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

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

LEGAL SUBMISSIONS FOR GENESIS ENERGY LIMITED FOR THE PROJECT OVERVIEW CONFERENCE

22 July 2025

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MAY IT PLEASE THE PANEL:

1. These legal submissions are filed on behalf of Genesis Energy Limited (**Genesis**) in advance of the project overview conference, scheduled for 10am on 24 July 2025.

2. Genesis owns and operates the Tekapo Power Scheme (the **scheme**), within the Waitaki Catchment, and is seeking replacement resource consents for the scheme under the Fast-track Approvals Act 2024 (**FTAA**).

3. These submissions are intended to assist the panel during the project overview conference and cover the following matters:

   (a) a brief overview of the scheme, the approvals required, the significant regional and national benefits, and the support for the scheme;

   (b) an overview of the remaining issues in dispute and updated conditions;

   (c) the panel's decision making under ss 81–85 and cls 17–18 of sch 5 of the FTAA; and

   (d) the panel's invitation for comment under s 53 of the FTAA.

OVERVIEW

Tekapo Power Scheme

4. An overview of the scheme is shown in Figures 1 and 18 of the AEE. The scheme comprises two hydro-electric power stations:

   (a) the Tekapo A power station has a capacity of 30 MW and was commissioned in 1951 (see Figures 3, 4, 7, 20 and 21 of the AEE); and

   (b) the Tekapo B power station has a capacity of 160 MW and was commissioned in 1977 (see Figures 11, 12 and 25 of the AEE).

5. The Lake Takapō Control Structure (**Gate 16**) dams the Takapō River and controls the levels of Lake Takapō (see Figures 8, 13 and 14 of the AEE).

6. Water is piped via the Tekapo Intake Structure (see Figures 5, 6 and 19 of the AEE) to the Tekapo A power station from where it is released into the Tekapo Canal (see Figures 9, 10, 22, 23 and 24 of the AEE). Water then passes through the Tekapo B power station, before discharging into Lake Pūkaki.

7. Water released from Lake Takapō via Gate 16 into the upper Takapō River is impounded in Lake George Scott (see Figure 15 of the AEE) and can be discharged into the Tekapo Canal via the Tekapo Canal Control Structure (**Gate 17**) (see Figure 15 and 17 of the AEE), bypassing the Tekapo A power station but passing through the Tekapo B power station.

8. Water that has passed through the Tekapo B power station can then be used for generation at Ōhau A, Ōhau B, Ōhau C by Meridian Energy Limited (**Meridian**)

9. Water from Lake Takapō can also flow over Lake George Scott Weir (see Figure 15 and 16 of the AEE) and continue down the Takapō River to Lake Benmore.

10. Downstream of the scheme, Meridian operates the Waitaki Power Scheme. The Combined Waitaki Power Scheme (incorporating both the scheme and the Waitaki Power Scheme) hydro-electric power stations and associated infrastructure were originally built and managed together. The Combined Scheme includes eight power stations: Tekapo A, Tekapo B, Ōhau A, Ōhau B, Ōhau C, Benmore, Aviemore and Waitaki.

Approvals sought

11. Sections 1.6 and 3–3.2 of the AEE set out in detail the resource consents sought for the scheme. In summary, Genesis is seeking:

    (a) a water permit to dam, take, divert and use water associated with the operation of the scheme including:

        (i) the damming of the Takapō River via Gate 16 to control and operate the levels of Lake Takapō;

        (ii) the taking, diversion and use of water from Lake Takapō via the Tekapo Intake Structure for the generation of electricity, and ancillary purposes, at the Tekapo A and B power stations;

        (iii) the damming of the Takapō River at the Lake George Scott Control Weir to control and maintain water levels in Lake George Scott; and

        (iv) the taking, diversion and use of water from the Takapō River via Gate 17; and

(b) a discharge permit to discharge water and associated contaminants associated with the operation of the scheme including:

(i) the discharge of water and associated contaminants into the Takapō River from Gate 16 for the purposes of spilling water, to bypass the Tekapo A power station, for Lake George Scott water level maintenance, and for recreational release purposes;

(ii) 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

(iii) the discharge of water and associated contaminants into Lake Pūkaki from the Tekapo B power station.

12. The resource consents required have a controlled activity status under the Waitaki Catchment Water Allocation Regional Plan (**WAP**) and the Canterbury Land and Water Regional Plan (**CLWRP**). All other aspects of the ongoing operation of the scheme are authorised by separate resource consents or as permitted activities under the WAP, CLWRP, the operative Mackenzie District Plan and the proposed Mackenzie District Plan (see sections 3.2.1.2, 3.2.2.2 and 3.3 of the AEE).

13. The application is accompanied by robust conditions. Following further discussions with the Canterbury Regional Council (**CRC**) and Te Rūnanga o Arowhenua, Te Rūnanga o Waihao and Te Rūnanga o Moeraki (**Waitaki Rūnaka**), Genesis has updated the conditions (see **Appendix One** will be provided to the panel prior to the project overview conference). The changes have been to:

(a) reorder the conditions for clarity;

(b) include water take and discharge flow monitoring and verification conditions;

(c) make adjustments to reporting requirements to address matters identified by CRC;

(d) incorporate adjustments to the indigenous biodiversity enhancement programme conditions that had been agreed with Waitaki Rūnaka, the Department of Conservation and Meridian;

(e) incorporate provision for exercising the consents when the lake control level changes on 1 October each year to address concerns identified by Transpower New Zealand Limited (**Transpower**); and

(f) adjust the conditions to fit more closely with CRC administrative requirements.

Significant national and regional benefits

14. The significant national and regional benefits of the scheme are addressed in section 5.2 of, and Appendix G to, the AEE. In recognition of its national benefits, the scheme and its associated water takes, use, damming, diverting and discharge of water is considered to be part of the existing environment.[1]

15. A secure, reliable, and affordable supply of electricity is critically important to the economic, social, and cultural wellbeing of New Zealanders. The scheme will maintain crucial existing electricity generation capacity and security of supply:

(a) on average the Tekapo A and B power stations directly provide electricity to the equivalent of more than 120,000 New Zealand homes annually;

(b) the scheme (through diverting water into Lake Pūkaki for use through the Ōhau power stations) directly and indirectly provides electricity to the equivalent of more than 228,000 New Zealand homes annually;

(c) the Combined Waitaki Power Scheme is the largest hydroelectric generating system in New Zealand generating up to 25% of New Zealand's annual electricity requirements;

(d) Lakes Takapō and Pūkaki provide up to 65% of the country's hydro average storage volume; and

(e) without the Tekapo A power station, an alternative electricity source would need to be developed as a local back-up for consumers in the Tekapo Albury region.

[1] CLWRP at policy 4.51.

16. The continuation of this substantial existing renewable electricity capacity is also essential for contributing towards:

    (a) reducing greenhouse gas emissions by 50% below 2005 levels by 2030, as required by the Paris Agreement; and

    (b) reducing New Zealand's greenhouse gas emissions (except biogenic methane) to net zero by 2050, as required by the emissions reduction target.

17. Increased thermal generation, which would be required without the scheme, would significantly raise New Zealand's greenhouse gas emissions, by the equivalent of 450,000 to 1.13 million cars per year while it was operating.

Support for the reconsenting of the scheme

18. Genesis has worked with mana whenua and affected parties in the development of the application for replacement resource consents for the scheme. As a result, Genesis has reached agreements with:

    (a) the relevant Papatipu Rūnanga – Waitaki Rūnaka – with their support of the applications to also be regarded as being the position of Te Rūnanga o Ngāi Tahu (see section 8.2 of the AEE);

    (b) the Department of Conservation (and Meridian) regarding the continuation of and increased funding for an indigenous biodiversity enhancement programme which compensates for the residual ecological issues associated with the scheme (see section 8.3 of the AEE);

    (c) Central South Island Fish and Game Region regarding game fish matters (including fish salvage) (see section 8.4 of the AEE);

    (d) the Trustees of the Tekapo Whitewater Trust and Whitewater New Zealand Incorporated on recreational matters (see sections 6.7 and 8.5 of the AEE);

    (e) Mackenzie District Council (see sections 6.6 and 8.7 of the AEE); and

    (f) the New Zealand Transport Agency (see section 8.9 of the AEE).

19. Genesis has also received written letters of support from the following (see Appendices B and U to the AEE):

    (a) Waitaki Rūnaka;

(b) Te Rūnanga o Ngāi Tahu;

(c) the Department of Conservation;

(d) Central South Island Fish and Game Region;

(e) the Trustees of the Tekapo Whitewater Trust and Whitewater New Zealand Incorporated;

(f) Mackenzie District Council;

(g) the New Zealand Transport Agency;

(h) Transpower; and

(i) Mount Cook Alpine Salmon.

20. Land Information New Zealand has provided a written approval for the resource consent applications (see Appendix U to the AEE).

21. Genesis has engaged extensively with CRC since mid-2018 in respect of the reconsenting of the scheme. In respect of the specific application under the FTAA, the legal, planning and evidential issues have been narrowed through:[2]

(a) discussions between experts for Genesis and CRC on:

(i) groundwater and hydrology on 26 June 2025 (a record of the discussion is attached as **Appendix Two**);

(ii) avifauna on 27 June 2025 (a record of the discussion is attached as **Appendix Three**); and

(iii) freshwater and native fish on 30 June 2025 (a record of the discussion is attached as **Appendix Four**);

(b) discussions on the conditions between the planners for Genesis and CRC on 1 July 2024, following which the proposed conditions have been updated (**Appendix One** will be provided to the panel prior to the project overview conference); and

(c) discussions between counsel and the planners for Genesis and CRC, and counsel for Waitaki Rūnaka, on 3 July 2025.

[2] As proposed by Genesis and CRC in the Joint-Memorandum-of-counsel-following-the-Conveners-Conference-23-June-2025-v1.pdf at [11].

22. The updated proposed conditions in Appendix One have been circulated to Transpower, Central South Island Fish and Game, Waitaki Rūnaka, and CRC and adjustments to their comments have been incorporated as appropriate.

23. Genesis is grateful to CRC and Waitaki Rūnaka for their assistance in a short timeframe to narrow these matters.

LEGAL ISSUES

24. The Panel Convener set out a 'question trail' in Minute 4.[3] Genesis and CRC have discussed those matters and can assist the panel if it wishes to consider those questions.

25. There is agreement between Genesis and CRC on the existing environment. In summary the scheme, within its current operational boundaries, is part of the existing environment due to:

    (a) the existing dam structures are permitted activities under the CLWRP;

    (b) the relevant rule, Rule 15A of the WAP applies to any activity part of the Waitaki Power scheme for "which a consent is held and is the subject of an application for a new consent for the same activity …";

    (c) it is fanciful and unrealistic to consider the environment as it existed prior to the construction of the scheme, ie an 'Eden' environment;[4] and

    (d) the CLWRP stating that for existing hydro-electricity generation assets the infrastructure, and associated water takes, use, damming, diverting and discharge of water is considered to be part of the existing environment.

26. The existing environment includes:

    (a) the existing structures;

    (b) associated water takes, uses, diversions, damming and discharges as managed subject to the present conditions; and

    (c) existing environmental processes and conditions reflecting the above.

[3] Minute 4 of the panel convener for Tekapo Power Scheme at [9].
[4] The High Court in *Ngāti Rangi Trust v Manawatu-Whanganui Regional Council* [2016] NZHC 2948 at [65] cited a passage from Derek Nolan *Environmental and Resource Management Law* (5th ed, Lexis Nexis, Wellington, 2015) at 610. See also *Otago Fish & Game Council v Otago Regional Council* [2021] NZHC 3258, (2021) 23 ELRNZ 355 at [135] and [145].

27. However, this position does not exclude, in light of the existing environment above:

(a) consideration of ongoing adverse effects of the way water is presently moved through the system;[5]

(b) to the extent, if any, that effects can be considered adverse, the panel considering, within the matters over which the respective rules reserve control, what measures by way of mitigation, offset or compensation may be appropriate to address those effects; and

(c) if justified under the FTAA (this is addressed below), conditions being imposed; while

any change from the present operations to manage an adverse effect must also be assessed in light of the national and regional benefits of the renewable electricity from the scheme and the Indigenous Biodiversity Enhancement Programme (**IBEP**).

28. The IBEP is proffered by Genesis on an *Augier* basis.[6] The IBEP was developed as an agreed position with the Department of Conservation and provides a compensation package for any residual adverse ecological effects arising from the ongoing operation of the scheme (and the Waitaki Power Scheme). Dr Hughey explains the background to the development of the first IBEP strategic plan, Kahu Ora, in his memo attached as **Appendix Five**. CRC agrees that the holistic approach Kahu Ora takes is appropriate, compared with addressing each type of ecological effect separately. Dr Hughey's position is, based on the expert Genesis reports, that "the delivery of the IBEP over the 35-year consenting period will more than compensate for the TekPS effects on existing biodiversity … ." CRC is considering the appropriateness of the IBEP (and Kahu Ora) with its experts and the relevant proposed conditions (conditions 23–35).

REMAINING ISSUES

Disagreements between experts

29. Following the timetable set out in the joint memorandum to the Panel Convener dated 23 June 2025 addressed above, there are limited remaining areas of

[5] This is covered by all the technical reports prepared on behalf of Genesis and appended to the AEE.
[6] Amended_Appendix-E-Consent-Condition-Plans-Tekapo-PS-Reconsenting-29-May-2025.pdf from page 25.

disagreement between experts for Genesis and CRC, as set out in **Table 1** below.

Table 1: Limited remaining areas of disagreement

Topic	Remaining matters of disagreement
Hydrology and groundwater	– Need for groundwater monitoring data. – Changes to the existing climate in the catchment and effect of Genesis operational changes to respond to this. – The effects of the following on the scheme operations within the present operating range: o projected changes to Lake Takapō / Tekapo inflows due to climate change; and o projected electricity demand change. – Effects of changes in lake levels compared to current operations. – Effect of Lake George Scott weir spill changes if the currently consented operation of the scheme were to continue. – Proposed conditions: metering / monitoring of rates of take, lake levels and rates of discharge.
Avifauna	– The effect of any spill flows on nesting birds in the Takapō River downstream of the Lake George Scott Weir. – Proposed conditions.
Lake water quality, aquatic ecology and native fish	– Monitoring data for information to understand ongoing effects of the scheme. – Proposed conditions.

Condition discussions / disagreement

30. In relation to the conditions, areas of current discussion / disagreement are limited to:

    (a) finalising the wording of some conditions;

    (b) whether additional conditions are required or necessary for lake clarity and groundwater monitoring; and

    (c) conditions relating to the IBEP.

DECISION MAKING UNDER THE FTAA

Overview

31. Sections 79(1)(a) and 81(1) of the FTAA require the panel to issue its decision by 4 November 2025, either granting the resource consents sought and setting conditions or declining the resource consents sought. Genesis acknowledges that, on its face, s 81(1) does not require the application to be granted. However, on a purposive interpretation, Genesis considers that the FTAA does not permit the panel to decline the resource consents:

    (a) ss 81(2)(b) and (3)(a) require the panel to apply cl 17(1)(b) of sch 5 of the FTAA, which imports s 104A of the RMA; and

    (b) it would be contrary to the purpose of the FTAA to provide the panel with scope to decline a controlled activity, when that activity would not be able to be declined under an RMA process.

32. In making its decision the panel must:

    (a) consider:[7]

        (i) Genesis' substantive application;[8]

        (ii) the report on Treaty settlements and other obligations;[9]

        (iii) the comments it has received from invited persons or groups within the specified timeframe, and Genesis' response to those comments;[10]

        (iv) any information it receives during a hearing, if a hearing is held, (Genesis considers that a hearing will not be required for this application);[11]

        (v) any responses to further information requests to Genesis or peer review advice;[12]

[7] The requirements in s 81(2)(a) to consider advice or report under s 51 is irrelevant for this application as the panel convener did not obtain any other advice or reports.
[8] FTAA, s 81(2)(a). See Substantive application | Fast-track website
[9] FTAA, ss 18, 52(b) and 81(2)(a). See FTAA-2503-1035-Tekapo-Power-Scheme-Applications-for-Replacement-Consents-section-18-report_Redacted.pdf
[10] FTAA, ss 53, 55 and 81(2)(a) and (6).
[11] FTAA, ss 58 and 81(2)(a).
[12] FTAA, ss 67 and 81(2)(a) and (6).

(vi) any response from Genesis on the draft decision and any responses from Genesis and persons and groups invited to comment on the draft conditions;[13]

(vii) any responses to further information requests to the Ministry for the Environment or CRC;[14] and

(viii) any comments from the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development on the draft decision, including any draft conditions.[15]

(b) apply the criteria in cl 17 of sch 5 (discussed below);[16] and

(c) comply with s 82 (discussed below).[17]

33. The panel has discretion to:

(a) consider any advice, report, comment, or other information received outside the specified timeframe in the FTAA;[18] and

(b) impose conditions (limited by the provisions in the FTAA and s 104A(b) of the RMA).[19]

Criteria for assessing the resource consent application

34. In considering the application, the panel is required to take into account:[20]

(a) the purpose of the FTAA;

(b) the provisions of Parts 2,[21] 3, 6[22] and 8 to 10 of the RMA that direct decision making on an application for a resource consent; and

(c) the relevant provisions of any other legislation that directs decision making under the RMA.

[13] FTAA, ss 69, 70 and 81(2)(a) and (6).
[14] FTAA, ss 81(2)(a) and 90.
[15] FTAA, ss 72 and 81(2)(a).
[16] FTAA, ss 81(2)(b) and (3)(a).
[17] FTAA, s 81(2)(c).
[18] FTAA, s 81(6).
[19] FTAA, ss 81(2)(e) and 84 and sch 5 cl 18.
[20] FTAA, sch 5 cl 17(1).
[21] Excluding s 8 of the RMA, per sch 5 cl 17(2)(a) of the FTAA.
[22] Excluding s 104D of the RMA.

35. The direction to 'take into account' requires the panel to consider the matter (ie give it genuine attention and thought) and weigh it against other relevant matters. The weighting of that matter is at the panel's discretion.[23]

36. The purpose of the FTAA and the relevant RMA provisions are explained in more detail below. There is no other relevant legislation that directs decision making under the RMA.

Applying the prescribed hierarchy – weighting

37. The purpose of the FTAA must be given the greatest weight, ahead of all other considerations.[24] The clear intent of the FTAA is that, while other considerations must be given due consideration on their own terms, a panel must always give the purpose of the FTAA the greatest weight when it stands back and undertakes its overall balancing.

38. A similar direction to apply a hierarchy to considerations was provided in s 34(1) of the Housing Accords and Special Housing Areas Act 2013. That provisions required the decision maker to have regard to a list of matters, giving weight to them (greater to lesser) in the order listed. The purpose of that Act was the first listed matter. The Court of Appeal in *Enterprise Miramar Peninsula Inc v Wellington City Council* found that provision required the decision maker to consider the matters listed "uninfluenced" by the purpose of the Act, before conducting an overall balancing in accordance with the hierarchy.[25]

39. In undertaking its analysis under cl 17 of sch 5, the panel should therefore:

    (a) consider the purpose of the FTAA and ss 5–7, 87A, 104, 104A, 105, 107, 108–108A and 123 on their own; and

    (b) subsequently conduct an overall balancing exercise that gives the greatest weight to the purpose of the FTAA.

40. For the scheme, this hierarchy is relevant in terms of how conditions can be applied. But as a controlled activity, on Genesis' interpretation of the FTAA there isn't an overall balance to be made in terms of granting the resource consents.

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[23] *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC) at [72]; more recently referred to in *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2024] NZCA 134, (2024) 25 ELRNZ 1047 at [15].
[24] FTAA, sch 5 cl 17(1).
[25] *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541, [2019] 2 NZLR 501 at [52]–[53].

The purpose of the FTAA

41. As the panel is aware, the purpose of the FTAA is: "to facilitate the delivery of infrastructure and development projects with significant regional or national benefits". When considering the purpose of the FTAA, the panel must consider the extent of the scheme's regional or national benefits.[26]

42. In this case, as relevant to a controlled activity, the panel must ensure that the conditions fit within facilitating the delivery of the regional and national benefits. As mentioned above this requires the panel, for any proposed condition, to consider any change from the present operations to manage an adverse effect in light of the national and regional benefits of the renewable electricity from the scheme.

RMA provisions

43. For the scheme, the relevant provisions of the RMA that direct decision making are ss 5–7, 87A, 104, 104A, 105, 107, 108–108A and 123.

Sections 87, 104 and 104A of the RMA

44. For controlled activities, ss 87A(2)(a) and 104A(a) of the RMA provide that the panel must grant the resource consent, unless it has insufficient information to determine whether or not the activity is a controlled activity.[27]

45. Section 104 of the RMA sets out the matters that the panel must have regard to, subject to Part 2.[28] As noted above:

    (a) Genesis and CRC are agreed on the existing environment. The actual and potential effect on the environment of allowing the activity are summarised in section 5 of the AEE for the panel's assessment under s 104(1)(a) of the RMA.

    (b) Section 104(1)(ab) of the RMA explicitly applies to the panel's decision making on resource consents.[29] The panel must have regard to Kahu Ora under s 104(1)(ab) of the RMA. Kahu Ora, which includes

[26] FTAA, s 81(4).
[27] Section 106 of the RMA does not apply as Genesis is not seeking a subdivision consent. Section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011 does not apply as there is no protected customary rights agreement or order for the scheme area.
[28] The direction to 'have regard to' requires the panel to give the matter genuine attention and thought. The question of weight is left to the panel (subject to the explicit requirement for the panel to give the greatest weight to the purpose of the FTAA). See *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991, (2015) 19 ELRNZ 163 at [59]–[63].
[29] FTAA, ss 81(2)(b) and (3)(a) and sch 5 cls 17(1) and 18. Imposing compensation or offsetting not proposed or agreed to, or altering conditions proposed by Genesis, would not help facilitate delivery of the scheme and would likely be more onerous than necessary.

compensation, has been proffered by Genesis on an *Augier* basis. As is the case under the RMA, the panel cannot:

(i) impose a requirement for offsetting or compensation without agreement from Genesis; and/or

(ii) alter the indigenous biodiversity compensation conditions without agreement from Genesis.

46. When considering adverse effects under s 104, and then the application of conditions, the panel must consider that it cannot decline due to effects that are less than "significant" and then only if that significant effect is "out of proportion to the project's regional or national benefits."[30] Therefore, conditions should be focused on significant effects and, as above, the implications on the benefits must also be weighed before imposing the condition.

47. An assessment of the relevant provisions of the following planning documents is provided in sections 7.2.4 – 7.2.9 of the AEE for the panel's consideration under s 104(1)(b) of the RMA:

(a) Resource Management (National Environmental Standards for Freshwater) Regulations 2020;

(b) Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007;

(c) Resource Management (Measurement and Reporting of Water Takes) Regulations 2010;

(d) National Policy Statement for Renewable Electricity Generation 2011;

(e) National Policy Statement for Freshwater Management 2020;

(f) National Policy Statement for Indigenous Biodiversity 2023;

(g) Canterbury Regional Policy Statement;

(h) WAP; and

(i) CLWRP.

[30] FTAA, s 85(3)(b).

48. In relation to proposed conditions the panel cannot determine an effect to be significant, and hence require conditions to address it:[31]

> … 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…

49. An assessment of the following other matters relevant and reasonably necessary for the panel to consider when determining the application, under s 104(1)(c) of the RMA, is provided in section 7.2.10 of the AEE:[32]

    (a) Te Rūnanga o Ngāi Tahu Freshwater Policy;

    (b) Ngāi Tahu Resource Management Strategy for the Canterbury Region;

    (c) He Rautaki mō te Huringa o te Āhuarangi: Te Tāhū o te Whāriki;

    (d) Waitaki Iwi Management Plan;

    (e) Ngāi Tahu Statutory Acknowledgement Areas;

    (f) Canterbury Water Management Strategy;

    (g) Upper Waitaki Zone Implementation Programme and Upper Waitaki Zone Implementation Programme Addendum;

    (h)Ināia tonu nei: a low emissions future for Aotearoa;

    (i) New Zealand's first and second emission reduction plans; and

    (j) Aotearoa New Zealand's first national adaptation plan.

50. The matters to which control has been reserved in the WAP and CLWRP for the purposes of ss 87A(2)(b) and 104A(b) of the RMA are set out in Table 25 of the AEE.

Sections 105 and 107

51. Section 105 of the RMA sets out additional matters the panel must have regard to when considering an application for a discharge permit and is addressed at section 7.4 of the AEE.

[31] FTAA, s 85(4).
[32] Waitaki Rūnaka have provided a comprehensive Treaty Impact Assessment (Appendix A of the AEE) and have provided a letter of support.

52. Section 107 of the RMA specifies certain circumstances in which the panel must not grant a discharge permit and is addressed at section 7.5 of the AEE.

Section 123

53. Genesis is seeking a duration of 35 years for the resource consents sought, as addressed at section 3.5 of the AEE.

Sections 5, 6 and 7

54. In respect of 'subject to Part 2' in s 104 of the RMA, the starting point is to assess the application with "a fair appraisal of the objectives and policies read as a whole."[33] This does not mean that all the objectives and policies can be blended together:[34]

> … rather, attention must be paid to relevant objectives and policies both on their own terms and as they relate to one another in the overall policy statement or plan.

55. Part 2 cannot subvert planning documents,[35] but decision makers can have regard to Part 2 if it is appropriate to do so.[36] When it is "appropriate" will depend on the planning document:

56. Where the relevant plan provisions have clearly given effect to Part 2, there may be no need to refer back as it "would not add anything to the evaluative exercise".[37] It would be inconsistent with the scheme of the RMA to override those plan provisions through recourse to Part 2. In other words, "genuine consideration and application of relevant plan considerations may leave little room for pt 2 to influence the outcome".[38]

57. On the flip side, it is appropriate to have regard to Part 2 if the plans have not provided a coherent set of policies that provide for clear environmental outcomes or appropriately reflect Part 2.[39]

58. An assessment against sections 5, 6 and 7 of the RMA is provided at section 7.3 of the AEE.

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[33] *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, [2018] 3 NZLR 283 at [73]. *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26, [2024] 1 NZLR 241 [*East West Link*] at [79] confirms that the s104D approach will be the same under s104.
[34] *East West Link*, above n 33, at [80].
[35] *East West Link*, above n 33, at [106]–[107].
[36] *Davidson*, above n 33, at [47] and [75].
[37] *Davidson*, above n 33, at [75], noting that "absent such an assurance, or if in doubt, it will be appropriate and necessary to [consider Part 2]".
[38] *Davidson*, above n 33, at [82].
[39] *Davidson*, above n 33, at [74]–[75].

Effect of Treaty settlement and other obligations on decision making

59. The panel must comply with s 82 as the Ngāi Tahu Treaty settlement is relevant to the approval Genesis is seeking. The Ngāi Tahu Treaty settlement, including the Ngāi Tahu Claims Settlement Act 1998, is discussed in the Treaty Impact Assessment by Waitaki Rūnaka (Appendix A to the AEE) and in sections 1.3, 4.2, 5.3, and 7.2.10 of the AEE. The s 18 FTAA report also set out the relevant principles and provisions in the Treaty settlement.

60. A statutory acknowledgement is an acknowledgement by the Crown of Ngāi Tahu's particular cultural, spiritual, historical, and traditional association with a site or area and has implications for processes under the RMA.[40] The panel must give the statutory acknowledgements for Takapō (Lake Tekapo), Lake Pūkaki and the Waitaki River (to the extent that the Waitaki River is downstream of the scheme) the same or equivalent effect it would under the RMA (ie it may be taken into account as evidence of Waitaki Rūnaka's association with the area).[41] The panel must also act in a manner that is consistent with the obligations arising under the Ngāi Tahu settlement.[42]

Limited grounds to impose conditions

61. The FTAA prescribes very limited grounds by which the panel can decline to grant an approval.[43] For the scheme, Genesis' interpretation of the FTAA is that those limited grounds for decline must be read in the context of ss 87A(2)(a) and 104A(a) of the RMA which further limit the grounds for decline to insufficient information to determine whether or not the activity is a controlled activity.[44] For completeness, however, Genesis notes that neither of the mandatory grounds for decline under the FTAA apply:[45]

    (a) as set out in section 1.5.8 of the AEE, the approvals for the scheme are not for an ineligible activity;[46] and

    (b) granting the approvals would not breach s 7 of the FTAA (which sets out obligations relating to Treaty settlements and recognised customary

[40] Ngāi Tahu Claims Settlement Act 1998, ss 206–211, 215 and 220; Deed of Settlement, section 12.2.
[41] Ngāi Tahu Claims Settlement Act 1998, s 211; and FTAA, s 82(2). See also the s 18 FTAA report at [37].
[42] FTAA, s 82(3) requires the Panel to consider whether granting an approval would comply with s 7. For completeness, s 81(7) provides that nothing in ss 81, 82 or 85 limits s 7.
[43] FTAA, ss 81(2)(f) and 85.
[44] Section 106 of the RMA does not apply as Genesis is not seeking a subdivision consent. Section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011 does not apply as there is no protected customary rights agreement or order for the scheme area.
[45] The requirements in ss 85(1)(c)–(h) and (2) do not apply to the scheme. The application is not for a change or cancellation of resource consent condition; certificate of compliance; concession; land exchange; access arrangement; mining permit; or coastal permit for aquaculture activities.
[46] FTAA, ss 5 and 85(1)(a).

rights): Waitaki Rūnaka and Te Rūnanga o Ngāi Tahu have provided letters of support.[47]

62. As a controlled activity, Genesis' position is that the panel's focus is on the conditions. The panel must take into account ss 104A(b) and 108–108A of the RMA (noting the requirement to give greater weight to the purpose of the FTAA, as explained earlier).[48] The following principles, which the panel will be familiar with in respect of imposing conditions for resource consents under ss 108–108A of the RMA, are relevant. Valid conditions must:[49]

    (a) be for a resource management purpose and not for any ulterior purpose;

    (b) fairly and reasonably relate to the proposal which is the subject of consent or designation (noting that s 108AA of the RMA requires a condition to be "directly connected" to an adverse effect of the activity on the environment and/or an applicable planning rule or environmental standard); and

    (c) not be so unreasonable that no reasonable decision maker could have imposed them.

63. Those broad powers to impose conditions under ss 108–108A of the RMA are then further constrained:

    (a) as a controlled activity, conditions must be limited to matters over which control is reserved in the WAP and CLWRP (see Table 25 of the AEE);[50]

    (b) conditions must be no more onerous than necessary to address the purpose for which they are set;[51] and

    (c) the purpose of the FTAA must be given the greatest weight.[52]

64. As with the mandatory grounds for decline, Genesis considers that the ability to decline under s 85(3) of the FTAA is not applicable to the scheme as a controlled activity. But, as above, s 85(3) is applicable to informing the imposition of conditions in the following way:

    (a) The panel must consider that it cannot decline due to effects that are less than "significant" and then only if that significant effect is "out of

[47] FTAA, ss 7 and 85(1)(b).
[48] FTAA, ss 81(2)(b) and (3)(a) and sch 5 cls 17(1) and 18.
[49] *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731 (HL) at 739, endorsed in the context of the RMA in *Housing NZ Ltd v Waitakere City Council* [2001] NZRMA 202 (CA) at [18].
[50] RMA, s 104A(b). Control has not been reserved in any national environmental standard or other regulations.
[51] FTAA, s 81(2)(d) and 83.
[52] FTAA, s 81(2)(b) and (3)(a) and sch 5 cls 17(1) and 18.

proportion to the project's regional or national benefits."[53] Therefore, conditions should be focused on significant effects and, as above, the implications on the benefits must also be weighed before imposing the condition.

(b) The panel cannot determine an effect to be significant, and hence require conditions to address it:[54]

> … 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…

65. Additional conditions are not required to recognise or protect the Treaty settlement.[55]

INVITATION FOR COMMENT

66. By Monday 28 July, the panel is required to invite written comments.[56] In accordance with the purpose of the FTAA and the Parliamentary intent, the panel should only invite the following persons and groups (set out in section 1.5.11 of the AEE) to provide written comments:

(a) CRC and Mackenzie District Council as the relevant local authorities;[57]

(b) the following relevant iwi authorities and Treaty settlement entities:[58]

(i) Te Rūnanga o Ngāi Tahu;

(ii) Te Rūnanga o Arowhenua and Aoraki Environmental Consultancy;[59]

(iii) Te Rūnanga o Waihao; and

(iv) Te Rūnanga o Moeraki;

(c) the 12 owners or occupiers of the land to which the substantive application relates or the land adjacent to that land;[60]

[53] FTAA, s 85(3)(b).
[54] FTAA, s 85(4).
[55] FTAA, ss 81(2)(e) and 84.
[56] FTAA, s 53(1).
[57] FTAA, s 53(2)(a).
[58] FTAA, ss 53(2)(b) and (c). Section 53(3) permits the Panel to invite comment from Aoraki Environmental Consultancy as requested by Te Rūnanga o Arowhenua.
[59] As noted in the memorandum of counsel on behalf of Te Rūnanga o Arowhenua, Te Rūnanga o Waihao, and Te Rūnanga o Moeraki (dated 12 June 2025) at [7], Aoraki Environmental Consultancy is mandated to represent Te Rūnanga o Arowhenua and should continue to receive any relevant communications and directions.
[60] FTAA, s 53(2)(h) and (i). The confidential contact details are provided in Appendix C to the application.

(d) the Minister for the Environment;[61]

(e) the Ministry for the Environment;[62]

(f) the following requiring authorities with designations on land to which the substantive application relates or the land adjacent to that land:[63]

(i) the New Zealand Transport Agency; and

(ii) Transpower; and

(g) the Director-General of Conservation.[64]

The panel should not invite any other person to provide comments

The Parliamentary intent is clear

67. The clear Parliamentary intention for the invitation for comment process is for specific persons and groups that are directly affected (such that they have a particular and explicit interest in the project), to be invited to comment, not to seek comments from the broader public.[65]

68. In rejecting a proposal during Committee of the Whole House to require public notification, the Minister for Regional Development, the Hon Shane Jones, stated that a key tenet of the FTA is that:[66]

> … those who have an entitlement to be integrally involved in the consideration of the panel in granting approval of those that are most affected by the approval, it is not a wide, vague description of who may or may not feel that they are affected by what externalities might flow from the project. This is the whole key point of the bill. So, for those reasons, obviously, we are not going to accept that submission or that proposed amendment. This bill will allow the people to be consulted, providing they represent that circle of interests that are genuinely and most impacted by the decision.

69. The Minister responsible for RMA Reform, the Hon Chris Bishop, made a similar point earlier in the debate:[67]

> … It is true that there are fewer participation rights and less ability than in the past as per the Resource Management Act, for example, but that is precisely the point. That is one of the purposes of the bill. That is why the bill has been drafted the way it is. …

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[61] FTAA, s 53(2)(j).
[62] FTAA, s 53(2)(k).
[63] FTAA, s 53(2)(l).
[64] FTAA, s 53(2)(m)(i) and sch 5 cl 13(a).
[65] Environment Committee *Fast-track Approvals Bill* (18 October 2024) at 15. Ministry for the Environment *Departmental Report on the Fast-track Approvals Bil*l – Version 2 (21 October 2024) at [779] and [782].
[66] (10 December 2024) 780 NZPD 7944.
[67] (10 December 2024) 780 NZPD 7809.

Other matters to consider

70. The following factors support Genesis' position that the panel should not exercise its discretion under s 53(3) (excluding Aoraki Environmental Consultancy).[68]

(a) **The purpose of the FTAA:**

(i) The meaning of legislation must be ascertained from its text and in the light of its purpose and its context, including if relevant, the social, commercial or other objective of the enactment.[69] The purpose of the FTAA is to facilitate the scheme which is infrastructure with significant regional and national benefits. That was made clear by the Minister for Energy in his comments at the third reading that the Bill was a Bill that says: "yes to energy security".[70]

(ii) The Supreme Court in *Unison Networks Ltd v Commerce Commission* was clear that:[71]

> A statutory power is subject to limits even if it is conferred in unqualified terms. Parliament must have intended that a broadly framed discretion should always be exercised to promote the policy and objects of the Act. These are ascertained from reading the Act as a whole. The exercise of the power will be invalid if the decision maker "so uses his discretion as to thwart or run counter to the policy and objects of the Act". A power granted for a particular purpose must be used for that purpose but the pursuit of other purposes does not necessarily invalidate the exercise of public power. There will not be invalidity if the statutory purpose is being pursued and the statutory policy is not compromised by the other purpose.

(iii) Inviting groups or persons with a stated opposition to the FTAA regime, and who may bring appeals, does not facilitate the delivery of the scheme. Inviting such groups or persons would thwart, instead of promote, the purpose of the FTAA.

(b) **The procedural principles in the FTAA:**

(i) The approvals should be determined in an efficient manner:

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[68] See for example Minute 3 of the Panel - 26 May 2025 at [16]–[18]; Sunfield - Minute 2 of the Panel at [14].
[69] Legislation Act 2019, s 10(1). *Accident Compensation Corporation v TN* [2023] NZCA 664, [2024] 2 NZLR 107 at [60]; and *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 at [22].
[70] (17 December 2024) 780 NZPD 8294.
[71] *Unison Networks Ltd v Commerce Commission* [2007] NZSC 74, [2008] 1 NZLR 42 at [53]. More recently cited in *Royal Forest and Bird Protection Society of New Zealand Inc v Minister of Conservation* [2016] NZCA 411, [2016] 3 NZLR 828 at [53].

(1) The panel is required to "take all practicable steps to use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions, duties, or powers being performed or exercised".[72]

(2) The panel must also "… regulate its own procedure as it thinks appropriate, without procedural formality, and in a manner that best promotes the just and timely determination of the approvals sought in a substantive application."[73]

(ii) The FTAA provides for very limited rights of appeals compared to a standard RMA process.[74] Cabinet made the decision for appeal rights to be limited and removed the right of appeal for any person with "an interest in the decision appealed against that is greater than that of the general public".[75]

(c) **The extent of consultation and agreement**: Genesis has consulted extensively with all relevant stakeholders and with mana whenua. The panel can be assured that it will have all relevant information before it to make a robust decision.

(d) **Whether the scheme would be prohibited under the RMA**: the scheme is a controlled activity and, on Genesis' interpretation of the FTAA, must be granted subject to conditions. There is no need to invite comments from broader groups or persons.

(e) **Legal issues**: there are no novel or contentious legal issues. Genesis and CRC have worked though the questions raised by the Panel Convener and can assist the panel on those matters if required.

71. Therefore, Genesis' position is that the panel should exercise its discretion under s 53(3) only to the limited extent of inviting Aoraki Environmental Consultancy to comment. Aoraki Environmental Consultancy is mandated to represent Te Rūnanga o Arowhenua but may not fall within the definition of 'iwi authority' or 'Treaty settlement entity' in the FTAA.

72. The Central South Island Fish and Game Council, Trustees of the Tekapo Whitewater Trust and Whitewater New Zealand Incorporated, and Mount Cook

[72] FTAA, s 10(1).
[73] FTAA, sch 3 cl 10(1).
[74] FTAA, s 99.
[75] See Proactive Release Coversheet at [24], [70]–[71] of CAB 493: Fast-track Approvals Bill: Approval for Amendment Paper and [18] of Appendix one to CAB 493.

Alpine Salmon have already provided their views to the Panel through their letters of support for the application and do not need to be invited for comment.

Royal Forest and Bird Protection Society Inc (Forest & Bird)

73. On 3 June 2025 Forest & Bird sent a letter to the Panel Convener, seeking to participate in the convener's conference. The Panel Convener responded by letter on 6 June 2025, declining the request and stating that:[76]

> If the Convener were to invite anyone else, this may create an expectation they will also be invited to comment under section 53(3). The panel is responsible for deciding whether to invite comment from any other person under section 53(3), and the Convener cannot interfere, even inadvertently, with the exercise of the panel's discretion in this regard.

74. Forest & Bird raised the existing environmental as a novel question of law. The Panel Convener stated that:[77]

> The issue that you raise - what is the *existing* environment - is one that every hearing panel must form a view. The panel may appoint legal counsel as a special advisor to assist with this and any legal issue, if required.

75. Genesis agrees with the Panel Convener. The existing environment has been addressed earlier in these legal submissions. It has been agreed between Genesis and CRC and is not a novel question of law necessitating the view of Forest & Bird. Rather it settled law and, in this case, aligned with the application of the relevant rule.

76. It would be inappropriate and contrary to Parliament's intention (see the matters discussed above) if this panel invited Forest & Bird to provide comment. Parliament specifically excluded Forest & Bird, who had been included in the COVID-19 Recovery (Fast-track Consenting) Act 2020. Opposition MPs specifically raised the omission of Forest & Bird from the list of persons invited to comment.[78] The Government voted down an amendment paper seeking to include, among others, Forest & Bird. See for example, the comments from the Hon Rachel Brooking in *Hansard*:

> Now, we've had some discussions about the COVID legislation, which was of course legislation in an emergency, and that legislation included a list of groups who were determined to be representative of some sort of both business, infrastructure, and environmental groups. So this list is: Business New Zealand Inc.; Employers and Manufacturers Association, more than incorporated; Environmental Defence Society

[76] At [3].
[77] At [4].
[78] (13 November 2024) 779 NZPD 7321.

> Inc.; Generation Zero Inc.; Greenpeace New Zealand Inc.; Infrastructure New Zealand Inc; the New Zealand Fish & Game Council; the New Zealand Infrastructure Commission; Property Council; and Forest & Bird.
>
> So what this Amendment Paper 142 is suggesting is that to make it more similar to the COVID legislation, which apparently this fast track is modelled on, those groups should be included at 24M. The result of including those groups at 24M would be that more people would have to be asked for comment on these very important, very large proposals, so it's part of the "must", not the "may".[79]
>
> …
>
> … I specifically asked the Minister if he would include the list of groups of people, from Business New Zealand to Forest & Bird, who were included in the COVID legislation. But, no, he wouldn't even do that, and that is a disgrace.[80]

77. Forest & Bird also raise overlap with the IBEP between two processes (this FTAA process and Meridian's direct referral process). This process will be first in time and must be decided within the provisions of the FTAA, which are different to the RMA. The panel has the ability through this process to ensure it gets all the information it may require on the IBEP (CRC, the Department of Conservation and Waitaki Rūnaka (at least) can comment). There is no valid rationale, nor benefit, to invite Forest & Bird to also comment on the process (and have rights to appeal) based on a separate process, at a later timeframe, under a separate legislative regime.

78. Finally, the Environment Court has recently held (in the context of s 274(1)(d) of the RMA) that being an advocate for environmental issues is not enough to show an interest in the matter greater than the general public.[81] The fact that Forest & Bird asserts an interest in the content of the application, and an ability "to assist", does not mean it should be invited to comment under the FTAA. As above, to the degree there are issues of biodiversity, CRC, the Department of Conservation and Waitaki Rūnaka (at least) can comment.

[79] (10 December 2024) 780 NZPD 7893–7894.
[80] (10 December 2024) 780 NZPD 7992.
[81] See for example *Otago Regional Council v Queenstown Lakes District Council* [2025] NZEnvC 178 at [21].

SITE VISIT

79. A proposed site visit programme was appended to the joint memorandum to the Panel Convener dated 23 June 2025. The parties can discuss this proposed programme with the panel during the conference.

Dated this 22nd day of July 2025

David Allen / Chelsea Easter
Counsel for Genesis Energy Limited