

UNDER the Fast-track Approvals Act 2024 (**Act**)

IN THE MATTER an application for approvals for the Lake Pūkaki
Hydro Storage and Dam Resilience Works – a
referred project

BY **MERIDIAN ENERGY LIMITED**
Applicant

**APPLICANT'S RESPONSE TO REQUEST FOR INFORMATION 1:
SUBMISSIONS OF COUNSEL FOR MERIDIAN ENERGY LIMITED**

15 May 2026

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MAY IT PLEASE THE PANEL

1. These submissions are made on behalf of Meridian Energy Limited (**Meridian**) and form part of Meridian's response to the Panel's Request for Information 1 dated 4 May 2026.
2. I provide below a response to **RFI 1.C – Tekapo Tailrace Issues**.
3. The Panel's request is:

10. In broad terms, following the receipt of comments, the Panel now has two fundamentally divergent engineering assessments of the structural state of the temporary Tekapo B tailrace weir and discharge channel structure (Damwatch, WSP), resulting in two different recommended approaches to managing the potential risk of its failure during lowered lake levels. Damwatch recommend a 'reactive' (i.e., monitor and repair) approach to managing the risk of failure, whereas WSP recommend a 'pro-active' (i.e., make sound first) approach. In determining which approach is to be preferred on the evidence, the Panel would be assisted in further information from the Applicant and GEL on the following matters:

- a. Regardless of which approach to risk is preferred, does the Applicant have sufficient legal rights to access the tailrace structure for repair or reinstatement without agreement from GEL? If no rights exist, how would a condition requiring either repair or reinstatement be legally effective?
- b. What obligations arise under the Building Act 2004 for recommissioning of the weir and discharge channel structure, including either the repair or reinstatement options? How do the parties consider those obligations can be met in either scenario?

Question 10a

4. Title in the land comprising part of the bed of Lake Pūkaki on which the Tekapo B tailrace structure is located is with Genesis Energy Limited.
5. Meridian Energy Limited has no formal easement to enter onto Genesis Energy Limited's land to access the tailrace structure for surveillance or maintenance purposes, and is unable to do so without agreement from Genesis Energy Limited. The Panel will appreciate that on the breakup of ECNZ both the Waitaki and Tekapo Power Schemes were vested in Meridian Energy Limited, and a subsequent Crown decision resulted in the transfer of the Tekapo Power Scheme to Genesis Energy Limited. The sale and purchase agreement relating to that transfer recorded that in connection with the ongoing operation of the Waitaki Power Scheme Meridian would from time to time continue to require access to land occupied by the Genesis assets being transferred. For reasons unknown that understanding was never translated into a formal easement.

6. Under the existing resource consent/permitted activity arrangement whereby the level of Lake Pūkaki is able to be lowered below 518 mRL in specified circumstances, there is an agreement between Genesis and Meridian¹ that provides that if Meridian operates the lake below 518 mRL it must:
 - a. Monitor the weir and intake and outflow ramp during those times to Genesis' reasonable satisfaction; and
 - b. Meet the reasonable costs for remediation if erosion to the structures occurs as a result of the lake being operated below 518 mRL.
7. While that existing agreement clearly contemplates that Meridian will access the Genesis land in order to undertake monitoring, no extension of that agreement is in place between Meridian and Genesis addressing what should happen if the lake level is lowered below 518 mRL outside the existing consent/permitted activity circumstances.
8. Proposed Conditions 10 and 11 of the section 14 water permit forming part of the current fast-track application (CRC262540) version 3, 15/04/26 address this matter as follows:

10. The consent holder shall engage an independent third party to undertake surveillance of the Tekapo B Power Station rock chute and weir at any time Lake Pūkaki falls below 518m RL and to provide daily updates of the surveillance to Genesis Energy Limited.

11. The consent holder shall ensure that sufficient rock riprap and gravel material is available at any time Lake Pūkaki falls below 518m RL to enable the rapid repair of any damage to the Tekapo B rock chute and weir that may occur during the exercise of this consent.
9. Condition 10 is only able to be complied with by Meridian if Genesis allows access to its land so that surveillance work can be done when the lake is below 518 mRL. I expect that Genesis would allow such access as the

¹ See Attachment C to my legal submissions dated 15 April 2026

condition is for Genesis' benefit, but the correct position in law must be that if Genesis does not agree to allow surveillance to be undertaken, then the condition cannot be complied with.

10. A condition cannot impose an obligation on a third party. There is no ability for the panel to compel Genesis to allow access for surveillance (or any other) purposes.
11. Proposed condition 10 as proffered serves a proper purpose – to mitigate a potential adverse effect of the activity on Genesis' asset. It has been held that offers of mitigation can be required to be made, and the mitigation carried out if the third party for whose benefit the offer is made agrees.²
12. I consider proposed condition 10 is appropriate, but if the Panel prefers I suggest the condition could start "Provided Genesis Energy Limited agrees, the consent holder shall engage..."
13. From a compliance perspective I do not consider proposed condition 10 causes difficulty. Proposed conditions 4 and 6 require Meridian to report on the exercise of the consent both while lake lowering is occurring (condition 4) and after each lowering event (condition 6). Both conditions require the reporting to include the measures adopted to mitigate adverse effects of operating the lake below 518 mRL. From that reporting I would expect ECan to be able to ascertain whether condition 10 had been complied with.
14. Finally in relation to condition 10 I note that the condition is strengthened from the existing agreement by requiring the surveillance to be by an independent party, and that the results of the surveillance be reported to Genesis on a daily basis while the lake is below 518 mRL.
15. Proposed condition 11 requires Meridian to have sufficient material on hand at any time the lake is lowered below 518 mRL to enable rapid repair of any damage to the Tekapo B rock chute and weir.

² *Redvale Lime Company Ltd v Rodney DC* [2006] ELHNZ 14 at [20]

16. Stockpiling of that material can occur on Meridian land or LINZ land over which Meridian has an operating easement, and does not require agreement with Genesis. It is implicit that the material should be made available to undertake repair of any damage to the weir and rock chute, but this could be made explicit if the Panel wished. Similarly, the condition could be expanded to make it clear that Meridian must meet the reasonable costs of any repairs that are necessary as a result of the exercise of the consent, as is the position under the existing agreement.
17. In my submission proposed conditions 10 and 11 are appropriate. They are intended for Genesis' benefit and contain a responsible approach to addressing third party risk. Genesis can elect not to allow access on its land for surveillance, but then assumes the risk associated with any damage caused by the exercise of the consent.
18. I note that this risk needs to be seen in context, and the evidence of Mr Lal and Dr Webby is that the likelihood of damage is small, and it should be a straight forward matter to repair, should damage occur.

Question 10b

19. I refer the panel to the attached letter from the applicant's solicitors Anderson Lloyd that describes the applicability of the Building Act 2004 in the context of the repair or reinstatement of the weir and discharge chute.
20. The Applicant's position, based on the advice of its engineers, is that the infrastructure constitutes a non-classifiable dam, being 3.5m in height, and that a building consent is not required.
21. Regardless, any consent required under the Building Act 2004 is outside the ambit of the Fast-Track Approvals Act 2024, and the Applicant's ability to comply with proposed conditions of the resource consent does not depend on compliance with the Building Act.

Dated 15 May 2026

A handwritten signature in blue ink, appearing to read 'S Christensen', written in a cursive style.

Stephen Christensen

Counsel for Meridian Energy Limited

14 May 2026

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Dear Humphrey

Building Act 2004 - Tekapo B Power Station tailrace weir and chute

- 1 Thank you for your email dated 6th of May 2026 asking that we provide legal advice on what obligations arise under the Building Act 2004 (**Building Act**) if there is a need to recommission the Tekapo B Power Station tailrace weir and chute (the **GEN Weir**).
- 2 The context of this, is that the Panel on Meridian Energy Limited's (**Meridian's**) Fast-track application has requested further information (RFI No.: 1-C Tekapo Tailrace Issues) in relation to the Tekapo B tailrace weir and chute. The Panel has askedC:

What obligations arise under the Building Act 2004 for recommissioning of the weir and discharge channel structure, including either the repair or reinstatement options? How do the parties consider those obligations can be met in either scenario?

- 3 We have considered the Building Act and set out our legal advice below.

Facts

- 4 We understand that the GEN Weir is a submerged structure located within Lake Pūkaki and is not operational when Lake Pukaki water levels are above 518 m RL (normal consented minimum lake level). We also understand that the GEN Weir was originally designed and constructed to enable the Tekapo B Power Station to operate prior to the completion of the Pūkaki Dam and the subsequent raising of Lake Pūkaki to its normal consented minimum operating level.
- 5 We understand that the GEN Weir forms part of the Tekapo Scheme including Tekapo B Power Station now owned and operated by Genesis Energy Limited's (**Genesis**).

Legal Advice

- 6 Structural work on the GEN Weir and associated site works would require the landowner (Genesis) to obtain a building consent under the Building Act.
- 7 There is the possibility of an exemption to this default position. The first exemption is if the GEN Weir is a non-classifiable dam. We understand this is the view of Meridian's Engineers. If the GEN Weir is classified as such, no building consent is required.
- 8 There is also the possibility the relevant Council may exempt the need for a building consent on the basis it is to be designed and constructed under the supervision of a Chartered Engineer.

- 9 If for some reason these exemptions do not apply and a building consent is required, Meridian could obtain any necessary building consent with Genesis' consent, or agree with Genesis to underwrite the cost to Genesis of that work.

Reasons

- 10 The Fast-track approvals process does not involve decision-making under the Building Act, and any requirements under that Act sit outside the Panel's decision-making role. It is also common for different regulatory regimes (for example, resource consents and building consents) to be dealt with separately. We understand that Meridian has proposed a voluntary condition as part of the Fast-track application to address how the separate requirements can be managed properly.
- 11 We note that unless exempted under the Building Act, a building consent is required to carry out any building work.¹ The definition of building work includes the construction, alteration, demolition and removal of a building,² and sitework.³ A building includes a "temporary or permanent moveable or immovable structure".⁴ It seems to us that the GEN Weir will be a "building", being an immovable structure.
- 12 We consider that structural work to reinstate or significantly repair the GEN Weir and associated siteworks will require a building consent (unless exempted). The obligation to apply for a building consent applies to the landowner.⁵ Here, this is Genesis.
- 13 We note that one of the exemptions from requiring a building consent under the Act includes building work on a dam below the large dam threshold i.e. a non-classifiable dam.⁶ We understand that Meridian's engineers advise that the GEN Weir is not a large dam, and is not part of a large dam and is therefore a non-classifiable dam (small dam). If this is the case, then the exemption from the requirement to obtain a building consent would apply to the GEN Weir.
- 14 We note that a second exemption may well apply here. The relevant Council administering the Building Act has a discretionary power to grant an exemption for any proposed building work. This can be done if a building consent is considered unnecessary because it will clearly comply with the Building Code, or is unlikely to endanger people or buildings.⁷ This exemption can apply to building work where the construction will be designed and supervised by a Chartered Professional Engineer. The point of this exemption is that supervision of building work by the Council is unlikely to add value when designed and constructed by a Chartered Engineer.

¹ Building Act 2004, s 40(1): A person must not carry out any building work except in accordance with a building consent.

² Building Act 2004, s 7: Building work means (a)(i): for, or in connection with, the construction, alteration, demolition, or removal of a building.

³ Building Act 2004, s 7: Sitework means work on a building site, including earthworks, preparatory to, or associated with, the construction, alteration, demolition, or removal of a building.

⁴ Building Act 2004, s 8.

⁵ Building Act 2004, s 14B.

⁶ Building Act 2004, sch 1 cl 22: Building work in connection with a dam that is not a large dam.

⁷ Building Act 2004, sch 1 cl 2.

15 Please do not hesitate to contact us if we can be of further assistance.

Yours faithfully
Anderson Lloyd



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