
MINUTE 4 OF THE PANEL CONVENER

Convener's Conference – Directions
Tekapo Power Scheme [FTAA-2503-1035]
(16 June 2025)

[1] The following directions were made at the conference of the Panel Convener held on **13 June at 10 am.**

Directions

[2] By consent,

- (a) By **Thursday, 19 June 2025**, the Regional Council will file a memorandum proposing two nominations for appointment to the panel. Of the two nominees, only one shall be selected and appointed.
- (b) By **Monday, 23 June 2025**, the applicant and the Regional Council must file a joint memorandum. Ideally, the parties should agree on the content. The memorandum is to set out:
 - (i) a question trail for the preliminary legal issues, and
 - (ii) the evidential matters in dispute and the process proposed for the resolving the dispute, including -
 - (1) prior to the commencement of s 53, the timing and sequencing of the issues to an alternative dispute resolution process.¹
 - (2) advise whether any commentary is contingent upon the

¹ Meeting, expert conferencing, mediation/negotiation etc.

determination of the preliminary legal issues and, if so, the likelihood of providing commentary in accordance with the statutory timeframes (FTAA sections 53 – 55).²

- (iii) based on the above, the statutory participants will update the table in Schedule 2: Parties' estimated time frame.
- (c) By **Monday, 23 June 2025** the applicant, having conferred with Transpower, Te Rūnanga and Kā Rūnaka, and the Regional Council, will report on whether agreement has been reached regarding the matters raised by Transpower in relation to conditions.³
- (d) By the **commencement date of section 53** (to be advised), the applicant, after conferring with the other statutory participants, will file a memorandum detailing a proposed site visit by the panel.

Other matters

[3] The person who will be appointed panel chair will be on leave from 18 to 22 August 2025. The time frame under section 79 will allow for an uninterrupted holiday.

[4] The site visit will not take place before 7 July 2025.

[5] At the request of Kā Rūnaka, the convener will appoint a panel member with expertise in Ngāi Tahu tikanga. Before making the appointment, the panel convener shall consult with Te Rūnanga and Kā Rūnaka regarding any concerns about the prospective appointee. Please note, the person I had contacted last week has a conflict of interest.

[6] The matters raised by the Regional Council concern the management of effects. Effects are principally to be managed under various management plans, which, due to no fault of the applicant, were not available to the Regional Council

² Note, we anticipate comment can include reports and supplementary reports.

³ Transpower, undated letter, to Genesis Energy Ltd attached as Appendix U: Letters of Support.

at the commencement of the conference.

[7] While the proposed conditions include ‘compensation’, the applicant confirms the principles for biodiversity compensation and aquatic compensation in the relevant National Policy Statements have not been applied and effects management hierarchy has not been applied.⁴ I wonder whether the Regional Council’s uncertainty is to do with the planning, rather than legislative, context to consider and decide this application. In response, I have suggested another legal issue for the participants’ consideration (below).

[8] As matters presently stand, unless resolved by agreement, there appears to be preliminary legal issues the determination of which may impact the scope of comments filed by the Regional Council. This can easily be accommodated under the FTAA. However, considering the present uncertainty the participants will need to explain their confidence for their estimate of time for the panel to read, evaluate and draft a decision on this proposal (10 or 15 working days).

Question trail

[9] As referred to above, the applicant and the Regional Council will agree on a question trail. Below are the questions discussed during the conference; these have not been finalised and include:

- (a) Is it fanciful or unrealistic to consider:
 - (i) the environment as it existed prior to the construction of the Scheme?
 - (ii) another hypothetical environment that has never existed, but could potentially exist?
- (b) How is the compensation offered by the applicant to be assessed and weighed?

⁴ I have not read the planning approach towards the Regional Plan(s).

- (c) What are the matters of control reserved in Rule 15A Waitaki Water Allocation Plan?
- (1) In response to the proposal's effects, can a condition of consent specify the flow in the river?
 - (2) Does a condition specifying flow, alter the environmental flow regime? If so, can the environmental flow regime be changed through a condition of consent?
- (d) What are the economic benefits or disbenefits of changing the environmental flow regime?

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by the word 'ane' in a cursive script.

Jane Borthwick

Panel Convener for the purpose of the Fast-track Approvals Act 2024

Schedule 2: Participants' estimated timeframe⁵

Task	Working days	Date
Panel commencement	N/A	XXX 2025 (nominal)
Invite comment from relevant parties	10 W/D later	XXX 2025
Comments close (ss 53 & 54)	20 W/D later	XXX 2025
Comments close for applicants (s 55)	5 W/D later	XXX 2025
Any other procedural step and evaluation	XXX W/D (say)	XXX 2025
Draft decision is to approve		
Draft conditions <u>and decision</u> to participants (s 70 <u>(1) & (2)</u>)	XXX W/D (say)	XXX 2025
Participant comments on draft conditions (s70(2))	XXX W/D later	XXX 2025

⁵ Note: a draft decision to decline is not included in this timeframe. If the statutory timeframe it is insufficient, the applicant will need to apply to suspend the application under s 64 FTAA.

Applicant response to participants on conditions (s 70(4))	5 W/D later	XXX 2025
Draft decision to Ministers (s 72)	XXX W/D (say)	XXX 2025
Response from Ministers (s 72)	10 W/D later	XXX 2025
Applicant response to Ministers (allow)	W/D later (say)	XXX 2025 (approx.)
Evaluate	W/D later (say)	XXX 2025 (approx.)
Any other procedural step and evaluation.	W/D later (say)	XXX 2025 (approx.)
Decision release	W/D later (say)	XXX 2025

Schedule 3: relevant iwi authorities and relevant Treaty settlement entities

- (a) Te Rūnanga o Ngāi Tahu
- (b) Te Rūnanga o Arowhenua
- (c) Te Rūnanga o Waihao
- (d) Te Rūnanga o Moeraki