

**BEFORE AN EXPERT PANEL  
FOXTON SOLAR FARM**

Under the **FAST-TRACK APPROVALS ACT 2024**

In the matter of an application for resource consents for the Foxton Solar Farm

By **GENESIS ENERGY LIMITED**  
Applicant

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**LEGAL ANALYSIS OF FAST-TRACK APPROVALS ACT 2024 FRAMEWORK  
AND APPLICATION FOR GENESIS ENERGY LIMITED**

17 February 2026

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**BUDDLE FINDLAY**

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## INTRODUCTION AND BACKGROUND TO THE PROJECT

1. Genesis Energy Limited (**Genesis**) is lodging a substantive application for resource consents to construct and operate<sup>1</sup> a 180 MWac solar farm near Foxton (the **project**). The project is listed in sch 2 of the Fast-track Approvals Act 2024 (**FTAA**).<sup>2</sup>
2. This document is intended to assist the panel by providing:
  - (a) a brief overview of the project and the resource consents required;
  - (b) a summary of the decision-making requirements under the FTAA;<sup>3</sup>
  - (c) a brief evaluation of the application; and
  - (d) Genesis' position on the panel's invitation for comment under s 53 of the FTAA.
3. The application documents prepared by SLR Consulting New Zealand provide detailed information on the project and draw on technical advice provided by a range of experts. This legal analysis is intended to be read alongside the application documents and technical reports.

## OVERVIEW

### Foxton Solar Farm

4. The project site is located approximately 4 km north from the centre of Foxton and 23 km from the centre of Palmerston North. As shown in Figure 1 (site location plan) of the AEE:
  - (a) State Highway 1 is located to the west of the project site; and
  - (b) the national grid transmission lines run through the project site and adjacent properties in a northeast-southwest direction.
5. Genesis has leased 436 ha of a 488 ha site currently used for dairy farming and stock grazing. The project will cover 335 ha of the leased area and comprises:
  - (a) the solar farm infrastructure:

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<sup>1</sup> And, if necessary, decommission.

<sup>2</sup> Project description: Construct and operate a solar farm across approximately 400 ha, and connect and supply electricity to the national grid.

<sup>3</sup> FTAA, ss 81–85 and sch 5 cls 17–18.

- (i) approximately 300,000 monocrystalline photovoltaic bi-facial solar panels;
  - (ii) single-axis trackers, aligned generally north to south and supported on piles driven into the ground;
  - (iii) inverters and transformers;
  - (iv) underground cabling; and
  - (v) provision for a harmonic filter, if required;
- (b) provision for construction of a 100 MW / 200 MWh Battery Energy Storage System (**BESS**), which may be installed as a second stage;
- (c) new transmission substation, which would be transferred to Transpower, including:
- (i) a high voltage (33/220 KV) transformer;
  - (ii) switching station; and
  - (iii) connection to the National Grid via the Transpower-operated existing 220 kV transmission line traversing the site; and
- (d) ancillary works, including:
- (i) an operations and maintenance (**O&M**) building and storage shed, with a combined floorspace of up to 555 m<sup>2</sup>;
  - (ii) parking, loading and manoeuvring areas;
  - (iii) a new primary site access (A02) on Wall Road;
  - (iv) upgrades to existing site accesses (A03 and A04) to accommodate operational and construction traffic;
  - (v) a new secondary emergency access (A01);
  - (vi) internal access and maintenance roads;
  - (vii) perimeter security fencing and internal stock exclusion fencing;
  - (viii) landscaping, riparian and wetland planting;
  - (ix) earthworks for site preparation, including trenching;

- (x) removal of minor farm buildings and scattered existing trees to enable the works;
  - (xi) establishment of a construction compound including demountable offices and amenities;
  - (xii) establishment of temporary laydown areas during construction and decommissioning; and
  - (xiii) installation of underground and above ground cables.
6. An overview of the project layout is shown in Figures 15 (overview plan of proposal) and 16 (indicative solar panel height and arrangement) of, and Appendix G (application plans) to, the AEE. Further detail is provided in section 4 of the AEE.

### **Approvals sought**

7. Section 6 of, and Appendix P (rules assessment) to, the AEE set out in detail the resource consents required for the project. In summary, Genesis is seeking resource consents for:
- (a) large scale land disturbance, which is a controlled activity under the Consolidated Regional Policy Statement, Regional Plan and Regional Coastal Plan for the Manawatū-Whanganui Region (**One Plan**);
  - (b) fencing and structures across and under a drain identified for flood control purposes, which is a discretionary activity under One Plan;
  - (c) earthworks and vegetation clearance within, or within 10 m of, a natural inland wetland, which are discretionary activities under regs 45(1) and (2) of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**);
  - (d) use of the land for a solar farm, which is a discretionary activity under the Operative Horowhenua District Plan;
  - (e) exceeding the:
    - (i) maximum height of structures and voltage for the substation, which are restricted discretionary activities under the Operative Horowhenua District Plan;

- (ii) noise standards at some adjoining sites and existing dwellings, which are restricted discretionary activities under the Operative Horowhenua District Plan; and
  - (iii) volume limits for the use and storage of hazardous substances on site, which is a discretionary activity under the Operative Horowhenua District Plan; and
  - (f) subdivision required to give effect to the lease area boundaries and leasing arrangements (including by creating rural residential lots around existing dwellings within the retained areas of land), which is a discretionary activity under the Operative Horowhenua District Plan.
8. The bundled activity status for the resource consents required for the project is discretionary.

## **DECISION MAKING UNDER THE FTAA**

### **Overview**

9. Sections 79(1)(a) and 81(1) of the FTAA require the panel to issue its decision by the timeframe set by the panel convener,<sup>4</sup> either granting the resource consents sought and setting conditions or declining the resource consents sought.
10. In making its decision the panel must:
- (a) consider:
    - (i) a relevant Government policy statement;<sup>5</sup>
    - (ii) Genesis' substantive application;<sup>6</sup>
    - (iii) any advice or reports the panel convener has obtained;<sup>7</sup>
    - (iv) the report on Treaty settlements and other obligations;<sup>8</sup>

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<sup>4</sup> Excluding any time the project is suspended (see s 60(2) of the FTAA). If no time frame is set, s 79(1)(b) provides that the decision must be issued within 30 working days after the date specified for receiving comments under s 53.

<sup>5</sup> FTAA, s 81(2)(aab).

<sup>6</sup> FTAA, s 81(2)(a).

<sup>7</sup> FTAA, ss 51 and 81(2)(a).

<sup>8</sup> FTAA, ss 18, 52(b) and 81(2)(a).

- (v) the comments it has received from invited persons or groups within the specified timeframe, and Genesis' response to those comments;<sup>9</sup>
  - (vi) any information it receives during a hearing, if a hearing is held (Genesis considers that a hearing will not be required for this application);<sup>10</sup>
  - (vii) any responses to further information requests or peer review advice requested by the Environmental Protection Authority at the panel's direction;<sup>11</sup>
  - (viii) any response from Genesis on the draft decision (if decline is proposed) or any responses from Genesis and persons and groups invited to comment on the draft conditions (if grant is proposed);<sup>12</sup>
  - (ix) any responses to further information requests from the Environmental Protection Authority to the Ministry for the Environment, Horowhenua District Council or Manawatū-Whanganui Regional Council;<sup>13</sup> and
  - (x) 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;<sup>14</sup>
- (b) apply the criteria in cl 17 of sch 5 (discussed below);<sup>15</sup> and
  - (c) comply with s 82 (discussed below).<sup>16</sup>

11. The panel has discretion to:

- (a) consider any advice, report, comment, or other information received outside the specified timeframe in the FTAA;<sup>17</sup> and
- (b) impose conditions (limited by the provisions in the FTAA).<sup>18</sup>

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<sup>9</sup> FTAA, ss 53, 55 and 81(2)(a).

<sup>10</sup> FTAA, ss 58 and 81(2)(a).

<sup>11</sup> FTAA, ss 67 and 81(2)(a).

<sup>12</sup> FTAA, ss 69, 70 and 81(2)(a).

<sup>13</sup> FTAA, ss 81(2)(a) and 90.

<sup>14</sup> FTAA, ss 72 and 81(2)(a).

<sup>15</sup> FTAA, ss 81(2)(b) and (3)(a).

<sup>16</sup> FTAA, s 81(2)(c).

<sup>17</sup> FTAA, s 81(6).

<sup>18</sup> FTAA, ss 81(2)(e) and (ea), 84 and 84A and sch 5 cl 18.

## Criteria for assessing the resource consent application

12. In considering the application, the panel must take into account:<sup>19</sup>
  - (a) the purpose of the FTAA (which must be given the greatest weight);
  - (b) the provisions of Parts 2,<sup>20</sup> 3, 6<sup>21</sup> 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. 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.<sup>22</sup>
14. The purpose of the FTAA, application of the hierarchy, and the relevant RMA provisions are explained in more detail below. There is no other relevant legislation that directs decision-making under the RMA in respect of the project.

## The purpose of the FTAA

15. The purpose of the FTAA is: "to facilitate the delivery of infrastructure and development projects with significant regional or national benefits". The purpose section was intentionally strengthened through the legislative process from providing a process to simply facilitating the delivery.<sup>23</sup>
16. Facilitating the delivery is reflected throughout the FTAA. For instance:
  - (a) the panel must give the purpose of the FTAA the greatest weight in its decision-making, including when imposing any conditions, ahead of all other considerations;<sup>24</sup>
  - (b) there is a high bar for declining an approval – adverse effects must be "sufficiently significant to be out of proportion to" the regional and

<sup>19</sup> FTAA, ss 81(2)(b) and (3)(a) and sch 5 cl 17(1).

<sup>20</sup> Excluding s 8 of the RMA, per sch 5 cl 17(2)(a) of the FTAA.

<sup>21</sup> Excluding s 104D of the RMA.

<sup>22</sup> *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].

<sup>23</sup> Fast-track Approvals Bill 2024 (31–2) (select committee report) at 3. As introduced, the purpose was "to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits." See also [Proactive Release Coversheet](#) at [17]–[18] and recommendation 2.3 and 3 of CAB 493: Fast-track Approvals Bill: Approval for Amendment Paper and [4]–[5] of Appendix One to CAB 493.

<sup>24</sup> FTAA, sch 5 cl 17(1)(a).

national benefits for the discretion to decline to be available to the panel;<sup>25</sup>

- (c) unlike the previous fast-track consenting legislation, if the panel proposes to decline an approval, the FTAA requires the applicant to be provided the draft decision and invited to propose conditions on, or modifications to, any of the approvals sought (or withdraw the part of the substantive application);<sup>26</sup> and
- (d) any conditions must be no more onerous than necessary to address the relevant matter.<sup>27</sup>

### **Applying the prescribed hierarchy – weighting**

- 17. The purpose of the FTAA must be given the greatest weight, ahead of all other considerations.<sup>28</sup> When considering the purpose of the FTAA, the panel must consider the extent of the project's regional or national benefits.<sup>29</sup>
- 18. 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.
- 19. 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 provision 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.<sup>30</sup>
- 20. In undertaking its analysis under cl 17 of sch 5, the panel should therefore:

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<sup>25</sup> The proportionality consideration in s 85(3) of the FTAA was introduced through an amendment paper to clarify the high bar for declining an approval. See Amendment Paper (238) Fast-track Approvals Bill 2024 (31-2) (explanatory notes).

<sup>26</sup> FTAA, s 69. See Proactive Release Coversheet at [7] of Appendix One to CAB 493: Fast-track Approvals Bill: Approval for Amendment Paper.

<sup>27</sup> FTAA, s 83.

<sup>28</sup> FTAA, sch 5 cl 17(1).

<sup>29</sup> FTAA, s 81(4).

<sup>30</sup> *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541, [2019] 2 NZLR 501 at [52]–[53].

- (a) consider the purpose of the FTAA and ss 5–7, 87A, 104, 104B, 106, 108–108A, 123, 123B and 125 on their own; and
  - (b) subsequently conduct an overall balancing exercise that gives the greatest weight to the purpose of the FTAA.
21. When undertaking the overall balancing exercise, the panel should keep in mind that:<sup>31</sup>
- (a) it cannot decline due to effects that are less than "significant"; and
  - (b) then only if that significant effect is "out of proportion to the project's regional or national benefits" (even after considering conditions).
22. Under the FTAA, there is a clear tolerance for adverse impacts, provided they are not out of proportion to the regional and national benefits. The panel cannot determine an effect to be significant:<sup>32</sup>

... 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...

### **RMA provisions**

23. For the project, the relevant provisions of the RMA that direct decision-making are ss 5–7, 87A, 104, 104B, 106, 108–108A, 123, 123B and 125.

### *Sections 87, 104 and 104B of the RMA*

24. For a discretionary activity, ss 87A(4)(a) and 104B(a) of the RMA provide that the panel may grant or refuse the application.
25. Section 104 of the RMA sets out the matters that the panel must have regard to, subject to Part 2:<sup>33</sup>
- (a) the effects of the project are assessed in section 7 of the AEE, as required by s 104(1)(a) of the RMA; and

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<sup>31</sup> FTAA, s 85(3)(b).

<sup>32</sup> FTAA, s 85(4).

<sup>33</sup> 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].

- (b) an assessment of the relevant provisions of the following planning documents is provided in sections 8.5 – 8.11 of the AEE for the panel's consideration under s 104(1)(b) of the RMA:
- (i) National Policy Statement for Renewable Electricity Generation 2011 (amended December 2025) (**NPS-REG**);
  - (ii) National Policy Statement for Highly Productive Land 2020 (amended December 2025) (**NPS-HPL**);
  - (iii) National Policy Statement for Freshwater Management 2020 (amended December 2025) (**NPS-FM**);
  - (iv) NES-F;
  - (v) Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NES-CS**);
  - (vi) One Plan; and
  - (vii) Operative Horowhenua District Plan.
26. When considering relevant objectives and policies the panel must apply the "*fair appraisal*" approach of the Court of Appeal in *RJ Davidson Family Trust v Marlborough District Council*,<sup>34</sup> when having regard to the relevant planning documents. The fair appraisal approach requires reading the objectives and policies of the relevant documents as a whole, rather than policy-by-policy in an isolated and decontextualised manner.<sup>35</sup> This does not mean that all the objectives and policies can be blended together, "*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.*"<sup>36</sup>
27. As set out above, for the FTAA, the panel cannot determine an adverse effect to be significant solely on the basis of a policy.

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<sup>34</sup> *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, [2018] 3 NZLR 283 (**Davidson**) endorsed by the Supreme Court in *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**).

<sup>35</sup> *East-West Link*, above n 34, at [79].

<sup>36</sup> *East-West Link*, above n 34, at [80].

### *Section 106*

28. Section 106 of the RMA specifies certain circumstances in which the panel may refuse to grant a subdivision consent and is addressed at section 11 of the AEE.

### *Sections 123 and 123B*

29. As the resource consents sought are for a renewable energy activity, the panel must grant a term of 35 years unless Genesis requests a shorter period.<sup>37</sup> As addressed at section 6.5 of the AEE, Genesis is seeking:
- (a) an indefinite term for land use activities, as provided for by s 123(1)(b) of the RMA; and
  - (b) a 10-year term for all resource consents granted solely for construction activities; and
  - (c) a 35-year term for any other resource consents.

### *Section 125*

30. As addressed at section 6.5 of the AEE, Genesis is seeking a lapse period of 10 years to give effect to the consents for the project. As the resource consents sought are for a renewable energy activity, the panel must grant that lapse period.<sup>38</sup>

### *Sections 5, 6 and 7*

31. 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."<sup>39</sup> This does not mean that all the objectives and policies can be blended together:<sup>40</sup>

... 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.

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<sup>37</sup> RMA, s 123B(2)(a) and sch 12 cls 52(1)(b) and (2). There two other exceptions, set out in s 123B(2)(b) and (c), are not relevant.

<sup>38</sup> RMA, s 125(1)(c) and sch 12 cls 53.

<sup>39</sup> *Davidson*, above n 34, at [73]. *East West Link*, above n 34, at [79] confirms that the s 104D approach will be the same under s 104.

<sup>40</sup> *East West Link*, above n 34, at [80].

32. Part 2 cannot subvert planning documents,<sup>41</sup> but decision makers can have regard to Part 2 if it is appropriate to do so.<sup>42</sup> When it is "appropriate" will depend on the planning document:
- (a) 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".<sup>43</sup> 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".<sup>44</sup>
  - (b) 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.<sup>45</sup>
33. Importantly, in *East-West Link* the Supreme Court noted that there is scope for "genuine, on-the-merits exceptions",<sup>46</sup> concluding that:<sup>47</sup>

A residual discretion to prevent outcomes plainly inconsistent with the purpose of the RMA must be preserved in order to ensure that, when applied to difficult cases, the policies do not subvert that purpose.

34. An assessment against ss 5, 6 and 7 of the RMA is provided at section 11 of the AEE.

### **Effect of Treaty settlement and other obligations on decision making**

35. The panel must comply with s 82 as the Rangitāne o Manawatū settlement is relevant to the approval Genesis is seeking. The Rangitāne o Manawatū settlement, including the Rangitāne o Manawatū Claims Settlement Act 2016, is discussed in section 9.1.1 of the AEE.
36. A statutory acknowledgement is an acknowledgement by the Crown of Rangitāne o Manawatū's particular cultural, historical, spiritual, and traditional association with the statutory area and has implications for processes under the RMA.<sup>48</sup> The panel must give the statutory acknowledgements for the Manawatū River and its tributaries, and the Omarupapako Reserve, the same

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<sup>41</sup> *East West Link*, above n 34, at [106]–[107].

<sup>42</sup> *Davidson*, above n 34, at [47] and [75].

<sup>43</sup> *Davidson*, above n 34, at [75], noting that "absent such an assurance, or if in doubt, it will be appropriate and necessary to [consider Part 2]".

<sup>44</sup> *Davidson*, above n 34, at [82].

<sup>45</sup> *Davidson*, above n 34, at [74]–[75].

<sup>46</sup> *East-West Link*, above n 34, at [109].

<sup>47</sup> *East-West Link*, above n 34, at [101].

<sup>48</sup> Rangitāne o Manawatu Claims Settlement Act 2016, ss 28–32 and 35–36.

or equivalent effect it would under the RMA (ie they may be taken into account as evidence of the association of Rangitāne o Manawatū with the area).<sup>49</sup> The panel must also act in a manner that is consistent with the obligations arising under the Rangitāne o Manawatū settlement.<sup>50</sup>

### **Limited grounds to decline or impose conditions**

#### *Mandatory grounds for decline do not apply*

37. The FTAA prescribes very limited grounds by which the panel can decline to grant an approval.<sup>51</sup> Neither of the potentially relevant mandatory grounds for decline under the FTAA apply to the project.<sup>52</sup>
38. As set out in sections 2.2.6 of the AEE, the approvals for the project are not for an ineligible activity.<sup>53</sup> In particular, the proposed activity does not occur **on** identified Māori land (which includes Māori freehold land):<sup>54</sup>
- (a) the application for listing the project was clear that:<sup>55</sup>
    - (i) a number of Māori freehold land parcels adjoin the site; and
    - (ii) there is an access easement on the site that is noted as being subject to the Māori Land Court in 1916; but
    - (iii) there is no identified Māori land within the proposed project site; and
    - (iv) the access area can be avoided through design as needed;
  - (b) as part of the listing application the Ministry for the Environment (**MfE**) requested further information to determine whether or not the easement was identified Māori land;
  - (c) the MfE stage 1 report noted the easement but found no issues with ineligibility;<sup>56</sup>
  - (d) the easement itself is not Māori freehold land; and

<sup>49</sup> Rangitāne o Manawatu Claims Settlement Act 2016, s 36.; and FTAA, s 82(2).

<sup>50</sup> 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.

<sup>51</sup> FTAA, ss 81(2)(f) and 85.

<sup>52</sup> The requirements in ss 85(1)(c)–(h) and (2) are not relevant. 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.

<sup>53</sup> FTAA, ss 5 and 85(1)(a).

<sup>54</sup> FTAA, s 5(1)(a).

<sup>55</sup> [329.01-response-ANON-URZ4-5FTS-Q\\_Redacted.pdf](#)

<sup>56</sup> [329.05\\_FTA329-Foxton-Solar-Farm-Sch-2A-MfE-assessment-form-Stage-1\\_Redacted.pdf](#)

- (e) no activity will occur on the easement (the project does not affect use of the easement / there will be no infrastructure in the easement footprint).
39. Granting the approvals would not breach s 7 of the FTAA (which sets out obligations relating to Treaty settlements and recognised customary rights).<sup>57</sup> Rangitāne o Manawatū have provided their support, in writing, for three hapū of Ngāti Raukawa ki te Tonga (Ngāti Rākau, Ngāti Te Au, and Ngāti Tūranga – together Ngā Hapū o Himatangi) to take the lead in respect of the project.

*Discretionary ground for decline does not apply*

40. Genesis considers that the panel's discretion to decline under s 85(3) of the FTAA is not applicable to the project as there are no significant adverse effects (see Table 13 of the AEE). Even if the panel were to disagree, it could only choose to exercise its discretion if the significant effect is "out of proportion to the project's regional or national benefits" (even after considering any conditions or modifications).<sup>58</sup>

41. The panel cannot determine an effect to be significant:<sup>59</sup>

... 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...

42. For example, the application could not be declined because of the NPS-FM direction that there is no further loss of extent of natural inland wetlands. Instead, for the project to be lawfully declined the adverse impacts must be sufficiently significant to be out of proportion to the project's regional or national benefits. In respect of natural inland wetlands, Genesis does not need to rely on the proportionality test as the project is specified infrastructure with a functional need to locate in a particular environment. Nevertheless, the different directions under the FTAA must be considered by the panel.

*Conditions*

43. In setting any conditions, the panel must take into account ss 104B(b) and 108–108A of the RMA (noting the requirement to give greater weight to the purpose of the FTAA, as explained earlier).<sup>60</sup> The following principles, which the panel will be familiar with in respect of imposing conditions for resource

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<sup>57</sup> FTAA, ss 7 and 85(1)(b).

<sup>58</sup> FTAA, s 85(3)(b).

<sup>59</sup> FTAA, s 85(4).

<sup>60</sup> FTAA, ss 81(2)(b) and (3)(a) and sch 5 cls 17(1) and 18.

consents under ss 108–108A of the RMA, are relevant. Valid conditions must:<sup>61</sup>

- (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);<sup>62</sup> and
- (c) not be so unreasonable that no reasonable decision maker could have imposed them.

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

- (a) conditions must be no more onerous than necessary to address the purpose for which they are set;<sup>63</sup>
- (b) the purpose of the FTAA must be given the greatest weight;<sup>64</sup> and
- (c) given the limited discretion for decline, conditions should be focused on significant effects and, the implications on the benefits must also be weighed before imposing the condition.<sup>65</sup>

45. Section 104(1)(ab) of the RMA explicitly applies to the panel's decision-making on resource consents.<sup>66</sup> As is the case under the RMA, the Panel cannot impose a requirement for offsetting or compensation without agreement from Genesis.

46. Additional conditions are not required to recognise or protect the Treaty settlement.<sup>67</sup> Rangitāne o Manawatū have provided their support, in writing, for Ngā Hapū o Himatangi to take the lead in respect of the project.

47. The application is accompanied by robust conditions (see Appendix T). These conditions have been shared with the Manawatū-Whanganui Regional

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<sup>61</sup> *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].

<sup>62</sup> Section 84A of the FTAA allows the panel to impose conditions on the applicant to ensure that the infrastructure in the project area or other infrastructure the project will rely on is or can be made adequate to support the project.

<sup>63</sup> FTAA, s 81(2)(d) and 83.

<sup>64</sup> FTAA, s 81(2)(b) and (3)(a) and sch 5 cls 17(1) and 18.

<sup>65</sup> FTAA, s 85(3).

<sup>66</sup> 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 project and would likely be more onerous than necessary.

<sup>67</sup> FTAA, ss 81(2)(e) and 84.

Council, the Horowhenua District Council and Ngā Hapū o Himatangi and changes have been made in response to comments.

## **EVALUATION**

### **Introduction**

48. This section very briefly addresses:

- (a) the project's significant regional and national benefits, which:
  - (i) are crucial purpose of the FTAA; and
  - (ii) must be given most weight by the panel; and
- (b) why there are no significant adverse effects from the project.

### **Significant national and regional benefits**

49. The significant national or regional benefits of the project are addressed in sections 2.1 and 7.2.1 – 7.2.3 of, and Appendix B (Economic Report) to, the AEE.
50. A secure, reliable, and affordable supply of electricity is critically important to the economic, social, and cultural wellbeing of New Zealanders. The project will generate approximately 345 GWh per year of renewable electricity, enough to power the equivalent of 47,000 homes annually.<sup>68</sup>
51. The project will help to diversify the location and type of renewable electricity which will improve the resilience of electricity supply. The project will be resilient to the effects of climate change as the panels are elevated and are not affected by floods.
52. Solar farming has the lowest emissions of CO<sub>2</sub> of any energy generation method on a kWh of energy basis, with only 6 g of CO<sub>2</sub> produced per kWh of energy. The project will help to reduce greenhouse gas emissions and assist in:
- (a) achieving the emissions reduction target of reducing greenhouse gas emissions (except biogenic methane) to net zero by 2050;<sup>69</sup>

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<sup>68</sup> Policy EIT-P1(1)(a) of the Manawatū-Whanganui Regional Council One Plan requires "facilities for the generation of more than 1 MW of electricity and its supporting infrastructure where the electricity generated is supplied to the electricity distribution and transmission networks" to be recognised as physical resources of regional or national importance.

<sup>69</sup> Section 5Q of the Climate Change Response Act 2002.

- (b) reducing greenhouse gas emissions by 50% below 2005 levels by 2030, and by 51 – 55% compared to 2005 levels by 2035, as required by the Paris Agreement; and
  - (c) achieving the Government's goal of doubling renewable energy generation by 2050.<sup>70</sup>
53. During construction, the project will contribute \$8.1 million towards the region's GDP.

### **No significant adverse effects**

54. Table 13 of the AEE summarises the effects of the project.
55. Rangitāne o Manawatū and Muaūpoko have provided their support, in writing, for three hapū of Ngāti Raukawa ki te Tonga (Ngāti Rākau, Ngāti Te Au, and Ngāti Tūranga – together Ngā Hapū o Himatangi) to take the lead in respect of the cultural effects of the project. Ngā Hapū o Himatangi have confirmed that adverse cultural effects have been appropriately addressed.
56. Adverse ecological effects are at most low (pre-mitigation) and will be very low, or positive, following the mitigation proposed by Genesis. That includes approximately 5.6 ha of restoration and enhancement around 1.15 ha of existing wetland.
57. The only residual adverse effects required to be managed relate to noise, landscape and visual effects. Genesis has proposed setbacks and boundary and internal plantings which will reduce landscape and visual effects to low-moderate to moderate. Mitigation is also proposed to reduce effects on rural character and amenity to low-moderate.
58. The absence of any significant adverse effects, let alone any that are out of proportion to the project's benefits, means that the panel has no legal basis on which to refuse the resource consents sought by Genesis.

### **INVITATION FOR COMMENT**

59. Within 10 working days of commencement, the panel is required to invite written comments.<sup>71</sup> In accordance with the purpose of the FTAA and the

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<sup>70</sup> Delivering Electrify NZ is a key action in the second emissions reduction plan.

<sup>71</sup> FTAA, s 53(1).

Parliamentary intent, the panel should only invite the following persons and groups to provide written comments:

- (a) The Manawatū-Whanganui Regional Council and the Horowhenua District Council as the relevant local authorities;<sup>72</sup>
- (b) the following relevant iwi authorities and Treaty settlement entities:<sup>73</sup>
  - (i) Te Rūnanga o Raukawa Incorporated;
  - (ii) Rangitāne o Manawatū Settlement Trust;
  - (iii) Tanenuiarangi Manawatū Charitable Trust;
  - (iv) Muaūpoko Tribal Authority Inc; and
  - (v) Ngā Hapū o Himatangi (see reasoning below);<sup>74</sup>
- (c) the owners or occupiers of the land to which the substantive application relates or the land adjacent to that land listed in Appendix F;<sup>75</sup>
- (d) the Minister for the Environment and other relevant portfolio Ministers;<sup>76</sup>
- (e) the Ministry for the Environment;<sup>77</sup> and
- (f) the Director-General of Conservation.<sup>78</sup>

60. The panel should exercise its discretion under s 53(3) to invite:

- (a) Ngā Hapū o Himatangi for comment. Ngā Hapū o Himatangi:
  - (i) is directly affected such that they have a particular and explicit interest in the project;
  - (ii) was consulted as required by s 11(b) of the FTAA; and
  - (iii) Rangitāne o Manawatū and Muaūpoko have provided their support, in writing, for Ngā Hapū o Himatangi to take the lead in respect of the cultural effects of the project;

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<sup>72</sup> FTAA, s 53(2)(a).

<sup>73</sup> FTAA, ss 53(2)(b) and (c). Section 53(3) permits the panel to invite comment from Ngā Hapū o Himatangi.

<sup>74</sup> There is a discrepancy between s 11(b) of the FTAA which requires mandatory consultation with any relevant hapū, and s 53(2)(b) and (c) which do not include hapū.

<sup>75</sup> FTAA, s 53(2)(h) and (i). The confidential contact details are provided in Appendix F to the application.

<sup>76</sup> FTAA, s 53(2)(j).

<sup>77</sup> FTAA, s 53(2)(k).

<sup>78</sup> FTAA, s 53(2)(m)(i) and sch 5 cl 13(a).

- (b) Transpower as the owner and operator of the National Grid transmission lines that traverse the eastern portion of the site; and
  - (c) NZ Transpower Agency Waka Kotahi as the requiring authority for State Highway 1.
61. It is not necessary for the panel to exercise its discretion under s 53(3) more broadly. Genesis has consulted extensively with all relevant stakeholders and with mana whenua. The panel can be assured, including through any comments received from the persons and groups listed above, that it will have all relevant information before it to make a robust decision.
62. 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.<sup>79</sup>
63. 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 FTAA is that:<sup>80</sup>

... 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.

64. The Minister responsible for RMA Reform, the Hon Chris Bishop, made a similar point earlier in the debate:<sup>81</sup>

... 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. ...

## CONCLUSION

65. The panel can be satisfied that the resource consents sought by Genesis can be granted on the conditions it has proposed. There are no significant adverse

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<sup>79</sup> Environment Committee *Fast-track Approvals Bill* (18 October 2024) at 15. Ministry for the Environment *Departmental Report on the Fast-track Approvals Bill – Version 2* (21 October 2024) at [779] and [782].

<sup>80</sup> (10 December 2024) 780 NZPD 7944.

<sup>81</sup> (10 December 2024) 780 NZPD 7809.

effects. Even if the panel disagreed with Genesis' assessment, the effects would not be out of proportion to the significant regional and national benefits.

**Dated** this 17<sup>th</sup> day of February 2026

A handwritten signature in blue ink, appearing to read 'D. Allen', is positioned above a horizontal line.

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**David Allen / Esther Bennett / Chelsea Easter  
Counsel for Genesis Energy Limited**