections 83 and 84 FTAA.
- 242 To the extent the final set contains minor errors, the Panel notes it has powers under section 89 FTAA to make minor corrections.

PART L: RMA 1991

- 243 As noted in Part C, Schedule 5, clause 17 sets out how the Application is to be assessed under various provisions of the RMA. The substantive provisions of relevance to the Application are Part 2, and the various matters engaged for consideration under section 104 RMA.

³⁸Section 70(2), FTAA.

244 We observe that clause 17(1) sets up a directive hierarchy to enable decision makers under the FTAA to approve an application if it achieves the purpose of that statute, but fails, or fails in part, to achieve the purpose of the RMA, or has adverse effects on the environment, or is inconsistent with national, regional or local RMA policy direction.

Panel finding

245 The Panel has not found itself in a position where, with respect to the Application, it has to place the purpose of the FTAA above that of the RMA, and in so doing allow the sustainable management purpose of that statute to be compromised in the pursuit of 'fast-track' development. This is because, in the Panel's finding, the proposal easily achieves the purpose of both the FTAA and the RMA.

246 As a result of the conclusions reached on the effects of the Application and in the context of the relevant planning provisions and the conditions, the Panel finds that the Application is consistent with Part 2.

PART M: FTAA, SECTION 3

247 The Panel's decision is subject to the purpose of the FTAA, contained in section 3, namely to: facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

248 As noted, the Panel finds that the Project will deliver development with significant national and regional benefit.

PART N: OVERALL ASSESSMENT

249 As noted in Part C a panel may decline an approval if, in complying with section 81(2), the panel forms the view that:

- (a) there are 1 or more adverse impacts in relation to the approval sought; and
- (b) those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account—
 - (i) any conditions that the panel may set in relation to those adverse impacts; and
 - (ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.³⁹
- (4) To avoid doubt, a panel may not form the view that an adverse impact meets the threshold in subsection (3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2).

250 This test is different from the test developed over the years under the RMA which culminated in the decision of *Environmental Defence Society v The New Zealand King Salmon Company Limited & Ors (King Salmon)*⁴⁰. The King Salmon case was clear – the approach by the Courts and local authorities of adopting an overall judgement approach to environmental decision making under the RMA was incorrect.

³⁹ Section 82 FTAA

⁴⁰ [2014] NZSC 38

251 In contrast, the FTAA clearly envisages an overall judgment or balancing approach to decision making. The Panel must balance the adverse impacts against the regional or national benefits of the project.

252 With reference to our evaluation of the adverse impacts of the Application, and on the principal issues in contention considered in Part I, the Panel is satisfied that there are no adverse impacts of such significance as to be out of proportion to the project's national and regional benefits.

253 There is therefore no basis for the approvals sought to be refused.

PART O: FINAL DECISION

254 The Panel has considered the Application and supporting information as well as the comments received on it and on the draft conditions, as well as the further information provided as a result of comments received from other participants and the subsequent refinement of the Application. We thank all those who commented for their contributions.

255 Overall, the Panel is satisfied that the matters set out in section 81 FTAA have been addressed appropriately and that the purpose of the FTAA is achieved by this Decision. In reaching that view, the Panel has had regard to the actual and potential effects on the environment of allowing the activity as set out above. The Panel has also had regard to the relevant planning documents.

256 The Panel determines to grant the RMA approvals sought subject to the Conditions attached as Appendix A1 to this Decision, and to approve the Wildlife Act approval sought subject to the Conditions attached as Appendix A2.

257 As required by section 99 of the FTAA the persons listed in that section are entitled to appeal and must commence any appeals within the 20-working day period from the day this Decision is published under section 88(3).

Kitt R M Littlejohn
(Chair)

Dr Kaley Crawford-Flett
(Member)

Tony Cussins
(Member)

John Iseli
(Member)

Tim Vial
(Member)

APPENDIX A1: CONDITIONS OF RMA CONSENTS

Panel's Draft Decision and Reasons

APPENDIX A2: CONDITIONS OF WILDLIFE ACT AUTHORITY

Panel's Draft Decision and Reasons

APPENDIX B: REASONS FOR CONSENT

Panel's Draft Decision and Reasons

Panel's Draft Decision and Reasons