

Manawa Energy Limited Response to the Statement of Issues

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Public version

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Executive summary

1. Manawa Energy Limited makes this submission in response to the Commerce Commission's Statement of Issues.¹
2. Manawa disagrees with the Commission's preliminary view that it cannot be satisfied that Contact's acquisition of the shares of Manawa will not be likely to substantially lessen competition. Manawa submits that based on the information before the Commission, the Commission can be satisfied that the acquisition will not be likely to harm competition in any market.
3. The Statement of Issues traverses numerous topics. Contact has responded to those issues in its submission. Manawa has seen a draft of, and agrees with, Contact's submission.

Focus of this submission is whether Manawa would sell shaped hedges in the counterfactual

4. This submission explains why Manawa disagrees with the Commission's preliminary view that "Manawa would likely supply some volume of shaped hedges to third parties" in the counterfactual,² and the Commission's starting point estimate that this volume would equate to 10% to 15% of Manawa's generation.^{3 4}
5. The Commission's preliminary view that Manawa is likely to sell shaped hedges absent the acquisition matters because it is a necessary – but not sufficient – condition for the Commission's preliminary view that competition could be harmed in relation to the supply of shaped hedges. If the Commission's preliminary view that Manawa is likely to sell shaped hedges is wrong, then the acquisition cannot harm competition for the supply of shaped hedges. (For completeness, even if there were a real chance that Manawa would sell shaped hedges, the acquisition would not be likely to harm competition for the reasons outlined in Contact's submission.)

It is not "likely" that Manawa will sell shaped hedges in the counterfactual – there is no 'real chance' it will

6. In Manawa's view, the Commission's preliminary view is implausible and not supported by the evidence already before the Commission and contained in this submission.
7. Rather, the evidence currently before the Commission and outlined in this submission demonstrates that the Commission should reach the view that it is satisfied that Manawa is not likely to be a supplier of shaped hedges in the counterfactual. Manawa submits that the Commission would be in error if it reached a different conclusion.
8. The Commission's preliminary view is based on the fact that Manawa has sold shaped hedges previously, that independent retailers have expressed an interest in buying shaped hedges, and that there is a "premium" for the sale of shaped hedges.⁵ Underlying the Commission's preliminary view is a misreading of Manawa's internal documents and a failure to recognise that the market dynamics that the Commission says will drive demand for shaped hedges, are the very dynamics which reinforce why Manawa would not be likely to supply the same.
9. Manawa accepts, of course, that it has **[Confidential]** existing shaped hedge contracts with Mercury (entered in 2021), **[Confidential]**. If the Commission simply means by its counterfactual that Manawa will continue to honour these contracts, then Manawa agrees. Of course, as the new owner of Manawa, Contact will also be contractually obliged to honour those contracts.

¹ Confidential information is enclosed in bolded square brackets and highlighted in green, i.e., **[Confidential]**.

² Statement of Issues at [8].

³ Statement of Issues at [100.2].

⁴ The Commission describes shaped hedges as fixed price, fixed volume peak and super peak hedges and that is the definition Manawa uses in this submission. See Statement of Issues at [38].

⁵ Statement of Issues at [97].

The transaction makes no difference to these existing contracts. It certainly does not give Contact the ability or incentive to breach its contractual obligations.

10. It follows that the question for the Commission is whether Manawa is likely to sell shaped hedges in addition to those it has previously sold. The question is what Manawa would do now and, in the future, not what it has done in the past.
11. Importantly also, the question for the Commission is not whether Manawa *could* sell shaped hedges; nor is it whether customers or even the Commission would prefer Manawa to sell shaped hedges. The question is solely whether Manawa, exercising its commercial judgment, is likely to do so.
12. Manawa's position remains that it would not sell shaped hedges to any material extent.⁶ Translating this into the "likely" and "real chance" language of the statutory test, Manawa's position is as follows.
 - 12.1 There is no "real chance" of Manawa selling shaped hedges, i.e., that scenario is not likely in the counterfactual.
 - 12.2 That said, Manawa (responsibly) accepts that it cannot say that it would be impossible for it to sell shaped hedges or that it would never sell shaped hedges. It is possible it may, but only in the "anything is possible" sense. Selling shaped hedges is not a part of Manawa's strategy, would pose an unacceptably high risk to the business, and is, therefore, no more than a mere possibility. That mere possibility does not reach the standard of amounting to a "real chance" or likely outcome.
 - 12.3 Even in the unlikely event that Manawa did contract with someone to sell some shaped hedges:
 - 12.3.1 there is no possibility – let alone a real chance – that the volume of those shaped hedges would approach anywhere near the 10%-15% of Manawa's total generation assumed in the Statement of Issues;
 - 12.3.2 Manawa would not expect any sales to be much above zero given the risks involved for Manawa and given that the premium Manawa would require to justify it accepting the risk of selling a shaped hedge would mean any volume would inevitably be priced higher than would be offered by other generators; and
 - 12.3.3 in any event, the counterparty would have to satisfy Manawa's credit policies (which have been enhanced following its experience with Prime defaulting in 2024). Currently, at least **[Confidential]**.

Manawa's strategy does not involve the sale of shaped hedges

13. Manawa's strategy has been clearly articulated. Manawa will seek long term generation following PPAs for a minimum of **[Confidential]** of its generation volume, and **[Confidential]** of its generation volume for the right opportunity. These PPAs will provide Manawa with the revenue certainty it needs to support the increased debt Manawa needs to deliver its generation development pipeline and lower its cost of capital, driving value for shareholders.
14. By market standards, Manawa will be highly geared. To support its high gearing, Manawa needs to mitigate the downside volatility of its earnings. Despite a suggestion in the Statement of Issues to the contrary, mitigating downside revenue risk to support an aggressive capital structure and underpin a development pipeline is not a risk averse strategy. This is a typical and

⁶ Manawa Energy Limited "Additional information on Manawa's strategy absent the Contact acquisition" (6 December 2024) at 3.

economically rational, achievable, and value creating, strategy for an Independent Power Producers (IPP).

15. Simply put, selling shaped hedges is not consistent with this strategy. That is why Manawa does not believe it is likely to sell shaped hedges in the future. A shaped hedge simply transfers market risk from one party to another. The Statement of Issues explains why customers value shaped hedges as a way of mitigating their own risk and also highlights that volatility in the market is expected to increase over time.⁷ However, the Statement of Issues does not reflect the fact that a generator taking on a shaped hedge is consciously taking on those risks for itself. The generator must be confident it can deliver energy in the profile required for the shaped hedge and requires sufficiently firm generation output to achieve this.
16. In short, selling shaped hedges will – by definition – materially increase Manawa’s earnings risk and volatility. Moreover, the Statement of Issues has materially overestimated the ability of Manawa’s generation portfolio to manage these risks and therefore underestimated the risk to Manawa. The commercial reality is that selling shaped hedges will expose Manawa to unacceptably high downside risks. Manawa’s experiences in 2024 and early 2025 are a stark illustration of this risk. These downside risks cannot simply be “averaged out” over a long time period given the implications of a low revenue outcome for Manawa’s ability to service its debt and meet its shareholders’ expectations. As a result, taking on material downside risks will simply serve to undermine Manawa’s overall strategy.
17. And while Manawa determined its strategy in 2023 and early 2024, events since then have only served to strengthen Manawa’s view that its strategy is the correct one.
18. As the Energy Competition Taskforce has recognised, winter 2024 demonstrated that the New Zealand energy market is increasingly more volatile. New Zealand is not only more susceptible to dry calm conditions than was anticipated, but the impact of this is exacerbated by reduced gas availability for thermal generation, which is expected to continue to be the marginal generation in times of market stress. There is no indication that this volatility will dissipate in the foreseeable future. In contrast, volatility is likely to continue to increase, particularly with more variable renewable energy (i.e. wind and solar) being added to New Zealand’s generation mix.⁸

Commission’s preliminary view is not supported by the evidence before it

19. Given this context, Manawa is disappointed that the Statement of Issues substitutes a different commercial strategy for Manawa to the strategy which Manawa’s Board has decided on and which it has described and evidenced to the Commission. Manawa does not consider there is a basis for the Commission to do so.
20. Indeed, the Commission’s preliminary view that Manawa is likely to sell shaped hedges is diametrically opposed to:
 - 20.1 statements Manawa provided to the Commission when interviewed;
 - 20.2 additional information Manawa provided to the Commission on 6 December 2024 about its strategy including why the [Confidential] hedge contracts it has previously entered do not provide any guide as to what it would do in the future;
 - 20.3 contemporaneous Manawa board documents which Manawa provided to the Commission and which evidence its strategy;

⁷ Statement of Issues at [137.1].

⁸ Electricity Authority “Level Playing Field measure: Options Paper”, 27 February 2025, at [2.10]-[2.12].

- 20.4 commentary in its investor communications supporting this strategy, which is widely available given Manawa is a publicly listed company;
- 20.5 Manawa's conduct in the market, including as recorded in the Statement of Issues itself;⁹ and
- 20.6 the way IPPs have operated in New Zealand previously and operate in overseas markets.
21. Moreover, Manawa's conduct since it decided its strategy (and before the Contact acquisition) is entirely consistent with this strategy. Manawa has declined to supply any additional shaped hedge products (peak or super peak) when approached, has not participated in the auctions for super peak products, has proactively sought out and negotiated with investment grade potential PPA off takers, and had **[Confidential]**, consistent with its IPP strategy.
22. So, while Manawa acknowledges that some independent retailers have expressed a desire to purchase shaped hedge products to transfer their own risks to Manawa, that does not mean that it is likely that Manawa will accept that transfer of risk by selling shaped hedges. Manawa knew this demand existed when it determined its strategy, and when it declined the opportunity to supply further shaped hedge products to these counterparties. Simply put, Manawa is not prepared to accept those risks.

The Commission should be satisfied that the acquisition will not substantially lessen competition

23. For all these reasons, and those outlined in Contact's submission, the Commission should be satisfied that the acquisition will not substantially lessen competition in any market in New Zealand.
24. In short, Manawa accounts for only 4% of New Zealand's total generation. And while it is an independent generator not a gentailer, Manawa is neither a price setter nor a disrupter in the market. Nor is Manawa a viable and economic provider of shaped hedges such as peak and super peak contracts for reasons traversed in this submission. None of this will change absent the transaction.
25. In contrast, as Contact has outlined in its submission and to the market more generally, the benefit of this transaction is that it enables Contact to harness Contact and Manawa's complementary hydro generation inflows, thereby creating a broader and more resilient portfolio to the benefit of competition in the New Zealand market.
26. The balance of this submission is structured as follows.
- 26.1 Part A describes the legal test the Commission is required to apply when assessing what Manawa would do absent the transaction.
- 26.2 Part B explains why the Statement of Issues has underestimated the risk to Manawa of supplying shaped hedges.
- 26.3 Part C provides further detail on Manawa's IPP strategy, why that strategy is inconsistent with the sale of shaped hedges, and why the documents cited by the Commission as evidence that Manawa would be likely to sell shaped hedges do not support that conclusion.
- 26.4 Part D reiterates why the Mercury, **[Confidential]** hedges provide no guide as to whether Manawa is likely to sell shaped hedges in the future, and why Manawa's conduct since

⁹ For example, Statement of Issues at [178.3].

those hedges were executed is consistent with Manawa not being likely to supply shaped hedges in the counterfactual.

- 26.5 Part E explains why, even in the unlikely event that Manawa were to sell shaped hedges, any volume Manawa sold would be minimal, high cost, and [Confidential].

A. The statutory test the Commission is required to apply in assessing Manawa's strategy absent the transaction

27. As described above, the question for the Commission is whether it is likely that Manawa would supply additional shaped hedges in the counterfactual. Or, put another way, can the Commission be satisfied that it is not likely that Manawa would supply additional shaped hedges in the counterfactual?
28. Naturally, the Commission must make that assessment based on a full, fair, and balanced reading of all the evidence before it. Moreover, the assessment must be made on the balance of probabilities, i.e., can the Commission be satisfied that the proposition that it is not likely that Manawa would sell shaped hedges is more probable than the hypothesis that it is likely Manawa would sell shaped hedges.
29. References to the applicant having to satisfy the Commission that the Commission can "exclude the real chance" of something happening can be misleading to the extent that they imply a higher standard of proof than the balance of probabilities. The job for the applicant is simply to bring the Commission to the point where it believes that it is more probable than not that a substantial lessening of competition is not likely. No more is required.
30. The legal test of whether something is likely is well settled. Something will not be "likely" if it is a mere possibility. Moreover, courts have reinforced that the question of whether something is likely is concerned with "commercial likelihoods" and the answer to that question must be informed by as much practical evidence as possible,¹⁰ take place in the "real world", and not rest on speculation or theory alone.
31. Moreover, the New Zealand Court of Appeal has previously shown a reluctance to second guess the commercial judgment of experienced commercial parties when deciding whether something is likely.¹¹
32. The language of the Statement of Issues appears to stray at times from this legal test. For example, in paragraph [97], the Statement of Issues records the Commission's view that:
- There is some evidence to indicate that Manawa might have the ability and/or incentive to supply some of the unsold generation as Shaped Hedges
33. Manawa submits that "some" evidence that "might" support Manawa supplying shaped hedges is not sufficient to support a finding that this is "likely".
34. Similarly, at paragraph [99] the Commission records its view that it:
- ... cannot rule out that [Manawa] would not supply some volume of Shaped Hedges given Manawa's supply of these products in the past and the increasing value of this product. Even small volumes of Shaped Hedges supplied by Manawa may have a big impact on the supply of these products.

¹⁰ *Commerce Commission v Woolworths* [2008] NZCA 276 (*The Warehouse*) at [191].

¹¹ *The Warehouse* at [142].

35. The Commission does not need to rule out Manawa supplying Shaped Hedges. It needs to assess whether it can be satisfied Manawa is unlikely to do so in the future. Furthermore, that there “may” be a “big” impact on competition if Manawa did so, is not sufficient to give rise to a likely substantial lessening of competition. It is a mere possibility, not more. Put another way, a low probability event will not be “likely” even if that event would have a big impact on competition were it to occur.
36. Putting those points aside, the Commission’s preliminary view that Manawa is likely to sell shaped products is premised largely on the existence of the Mercury hedge, and the fact that **[Confidential]**.
37. Manawa has already explained – and explains again in this submission – why those contracts do not provide any guide as to how it would act in the future. The evidence is supported by Manawa’s internal documents and subsequent conduct, while being reinforced by the increasing volatility being observed in the New Zealand energy market. This information is not referred to in the Statement of Issues and it is not clear why the Commission has second guessed the commercial judgements conscientiously made by Manawa’s Board and management.
38. In this sense, the question of whether Manawa would be “likely” to sell more shaped hedges is very similar to the question that was before the Australian Federal Court in *Vodafone v ACCC*.¹²
39. As the Commission will know, that case centred in large part of whether TPG would roll out a fourth mobile network in Australia having made initial steps to do so, which it had then abandoned.
40. The ACCC objected to that merger on the basis that, in its view, absent the merger TPG would roll out a fourth mobile network in Australia, and therefore the acquisition would reduce the number of competing mobile networks in Australia from four to three and thereby substantially lessen competition.
41. Vodafone sought a declaration from the Federal Court of Australia that Vodafone’s acquisition of TPG would not substantially lessen competition. Vodafone effectively faced the same legal test as applies to this clearance, i.e., Vodafone had to satisfy the Court that the acquisition was unlikely to substantially lessen competition.
42. The Federal Court dismissed the ACCC’s objection and found that Vodafone had discharged its burden of satisfying the Court that there was no likely substantial lessening of competition. The Court held that despite TPG having initially identified an opportunity to roll out a fourth mobile network, at the time of the merger, there was “no real chance that TPG will roll-out a retail mobile network or become an effective competitive fourth mobile network operator ... in Australia in the relevant future”.¹³
43. In reaching his decision, Middleton J cited with approval French J’s statement the test for “likely” in *AGL*, i.e., that the “meaning of “likely” reflected a “real chance or possibility” and did not encompass “a mere possibility”. In the passages cited by Middleton J, French J also went on to comment on the need to apply the test of whether something is likely “in the real world” and that the assessment of “a real chance of a substantial lessening of competition cannot rest upon speculation or theory”. French J concluded:

To borrow the words of the Tribunal in the Howard Smith case, the Court is concerned with “commercial likelihoods relevant to the proposed merger”. The word “likely” has to be applied at a level which is commercially relevant or meaningful as must be the assessment of the substantial lessening of competition under consideration.¹⁴

¹² *Vodafone v ACCC* [2020] FCA 117 (*Vodafone*).

¹³ *Vodafone* at [10].

¹⁴ *Vodafone* at [52].

44. In his judgment, Middleton J also cautioned against the ACCC or the Court taking an interventionist approach outside the statutory test, commenting that:

... it is not for the ACCC or this Court to engineer a competitive outcome. The only question for this Court is whether the merger would have the effect, or be likely to have the effect, of substantially lessening competition in the supply of retail mobile services in Australia.¹⁵

45. Middleton J also commented on the need to consider the evidence in the round in deciding whether something was likely.

An important matter to keep in mind when considering individual factors that may impact upon the future likelihood, possibility or real chance of a roll-out by TPG is the cumulative effect of these factors, and how this cumulative effect would impact on the likelihood of making a rational commercial decision to roll-out a retail mobile network. Just because one factor is not 'critical' to achieving a roll-out (but is otherwise undesirable or difficult to implement) does not mean that that factor in conjunction with other factors, may not swing rational decision makers to a particular view against rolling out a retail mobile network. If sufficient factors that may favour a roll-out are either not likely to occur, or to a rational decision maker are undesirable or difficult to implement, this may indicate that a roll-out would be a decision no rational company in the position of TPG would take in the relevant future period. This is not to say that in looking at each factor that may be in favour of, or an impediment to, a roll-out of a retail mobile network, each factor will not need to be assessed in isolation. It is just that it will be necessary to look at the whole picture.¹⁶

46. Manawa submits that the Federal Court's comments are apposite and helpful in considering whether it is likely that Manawa would supply shaped hedges in the future. In summary, Manawa submits:

- 46.1 the assessment of what Manawa is likely to do must be based on a full and fair reading of the evidence before the Commission, commercially realistic, and not based on theory or speculation alone;
- 46.2 the fact that Manawa *could* sell shaped hedges or *might* do so does not make it likely Manawa will do so – something will not be likely if it is a mere possibility, but must be something that is commercially likely to occur in the real world;
- 46.3 when considering whether Manawa is likely to sell shaped hedges, the Commission must consider the cumulative effect of all factors in determining whether it is likely that Manawa would sell additional shaped hedges;
- 46.4 as illustrated by Middleton J's judgment in Vodafone the fact that Manawa has sold shaped hedges in the past does not make it likely Manawa will do so in the future – the assessment must be made based on the position today;
- 46.5 the fact that independent retailers have expressed a wish to buy shaped hedges and transfer their own risk to Manawa is not evidence of whether Manawa will take on that risk by selling shaped hedges;
- 46.6 the Commission should be slow to second guess the commercial strategy of experienced commercial parties, particularly where that strategy is evidenced by that business having conducted a thorough, conscientious, and considered analysis unrelated to the acquisition being assessed; and
- 46.7 it is not for the Commission to use the clearance process to seek to engineer what it regards as a more competitive outcome – the question is solely whether the acquisition itself will substantially change whatever level of competition would

¹⁵ Vodafone at [11].

¹⁶ Vodafone at [14].

otherwise be in the market.

B. Statement of Issues underestimates the risk to Manawa of supplying shaped hedges

47. A key premise underlying the Commission's view that Manawa would be likely to supply shaped hedges in the counterfactual is the Commission's preliminary view that Manawa is well placed to provide such products because of the flexibility of its hydro generation assets. For example, the Statement of Issues refers to Manawa as having "a large degree of generation flexibility".¹⁷
48. Manawa disagrees. For the reasons outlined below, Manawa does not have "a large degree of generation flexibility". Moreover, the Statement of Issues overestimates the ability for Manawa to use the flexibility it does have to deliver firm volume.
49. That said, Manawa is not saying that it is impossible for it to sell firm volume. Manawa acknowledges that it has commitments to do so under the Mercury, [Confidential] hedges.
50. What Manawa does submit is that the Commission has materially underestimated the risk Manawa would assume were it to sell shaped hedges in the counterfactual. Whether this is classified as Manawa's ability or incentive to sell shaped hedges, the fact is that the level of risk is directly relevant to whether Manawa is likely to do so.
51. That shaped hedges transfer risk is also the context through which the Mercury [Confidential] hedge must be viewed. Mercury required the hedge as part of a broader transaction to purchase Trustpower's mass market retail business. The Mercury hedge cannot be treated as evidence of a hedge that Manawa would have otherwise entered into. This is discussed in detail in Sections C and D below.
52. In this section, Manawa illustrates how the Statement of Issues materially overestimates Manawa's ability to deliver firm volumes by:
- 52.1 explaining how the Statement of Issues conflates flexible generation with the ability to deliver firm volume;
 - 52.2 explaining how the Statement of Issues has overestimated the flexibility of Manawa's generation;
 - 52.3 explaining how the Statement of Issues has overlooked the impact of the volatility in hydro inflows on a generator's ability to offer firm volume (particularly where the generator has limited storage);
 - 52.4 providing a case study of Coleridge to show how the Statement of Issues has overestimated Manawa's ability to provide firm volume; and
 - 52.5 illustrating the impact of volatility on Manawa's ability to deliver firm volumes by reference to Manawa's experience servicing the Mercury hedge.

Statement of Issues conflates flexible generation with firm volume – the concepts are different

53. From Manawa's perspective, the Statement of Issues conflates flexibility of hydro generation with the ability to provide firm volume. In doing so, the Statement of Issues overlooks, or at least significantly underplays, the underlying variability of hydro generation.
54. Supplying a fixed price, fixed volume contract such as a shaped hedge commits a generator/seller to pay the hedge buyer the spot market value of a set volume of electricity generation at specified times. This is the "firm" value of volume multiplied by price. If the

¹⁷ Statement of Issues at [111].

generator is not able to generate enough electricity to earn that spot market value in any half-hour trading period, then it will be exposed to the spot prices for any shortfall between the volume of electricity it is capable of selling into the market using its own generation (or other purchased volume via hedges and PPAs to support these commitments) and the volume of electricity it has committed to service under the fixed volume hedge at those times.

55. Manawa's ability and incentive to supply shaped hedges (or any fixed price fixed volume contracts) is therefore a function of its ability to offer "firm" volume, i.e., to supply the fixed volume commitment it needs to in each trading period.
56. Having flexible generation certainly assists a generator to meet any fixed volume commitments. For example, the flexibility afforded by access to gas or coal fired generation or the ability to discharge from a battery provide a strong basis for supplying shaped volume commitments. However, for hydro generation, flexibility is only one factor. Moreover, it is a factor which itself is a function of variable and unpredictable hydro inflows.
57. Simply put, the ability and incentive for Manawa to offer shaped hedges will depend on the extent to which it can have a high degree of certainty over the amount of electricity it can generate in each trading period. In this respect, the Statement of Issues overestimates Manawa's ability to offer firm volume because it:
 - 57.1 overestimates Manawa's flexibility in absolute and relative terms; and
 - 57.2 overlooks the variability of Manawa's inflows (and variability in wind volume purchased) and how that impacts on its ability to offer firm volume.
58. Manawa explains why below and, to assist the Commission, Manawa has provided a case study of Coleridge as an example of how these factors interact.

Statement of Issues overestimates Manawa's flexible generation and its ability to offer firm volume

59. The Statement of Issues proceeds on the basis that any hydro generation that has some storage is "flexible" generation, and that because some of Manawa's assets are "flexible", they could support the supply of shaped hedges.¹⁸ In doing so, the Statement of Issues has overestimated the degree of Manawa's generation flexibility.

Statement of Issues does not appropriately measure flexibility

60. As an initial point, the Statement of Issues assesses flexibility in two ways. However, neither approach is an appropriate method for assessing the flexibility of Manawa's assets.
61. First, Table 3 of the Statement of Issues attempts to measure the flexibility of Manawa's assets by assessing Manawa's average generation from plant with hydro storage. This approach measures generation from hydro plant on average over a year.
62. Manawa understands that Contact has recalculated Table 3 using more up to date data, and this illustrates Manawa has much lower flexibility than suggested by Table 3.
63. However, in any event, average generation is not a measure of whether generation was or could be used flexibly. Indeed, the approach in Table 3 illustrates that the Statement of Issues has a binary assumption that Manawa's assets are either flexible or not. This misunderstands or oversimplifies what is required to support a shaped hedge, and overstates the degree of flexibility within Manawa's portfolio.

¹⁸ Statement of Issues at [94], citing a statement by Manawa that its "existing assets are almost exclusively hydropower" from Manawa's FY24 Annual Results Presentation (20 May 2024).

64. Furthermore, since trading takes place on a half hourly basis, looking at average generation will overlook variations in generation by trading period. Variations by trading period are what creates spot price exposure for generators selling shaped hedges in which a generator has committed to supply a specific volume.
65. Second, the Statement of Issues relies on “the difference between the 95th and 5th percentile of generation distribution of a given plant as a measure of its flexibility”, because “a plant with a wide distribution of electricity generation in a given period is likely to be more flexible than a plant whose output does not vary as much”.
66. Looking at the differences between the 95th and 5th percentile of generation distribution of a given plant is a measure of variability that may or may not be coincident with flexibility. To illustrate, a wind farm will regularly have output that varies from <5 to >95% but it is clearly not flexible.
67. In addition, the Statement of Issues’ application of the MDAG approach does not account for the type of flexibility offered (if an asset is indeed flexible). As discussed below, this is an important factor for providing firm volume. The MDAG paper approach draws a distinction between short term flexibility, and medium and long term flexibility. Putting aside whether MDAG’s approach is an appropriate measure of flexibility, MDAG itself does not attempt to apply the approach to assets with short term flexibility.¹⁹ The Statement of Issues seeks to apply the MDAG approach to all of Manawa’s assets, regardless of the type of flexibility they might offer. As discussed later, a substantial portion of Manawa’s portfolio only offers short term flexibility.
68. In addition, a key limitation of the MDAG approach – which goes unacknowledged in the Statement of Issues – is that it does not account for all of the factors that can constrain extended energy production.²⁰

Intra-day and intra-week storage is not sufficiently flexible to provide firm volume

69. Neither of the Statement of Issues’ attempts to measure Manawa’s flexibility – nor the Statement of Issues more generally – distinguishes between Manawa’s different types of storage.
70. The majority of Manawa’s assets only offer a degree of flexibility within a day. They are generally small in nature and are either run-of-river, offer very limited storage or are subject to significantly restrictive operating constraints.²¹ These assets have a combined mean generation of approximately 723GWh per year.²²
71. The Manawa schemes that offer intra-week flexibility have storage available that can be used to buffer stable inflows within a week. The Manawa schemes that offer intra-week flexibility are Matahina, Patea, and Kumara (Kumara and Dillmans), and Mangahao. These assets have a combined mean generation of approximately 569GWh per year.
72. Assets with intra-day or intra-week storage account for two-thirds of Manawa’s generation and do not have sufficient flexibility to support the supply of shaped hedges. They do not have

¹⁹ <https://www.ea.govt.nz/documents/1253/Competition-analysis-FINAL-v2.pptx> at slide 6.

²⁰ In addition, MDAG notes that this measure of flexibility cannot be considered a comprehensive measure of flexibility (which is “multidimensional”) or a widely accepted measure of flexibility:
<https://www.ea.govt.nz/documents/1253/Competition-analysis-FINAL-v2.pptx> at slides 6 and 12.

²¹ The Manawa schemes that only offer intra-day flexibility are Kaimai (Lloyd Mandeno, Lower Mangapapa, Ruahihi and K5), Wheao, Flaxy, Hinemaiaia (HA, HB and HC), Esk (Rimu and Toronui), Kuratau, Piriaka, Wairere Falls and Mokuiti, Mangorei, Motukawa, Waihopai, Branch (Argyle and Wairau), Arnold, Duffers, Kaniere Forks, Mckays Creek, Wahapo, Montalto, Highbank, Paerau, Patea, and Deep Stream (A and B).

²² Some of the smaller schemes within this category are not offered into the market, so could theoretically change their output at short notice – however, this is subject to their operating and resource consent conditions allowing this. As noted above, these can often be very restrictive.

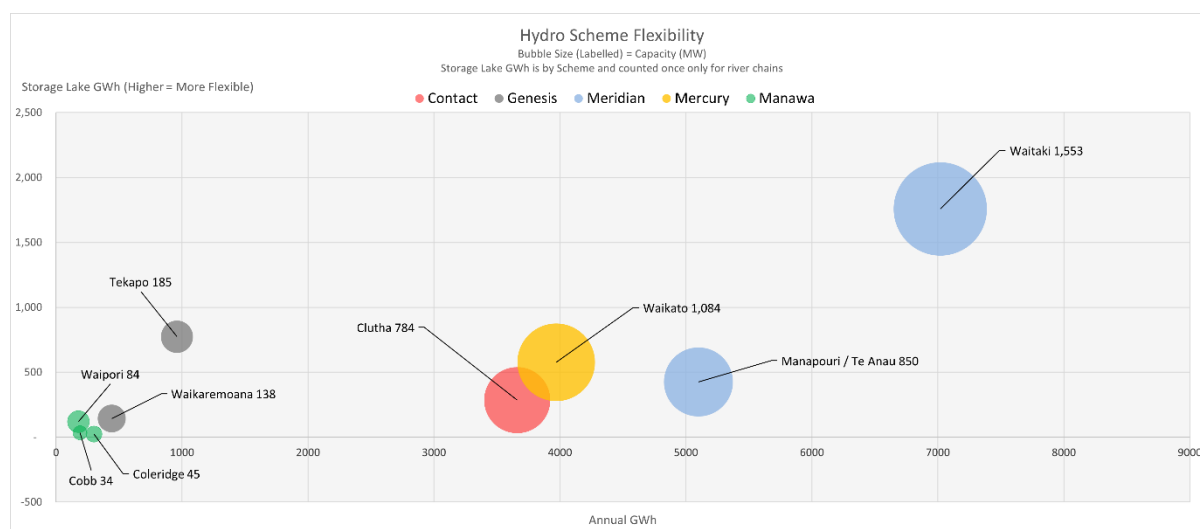
“medium term flexibility”.²³ While assets with intra-day and intra-week can provide flexibility within a day or week, they have significant week-to-week variability caused by differences in inflows. It is this variability that limits their ability to support fixed volume hedges which require the consistent delivery of specific volume in specific half hour trading periods.

73. In short, the flexibility these assets afford Manawa is not sufficient to enable Manawa to consistently meet peak volume commitments. Intra-week storage does not provide sufficient scope for Manawa to refill storage to deliver firm generation during peak periods, particularly with volatile hydro-inflows and an increasingly volatile wholesale market.
74. The lack of flexibility is exacerbated by resource consent and other operational requirements for some schemes, as well as scheduled and unscheduled maintenance requirements.
75. For example, Manawa’s largest scheme by capacity and annual generation volume is Matahina, accounting for approximately 15% of Manawa’s annual production. Matahina’s resource consent imposes a minimum flow requirement of 35 cumecs of water (~20MW) at all times. When inflows are below that level, outflows must match inflows (i.e., water cannot deliberately be stored even if inflows are low). Consequently, over half of Matahina’s annual output is generated on the basis of meeting the minimum flow requirements as opposed to being directed by market signals and commercial commitments.

Manawa’s assets with longer-term flexibility are limited

76. The Manawa schemes that offer intra-month or longer term flexibility are Cobb, Coleridge and Waipori. These schemes produce a mean generation of approximately 650GWh, or approximately one-third of Manawa’s total generation on average.
77. As illustrated in Figures 15 and 16 of the clearance application, this level of flexibility is small in market terms. Figure 1 below plots lake storage size in GWh against average annual production in GWh, with bubbles representing installed capacity, for the major schemes of Manawa and the four gentailers.

Figure 1: Comparison of Manawa’s largest schemes with its competitors²⁴



²³ Statement of Issues, footnote 112.

²⁴ Chart is intended to be illustrative only. Measures of storage and capacity may differ depending on data sources. For consistency the chart uses EA data for capacity and production (Refer <https://www.emi.ea.govt.nz/Wholesale/Datasets/Generation/GenerationFleet/Existing>), and NZX Hydro data for storage (daily data from energy.data@nzx.com), Manawa internal data is used for Manawa schemes, and Contact data for Clutha. Tekapo storage is assigned to Genesis but in practice is also available to Waitaki (Meridian).

78. Figure 1 is Manawa's best assessment, but it is indicative only, as Manawa has not considered any operating restrictions that apply to non-Manawa schemes. However, Manawa believes the relativities to be accurate (at least in order of magnitude terms) and shows that the storage available to Manawa is much lower than what is available to its competitors. This is relevant to the relative risk (and, therefore cost) Manawa would be taking on were it to sell shaped hedges.
79. Manawa's degree of flexibility can also be assessed by comparing changes in storage. All else being equal, the greater the inflows and outflows from a storage lake and the greater the volume of water that can be stored, the greater the degree of flexibility a generator will have.
80. The following table and graphs show the magnitude of the changes in water storage, in GWh, at Manawa's only meaningful storage (Waipori, Coleridge, Cobb) and Waitaki (Meridian, Genesis), Waiau (Meridian), Taupo (Mercury) and Hawea (Contact).
81. Table 1 shows the largest difference between the total stored GWh on the first day of two consecutive months in the period January 2020 to February 2025 at each lake.²⁵ The maximum increase and maximum decrease in storage at each lake illustrate the differences in the scale of the storage lakes. For example, even if all of Manawa's lakes had record increases in storage in a month, that would be orders of magnitude lower than the minimum increases experienced by other lakes.

²⁵ As calculated using lake level sensors and conversion factors for Waipori, Cobb, and Coleridge, and using GWh figures obtained from ComitHydro for the others.

Table 1: Magnitude of month-to-month changes in GWh storage at Manawa plant

	Manawa			Meridian / Genesis	Meridian	Mercury	Contact
	Waipori	Coleridge	Cobb	Waitaki	Waiau	Taupo	Hawea
Max increase	30	13	23	687	482	193	87
Max decrease	28	13	16	580	364	206	91

82. Figures 2 to 6 below show the actual increase and decrease in hydro storage at Manawa’s Waipori, Coleridge, and Cobb schemes combined, juxtaposed against Waitaki, Waiau, Taupo and Hawea from month to month over the same period. Green indicates an increase in storage, while red indicates a decrease in storage.

Figure 2: Waipori, Coleridge, and Cobb, combined



Figure 3: Waitaki

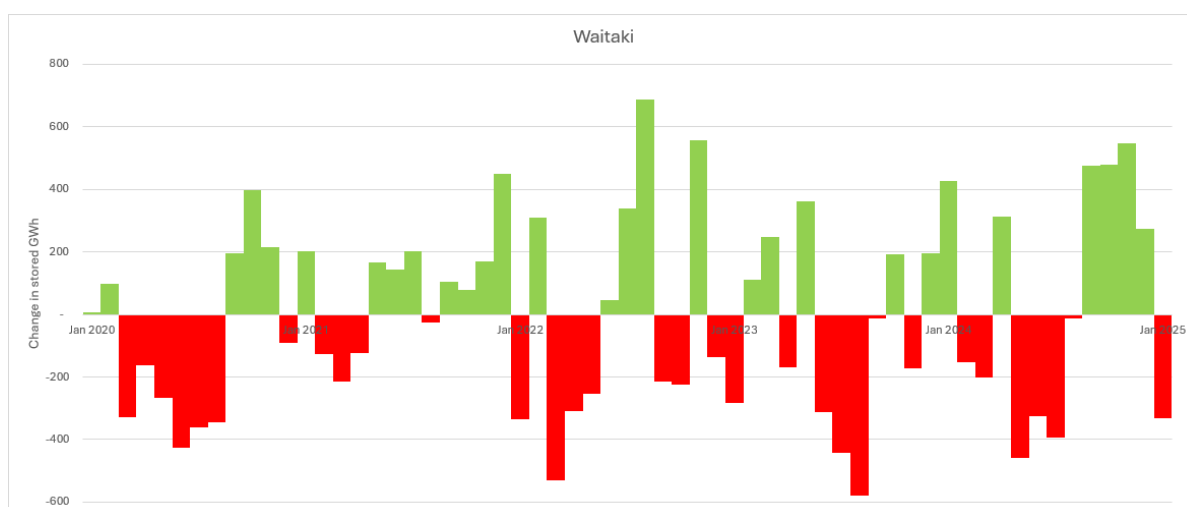


Figure 4: Waiau



Figure 5: Taupo

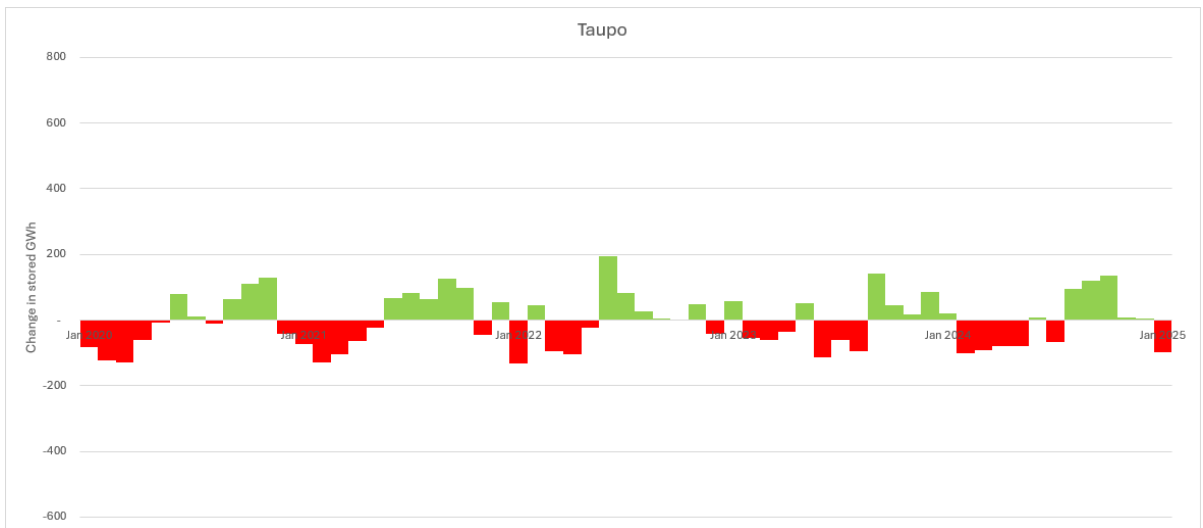


Figure 6: Hawea



83. The above graphs illustrate that Manawa's level of storage is orders of magnitude below those of the gentailers. All else being equal, this means that Manawa has a more limited ability to augment its generation in a way that provides firm volume compared to the gentailers. It follows that the risk to Manawa of selling a shaped hedge of any volume will be higher than for gentailers selling the same volume as a shaped hedge.

Planned and unplanned outage further reduce the generation capacity available to firm volume for shaped hedges

84. The other factor which constrains Manawa's ability to offer firm volume is plant outages across the portfolio, either planned or unplanned, which will impact its ability to offer firm volume.
85. On average, Manawa can expect a reasonable proportion of its theoretical generating capacity to be unavailable at any one time. Figure 7 shows that for the period since January 2023 this has been in the order of [Confidential]. However, like inflows and outflows, this too fluctuates.

Figure 7: Actual availability of Manawa generation capacity

[Confidential]

86. The need to support outages in this way further reduces the generation capacity that might be available from Manawa's generation assets to support shaped hedges.

Statement of Issues overlooks the impact of inflow volatility on the ability to offer firm volume

87. In addition to having storage available, a generator must also have confidence that fuel will be available to service the hedge at the required time. The Statement of Issues overlooks the impact of this variability.
88. Manawa's inflow volumes can vary greatly from year to year, as shown in Figure 8 below. The lines represent Manawa's inflow volumes in each year from 1951 to 2024.

Figure 8: Manawa portfolio inflow volumes by year (1951) to 2024)

[Confidential]

89. However, aggregate figures, even at a monthly level, can be misleading as to the risk being assumed. Delivering a shaped hedge requires a generator to meet fixed volume commitments in each trading period, on each day, for the duration of the contract or face the spot cost of not doing so. Therefore, even where a generator has sufficient generation to cover its commitments when viewed at an aggregate level, that generator may not be able to meet its commitments in an individual trading period particularly where their ability to store water is limited [Confidential]. The combination of volatility combined with limited storage limits the volumes that Manawa can rely on to support a shaped hedge.

Coleridge case study illustrates volatility alongside other factors

90. The degree to which looking only at storage capacity is misleading can be illustrated by examining the operation of Coleridge in Canterbury.
91. Coleridge is a 39.5MW capacity hydro power station. It is among Manawa's assets with the largest storage capacity (35GWh maximum when full). It is therefore, in principle, one of Manawa's most flexible operations. However, it is subject to variations in hydro inflows plus resource consent and other operating conditions which reduce Manawa's ability to scale up and scale down generation.
92. Figure 9 below shows Coleridge's storage potential capacity and actual lake levels between 2017 and 2025.

Figure 9: Coleridge lake storage

[Confidential]

93. Resource consent constraints confine Manawa to operating the lake **[Confidential]**. What this means in practice is that while Coleridge has nominal storage of 35GWh the maximum usable storage is only **[Confidential]**.
94. What Figure 9 also shows is that in any particular year, the lake level will be variable due to differences in hydro inflows. The coloured lines in Figure 9 show actual storage levels in the years 2017 to 2025. Figure 9 shows that storage (illustrated by lake levels) is generally higher during the summer months, tends to reduce as the catchment freezes in winter, and then increases rapidly in the late spring when the catchment thaws.
95. However, while this reflects a general trend, the timing and volume of inflows can vary greatly from year to year. This is the type of variability which makes it risky for Manawa to sell shaped hedges because the extent and timing of inflows are unpredictable in any given year.
96. Moreover, as well as being used by Manawa for electricity generation, Coleridge is also Mid - Canterbury's main water storage reservoir for irrigation water. This requires storage to be "filled" in the spring months, and priority release rights are allocated to irrigators from October to April (inclusive). This further limits Manawa's operational flexibility – even if storage levels do not seem low – and especially during the summer months as water must be stored to meet irrigation demand.
97. That final factor – others having priority rights to the same water – is an especially difficult factor for Manawa to account for in any attempts to offer firm generation. Manawa cannot control the demand that other higher priority users may have for the water. Increases in their demand for that water may coincide with periods when there is less water available.²⁶ This makes the impact of dry periods on Manawa's generation capacity especially difficult to predict, further reducing Manawa's ability to firm its generation as required for the supply of shaped hedges.
98. The impact of this can be seen in the red line in Figure 9, **[Confidential]**.

Impact of volatility illustrated by Manawa's experience with the Mercury hedge

99. The impact of volatility can be seen in Manawa's experience with the Mercury hedge.
100. At paragraph [97.1], the Statement of Issues refers to the Mercury Hedge as indicating that "Manawa would be able to sustain a high level of supply of Shaped Hedges". Even putting aside the fact that the question for the Commission is not whether Manawa could sustain a high supply of hedges, but whether it would be likely to do so, Manawa disagrees with the Commission's preliminary view. Far from evidencing that Manawa would be likely to supply shaped hedges as the Mercury hedge reduces, Manawa's experience with the Mercury hedge underscores the risks of a shaped hedge.
101. Prior to the Mercury transaction, Trustpower had supported its mass market sales of ~2,000 GWh per year from ~1,950 GWh per year of its own generation plus ~660 GWh wind per year acquired from Tilt Renewables under Trustpower's PPA with Tilt. The Mercury hedge volume approximated the mass market load that Trustpower was divesting and the term over which the Tilt PPA would be in place. It was designed to meet Mercury's objectives from the transaction, while allowing Manawa to gradually reduce its shape risk over the period of the hedge.

²⁶ For example, summer periods with low capacity likely reflect dry conditions. Those same dry conditions are likely to result in an increase in demand on water for irrigation purposes.

102. Manawa's experience since the hedge commenced in mid-2022 is that **[Confidential]**.

103. **[Confidential]**.

Figure 10: Comparison of Manawa generation and wind PPAs against Mercury hedge volumes - Net MW volumes by day and half hour

[Confidential]

Figure 11: Comparison of Manawa generation and wind PPAs against Mercury hedge volumes – Net GWh volumes summed by month

[Confidential]

Figure 12: Comparison of Manawa generation and wind PPAs against Mercury hedge volumes – Net spot market value (\$000s) summed by month

[Confidential]

Figure 13: Net volume of Manawa generation over Mercury hedge versus net spot sales [

[Confidential]

104. [Confidential].²⁷

105. [Confidential].

106. [Confidential].

107. Manawa acknowledges that the volumes of shaped hedges the Statement of Issues assumes Manawa would sell are lower than the Mercury hedge. However, the risk is the same in principle and Manawa's experience serves to highlight the risks inherent in Manawa seeking to deliver firm volumes from its portfolio.

108. Indeed, the reality is that while Manawa decided on its strategy prior to 2024, Manawa's appetite for taking electricity trading risk has further reduced following the extreme conditions that it experienced in the Winter of 2024 and continues to experience in early 2025. Among other things, this is evidenced by Manawa's adoption of new Wholesale Energy Revenue Risk Management and Credit & Counterparty Policies, which have been fundamentally re-written to better reflect Manawa's position as an IPP with variable generation assets.

109. This increased financial loss aversion is a natural response to a year where it has been forced to issue two earnings downgrades. And it is not unique to Manawa. Mercury and Meridian have both highlighted actions they are taking or regulatory changes they wish to see made which indicate that they each see increased volatility and risk in the wholesale market.

110. It is in the context of having recognised the risks outlined in this section, that Manawa's Board and management determined its go-forward IPP strategy. That strategy is discussed in the next section.

C. Manawa's IPP strategy, and why that strategy is inconsistent with the sale of shaped hedges

111. As recorded in the Statement of Issues, Manawa's IPP strategy in the counterfactual is to seek long term generation following contracts for [Confidential] of its volume (PPA contracts).²⁸ To clarify, Manawa's position is that this [Confidential] is a minimum; it is not a target, and the level of PPA contracts could be higher.

112. Manawa's strategy is evidenced in Manawa's internal documents and in its statements to the market. It is the result of a thorough and considered analysis run by the Board, evidenced by the internal documents provided to the Commission.²⁹ The Board determined that the IPP model was, by some distance, the approach that maximised shareholder value. There is no reason to suggest that the Commission should substitute a different view to that reached by Manawa's Board.

²⁷ [Confidential]

²⁸ Statement of Issues at [96].

²⁹ See, in particular, the documents provided in relation to [Confidential].

113. To be clear, the PPAs Manawa intends to enter would entitle the counterparty to a fixed proportion of Manawa's actual generation (i.e., the notional volumes vary in accordance with Manawa's generation volumes), rather than a fixed volume independent of Manawa's generation. In this way, the PPA contracts would be fundamentally different from a shaped hedge (a point we return to below). Generation following PPAs of this type are the most common type of offtake agreement in New Zealand and in other markets such as Australia, Europe and the US.
114. The question for the Commission is that having committed to sell at least [Confidential] of its generation as PPA contracts, what would Manawa do with the residual uncontracted demand? More specifically, is it likely that Manawa would sell (i.e., contract) a portion of this maximum residual [Confidential] of its generation – which will be a variable amount each year – as shaped hedges?
115. Manawa says there is no likelihood that it would sell this residual as shaped hedges. In short, given Manawa's relative inability to predictably flex its generation to meet a fixed volume requirement from its own generation (see Section B), selling the residual as shaped hedges would expose Manawa to an unacceptable downside risk, erode shareholder value, and undermine its IPP strategy. This section explains:
- 115.1 Manawa's IPP strategy and why this strategy is not risk averse;
- 115.2 how Manawa's IPP strategy drives its contracting strategy and why selling shaped hedges would be high risk for Manawa;
- 115.3 the negative impact that selling shaped hedges would have on Manawa's WACC and value;
- 115.4 that Australian IPPs have not typically sold shaped hedges into the market;
- 115.5 why the Commission's focus on a price premium for shaped hedges as an indicator of Manawa's likely behaviour is misplaced;
- 115.6 why the PPAs Manawa is likely to sell cannot be considered to be functionally similar to shaped hedges; and
- 115.7 why the Commission's reliance on references to Manawa's documents as supporting a conclusion that there is a real chance it would sell shaped hedges is misplaced.

The rationale for Manawa's IPP strategy is to build new generation

116. As the Commission has acknowledged, Manawa has an established pipeline of investment opportunities that it intends to pursue absent this transaction.³⁰ Manawa's IPP strategy is designed to support the funding and development of that pipeline.
117. To develop its pipeline, [Confidential].
118. [Confidential].
119. [Confidential].³¹
120. [Confidential].³² [Confidential].³³ [Confidential]

³⁰ Statement of Issues at [14.1].

³¹ [Confidential]

³² Statement of Issues at [180.4].

³³ [Confidential]

[Confidential]

- 121. [Confidential].
 - 122. [Confidential].³⁴ [Confidential].³⁵
 - 123. [Confidential].
 - 124. [Confidential].
 - 125. [Confidential].
 - 126. [Confidential].
 - 126.1 [Confidential].
 - 126.2 [Confidential].³⁶
 - 127. [Confidential].³⁷ [Confidential].³⁸ [Confidential].
 - 128. [Confidential].
 - 129. [Confidential].
 - 130. [Confidential].
 - 131. [Confidential].
 - 132. [Confidential].
- Figure 14: [Confidential].³⁹
[Confidential].
- 133. [Confidential].

Implications for debt funding and valuation implications

- 134. [Confidential].
- 135. [Confidential].
- 136. [Confidential].
- 137. [Confidential].
- 138. [Confidential].
- 139. More specifically, Manawa expects that if it entered into shaped hedges, the market's and lenders' views of Manawa's WACC would increase, given the additional risks being borne, particularly in light of the events of the last 12 months and the challenges to Manawa of the

³⁴ [Confidential]
³⁵ [Confidential]
³⁶ [Confidential]
³⁷ [Confidential]
³⁸ [Confidential]
³⁹ [Confidential]

Mercury hedge. This arises because shaped hedges will result in Manawa having a greater variability in revenues and ultimately a higher WACC.

140. The differences in WACC – differences in the asset beta – can be illustrated by looking at three different WACC estimates ascribed by the market for three different IPP generators with three different revenue strategies in Australia: Tilt Renewables, Infigen Energy, and ERM Power.
- 140.1 Tilt Renewables was a highly contracted (90%+ through generation-following PPAs) owner and operator of wind generation assets in Australia and New Zealand. It was acquired in 2021 by a consortium comprising Mercury (New Zealand assets), and QIC, Future Fund, and AGL Limited (Australian assets). Tilt Renewables had the lowest risk revenue strategy of the three.
- 140.2 Infigen was a ‘green gentailer’ comprising a portfolio of operating wind assets, a BESS firming asset and two gas-fired peaking generation assets. Its revenues comprised generation-following PPAs, flat and shaped hedges with C&I customers, and merchant/short-term hedges on the ASX. It was acquired by Iberdrola in 2020.
- 140.3 ERM was a retailer to C&I customers with relatively short-tenor contracts with a mix of investment-grade and sub-investment grade customers. ERM balanced risk through its ownership of gas peaking generation assets. It was acquired by Shell in 2019. ERM had the highest risk revenue strategy of the three.
141. In order to compare market views on WACCs for the above companies, Manawa used estimates from equities research analysts from mid-2019 (i.e., when all three of the companies were still listed). It is important that the data points are from the same time period in order to ensure that variances in WACC are not interest rate driven.
142. The consensus WACCs for these companies at the time were 7.1% for Tilt, 8.4% for Infigen and 11.5% for ERM Power.⁴⁰ This indicates the substantial WACC premiums for riskier revenue strategies, with this delta existing despite Infigen and ERM Power owning gas-fired peaking generation. In the absence of this, the WACC premium would likely be much higher again.
143. The reduction in WACC is not only a benefit for shareholders, it also reduces the ‘levelised cost of energy’ (LCOE) of a new generation asset. This implies that all else being equal, an IPP can supply energy at a lower cost to an off taker through a generation-following PPA relative to a flat hedge, and at a lower cost again relative to a shaped hedge.

IPPs do not typically sell shaped hedge products

144. Manawa’s strategy and its position that it would not sell shaped hedges is orthodox for an IPP, and is consistent with the way IPPs operate overseas. IPPs typically enter ‘generation-following’ contracts with residual generation sold on the spot market.
145. Where IPPs overseas have written fixed volume hedges, these have tended to be ‘flat swaps’,⁴¹ for only a small portion of generation volume, and where those IPPs have ‘firming’ capacity (i.e., dispatchable gas generation and/or BESS). For the reasons, already explained above Manawa does not have this firming capacity, particularly because in years when its risk is high (and it has a scarcity of available fuel (i.e., water)), spot prices will also tend to be high.
146. Looking at IPPs in the Australian market illustrates this. Of the ~ 27 GW of operating and under-construction wind and solar generation capacity in the Australia market, the majority of these projects’ generation volumes are mostly or fully contracted through PPAs. These PPAs are

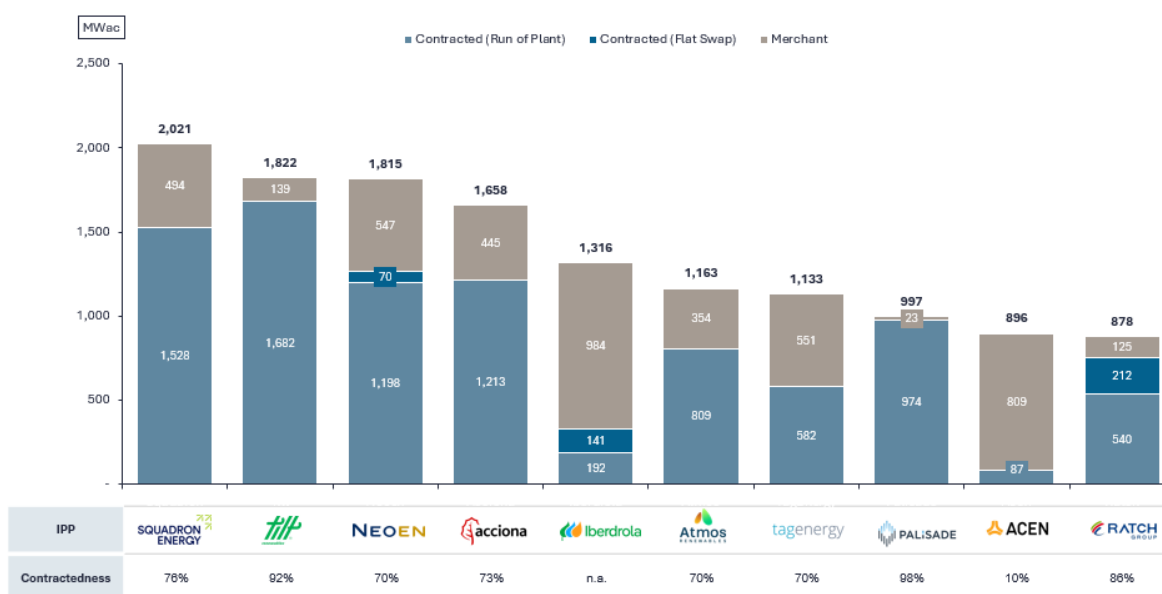
⁴⁰ Tilt WACC based on average of Credit Suisse and Deutsche Bank, Infigen WACC based on average of J.P. Morgan, Canaccord and RBC, ERM WACC based on average of Macquarie and J.P. Morgan.

⁴¹ Fixed volume, no shape.

typically 'run of plant' or generation-following, rather than a flat or shaped product.⁴² Put another way, it is the off takers that manage the price/shape risk, rather than the generators.

147. The portion of contracted versus merchant offtake for the largest (top 10) Australian wind/solar platforms is shown in Figure 15 below. This indicates that the most common contractedness levels amongst the larger portfolios is in the range of ~70-80%, [Confidential]. Whilst both Palisade Investment Partners' portfolio and the Tilt Renewables portfolio have higher contractedness levels than this, none of the assets in these portfolios are exposed to generation shape risk (in other words, all the PPAs are run of plant / generation-following, and neither portfolio has written any flat or shaped hedges).

Figure 15: The contractedness vs. merchant split of the ten largest Australian wind/solar platforms^{43 44}



148. There are few examples of Australian IPPs selling fixed volume flat hedges (e.g., Neoen, RATCH/Nexif). However, in the case of Neoen this is only for less than 4% of its generation volume and is also backed by BESS firming capacity, while in the case of RATCH/Nexif this is a flat hedge supported by gas-fired peaking capacity.
149. The only example of an IPP in Australia selling 'shaped hedges' is Iberdrola Australia (formerly Infigen). However, Iberdrola does maintain a meaningful generation 'buffer' of merchant volumes. Iberdrola also has both gas and BESS firming capacity available to it.⁴⁵
150. Manawa understands that IPPs without gas and/or BESS firming capacity have not entered into fixed volume contracts at all.

⁴² It is also relevant that these IPPs have not needed to acquire shaped hedges (nor any other type hedges) to build renewable generation or sell the generation output of their projects.

⁴³ Source: Company websites, press. Note that the chart shows top ten wind and solar portfolios, based on total of operating and under-construction capacity, on an equity-interest basis.

⁴⁴ Iberdrola does not disclose its non-PPA contracting mix. Therefore, the split of C&I contracting vs. merchant is not possible to identify.

⁴⁵ Iberdrola acquired Infigen Energy (ASX: IFN) in 2020. Infigen's last results presentation prior to announcement of the acquisition indicated that its target contracting ratio was ~70-80% of expected renewable energy generation.

The relevance of the “premium” on shaped hedges

151. The Statement of Issues refers to the premium attaching to shaped hedges as a reason why the Commission believes that it cannot exclude the real chance of Manawa selling shaped hedges. Manawa makes two points in response.
- 151.1 First, while Manawa accepts that shaped hedges are sold at higher prices than other types of hedges,⁴⁶ what matters is the value of a contract over its term. The higher price is reflective of the underlying risk to the particular generator associated with delivering fixed volume at some point in the future from its portfolio. That risk will be different for each generator as each generator's portfolio is different. The higher revenue risks arising from a shaped hedge means that a generator will apply a higher discount rate to future revenues from a shaped hedge than for lower risk products. This will reduce the net present value of a shaped hedge relative to other products. A focus on the face value of a shaped hedge risks overlooking this key difference in value.
- 151.2 Second, the existence of a “premium” is not news to Manawa. Manawa was well aware that a “premium” applied to the sale of shaped hedges when it determined its strategy. Indeed, that was the very reason why [Confidential].⁴⁷

The PPAs Manawa would enter are not functionally similar to shaped hedges

152. At paragraph [98.3], the Commission asserts that the PPAs Manawa would sell would be ‘shaped’ and therefore functionally similar to shaped hedges. This is not correct.
153. As an initial point, Manawa’s view is that [Confidential]. Manawa, like any rational market participant, will seek to maximise generation when spot prices are high. [Confidential].
154. In any event, it is not clear what inference the Commission seeks to draw from this statement. [Confidential]?
155. Either way, these [Confidential] a generation following contract into something that equates to a shaped hedge. [Confidential].
156. [Confidential].

Manawa’s internal documents do not support the preliminary view that it would sell shaped hedges

157. Manawa’s internal documents are entirely consistent with its position that it is not likely that it would sell shaped hedges in the counterfactual.
158. [Confidential]
- 158.1 [Confidential]⁴⁸
- 158.2 [Confidential]⁴⁹
- 158.3 [Confidential]⁵⁰
159. [Confidential].

⁴⁶ Cf Statement of Issues at [97.4].

⁴⁷ [Confidential]

⁴⁸ Statement of Issues at [97.3] and footnote 73; at [105.2] and footnote [85]; at [122.2] and footnote 103.

⁴⁹ Statement of Issues at [97.3] and footnote 73; at [105.2] and footnote [85]; at [122.2] and footnote 103; at [180.4] and footnote 166.

⁵⁰ Statement of Issues (citing page 39) at [105.2] and footnote [85]; at [122.2] and footnote 103.

160. [Confidential].

161. [Confidential].

162. [Confidential].

163. [Confidential]:

163.1 [Confidential]:

[Confidential]

163.2 [Confidential]:

[Confidential]

[Confidential]

164. [Confidential].

165. [Confidential]

[Confidential]

166. [Confidential].

[Confidential].

167. [Confidential].

168. [Confidential].

169. [Confidential].

169.1 [Confidential].

169.2 [Confidential].

169.3 [Confidential].

[Confidential]

170. [Confidential].

171. [Confidential].⁵¹

[Confidential].

172. [Confidential].

173. [Confidential].

174. [Confidential].

⁵¹ [Confidential].

D. Mercury hedge is not evidence that Manawa would be likely to sell shaped hedged products in the future

175. The Statement of Issues places considerable weight on Manawa having agreed the Mercury, [Confidential], hedges to support the Commission's view that Manawa would be likely to supply additional shaped hedges in the counterfactual.
176. The weight the Commission places on these agreements is misplaced not only for the reasons highlighted in Sections B and C but also based on the context in which those agreements were signed, and in light of Manawa's conduct since that time. To assist the Commission, Attachment A provides a timeline of relevant events.

Mercury hedge must be viewed in the context of when and why it was signed

177. The Mercury hedge cannot be viewed in isolation from when and how it was signed. The Mercury hedge was signed in June 2021. As Manawa has told the Commission previously, there were three reasons why entering that hedge at that time as part of the retail sale was advantageous, namely that:
- 177.1 the Mercury hedge was a condition of Mercury's acquisition of Trustpower's retail business;
 - 177.2 the 10 year contract, with volumes rolling off progressively, reduced Manawa's shaped risk exposure over time while providing the new Manawa with a degree of certainty of sales volumes and revenues and allowing Manawa time to solidify itself as an IPP and to determine its strategy; and
 - 177.3 the shape of the hedge, while carrying some risk to Manawa, was deemed acceptable in light of the strategic divestment, the purchase price, and the hedge's substitution for the previous mass market load commitment.
178. Put another way, the Mercury hedge was one component of a wider transaction and cannot be treated as evidence of a hedge that Manawa would have otherwise entered into or would enter into again. This is particularly so given:
- 178.1 Manawa's experience has been that the risk of the Mercury hedge has [Confidential], particularly due to the increasing volatility of the wholesale market; and
 - 178.2 at the time the Mercury hedge was entered into, Trustpower/Manawa did not have a meaningful pipeline of generation developments [Confidential].

The [Confidential] are not evidence that Manawa would offer material volumes of shaped hedge products in the counterfactual

179. Manawa has provided evidence through its contemporaneous internal documents, previous submissions and statements at interview which explain the context of [Confidential]. Manawa is disappointed that the only reference in the Statement of Issues to that evidence is an oblique reference to Manawa having [Confidential].⁵²
180. The weight the Commission has placed on [Confidential] is inconsistent with the [Confidential]. Simply put, [Confidential] provide no guide to how Manawa would act in the counterfactual.
181. [Confidential].

⁵² Statement of Issues at [97.2].

182. [Confidential].

183. [Confidential].

184. [Confidential]

[Confidential]

185. [Confidential]

[Confidential]

186. [Confidential]

187. [Confidential]

188. [Confidential]

Manawa's decisions and actions since [Confidential] are inconsistent with the supply of additional shaped hedges

189. As explained to the Commission in Manawa's previous submissions and at interview, [Confidential]

190. This is reflected in other decisions Manawa has made after [Confidential]. For instance:

190.1 As acknowledged in the Statement of Issues, Manawa did not express any interest in the period of Q4 2022 to Q2 2024 for the supply of shaped hedges to independent generators.⁵³

190.2 Manawa has not run any further tenders for shaped hedges, or any other processes seeking to sell shaped hedges, for any type of customer.

190.3 [Confidential].⁵⁴

191. In addition, [Confidential].

192. [Confidential].⁵⁵ [Confidential].

193. [Confidential]⁵⁶

193.1 [Confidential];

193.2 [Confidential];

193.3 [Confidential].

194. [Confidential]. This serves to emphasise that, absent the proposed acquisition, Manawa would not be entering the same sorts of contracts that it had in the past. [Confidential].

⁵³ Statement of Issues at [119].

⁵⁴ [Confidential]

⁵⁵ See, for example, [Confidential]

⁵⁶ [Confidential].

195. Manawa submits that all these actions, [Confidential], and reinforced by recent market experience, are reliable evidence that it would not be likely to supply shaped hedges in the counterfactual.
196. Certainly, Manawa's subsequent conduct and decisions are better evidence of its likely conduct than decisions Manawa made in its infancy in late 2022. Those decisions were expressly made to [Confidential].
197. Relying on those contracts as evidence of what Manawa would do in the counterfactual ignores the context in which they were entered into and how things have changed since then.

E. Even if Manawa were to sell shaped hedges, the volume would be minimal and high cost and Manawa is [Confidential]

198. For all the reasons explained in the previous sections, Manawa says that it is not likely to sell shaped hedges in the counterfactual. Responsibly, however, Manawa accepts that it can never say never. It is always possible – albeit unlikely – a counterparty may present an opportunity that is sufficiently compelling that Manawa would see it as value enhancing.
199. Even in the unlikely event that Manawa were to sell some shaped hedges, the volume it would sell would not approach anything near the 10-15% of its generation volume as assumed by the Commission.
200. The Statement of Issues has overestimated the amount of uncontracted volume that would be available and made an implausible assumption as to the amount of any residual volume that would be sold as shaped hedges. This implausible assumption ignores the other sales channels that Manawa has available and which it prefers, and fails to take account of the fact that the Manawa hedge price would almost inevitably be higher than other generators could offer, as Manawa would be a high cost supplier of these types of hedges.
201. Finally, while acknowledging that Manawa will be conscious of a potential customer's creditworthiness given its experience with Prime Energy,⁵⁷ the Statement of Issues does not address the question of counterparty risk when assessing to whom Manawa would sell shaped hedges.
202. From Manawa's perspective, it is difficult to envisage [Confidential].

Any volume Manawa would sell would be materially lower than assumed in the Statement of Issues

203. There is no prospect that Manawa would sell anything near 10-15% of its generation as shaped hedges. It is not clear from the Statement of Issues how the Commission arrived at this figure. For example, footnote 83 records:
- ... we consider that in the counterfactual Manawa is unlikely to offer a de minimis level of its uncontracted volume as Shaped Hedges but also that it is unlikely to offer a large proportion of its uncontracted volume as Shaped Hedges.
204. However, contrary to what footnote 83 suggests, 10% to 15% of Manawa's generation would be [Confidential] Manawa's uncontracted generation. Not only that, it would be a large proportion of Manawa's entire generation volume.
205. The Statement of Issues accepts that Manawa would contract between [Confidential] of its generation under PPA contracts. From Manawa's perspective, this [Confidential] is a minimum

⁵⁷ Statement of Issues at [96.3].

not a target. There is every chance the figure could be higher as is the case for some other IPPs in Australia.

206. The Statement of Issues also accepts that generators do not typically contract all their volume. At present, given the variable nature of its hydro and any purchased wind volume (i.e., the GWAP/TWAP ratio), Manawa aims to keep [Confidential] GWh of its generation as a buffer to deal with volume shortfalls but also the impact of nodal pricing differences (i.e., location factor) and the earned value of the generation. This approach is core to Manawa's portfolio risk management and is assessed against Manawa's annual hydro generation volumes and the wind generation volumes purchased via PPAs with Mercury (i.e., ~ 2,600GWh). This equates to approximately [Confidential] of this total volume.
207. There is no reason to believe Manawa's approach of keeping [Confidential] of its generation as a buffer will change in the counterfactual. It is likely that Manawa will in fact increase this buffer to manage its risk given the increasing levels of volatility observed and expected in the market and the nature of its generation portfolio.
208. It follows, that the maximum amount of non-PPA volume available to be contracted in some way would be, at most, in the range of [Confidential], noting that as stated above, Manawa's buffer is very likely to increase in the future, particularly as its acquisition of wind volume from Mercury (Tilt PPAs) declines.
209. And for all of the reasons already outlined in previous sections, it is not plausible to suggest that Manawa would effectively contract *all* of this residual volume as shaped hedges. Such an approach would not only expose Manawa to high risk, but it would also mean that Manawa would forego all its other sales channels including increased spot market sales [Confidential], baseload hedges etc. [Confidential].
210. Therefore, it is not plausible that Manawa would ever commit such a significant amount of its generation to shaped hedges. Its starting point is that it will commit none.

If Manawa were to offer shaped hedges, it would be a high cost supplier of hedges

211. It follows that it is also implausible to believe that there would be sufficient actual demand at the prices necessary to incentivise Manawa to sell such a large volume of shaped hedges. While the Statement of Issues refers to there being demand for shaped hedges, that demand cannot be considered in isolation from the price (and more importantly the proper assessment of underlying risk adjusted value) that would be needed to convince Manawa to sell a shaped hedge rather than sell that volume through a more preferred channel.
212. In this respect, while Manawa accepts that shaped hedges are sold at higher prices than other types of hedges,⁵⁸ the higher price is reflective of the underlying risk to the generator associated with delivering fixed volume at some point in the future, and will differ for each generator as each has a very different mix of generation technology, scale and fuel type and availability.
213. For Manawa, for the reasons described above, the risk level is a function of:
- 213.1 the negative correlation between Manawa's generation and spot prices (i.e., prices tend to be high when Manawa's generation is low);
 - 213.2 Manawa's limited ability to flex its generation to deliver firm volumes; and
 - 213.3 the need for Manawa to [Confidential].

⁵⁸ Cf Statement of Issues at [97.4].

214. For all these reasons, even were Manawa to be a seller of shaped hedges, it would be a high-cost seller and, therefore, would not be a competitive constraint. That is, the price it would require for a shaped product is likely to have a materially higher risk premium than the other gentailers. It is this high price which will mean it is unlikely that those seeking shaped hedge products will acquire them from Manawa.
215. Put simply, counterparties will not be willing to pay the premiums that would be necessary to incentivise Manawa to assume the risk of selling a shaped hedge. The probability that the confluence of events necessary to bring about a shaped hedge contract between Manawa and a counterparty for any volume of note is very small.
216. Indeed, this is one of the benefits of the Contact acquisition. Because Contact's and Manawa's generation are not correlated (but are both negatively correlated to price), the acquisition will have a strong diversifying effect on Contact's portfolio, lowering its risk and therefore increasing its ability to supply shaped hedges.

Any counterparty would need to meet Manawa's credit and risk criteria

217. Finally, even if a counterparty were willing to pay the premium that would be necessary for Manawa to contract to sell shaped hedges (or any hedges), that party **[Confidential]**.
218. Manawa adopted a new Credit & Counterparty Policy following Prime Energy's default in 2024⁵⁹ and Manawa's move to be an IPP, which resulted in Manawa adopting a new Wholesale Energy Revenue Risk Management Policy.
219. Manawa engaged Deloitte to help Manawa develop the new Policy and to advise on industry credit management best practice.
220. Currently, Manawa is **[Confidential]**.

F. Concluding comments: summary of Manawa's position

221. This submission has focussed on whether Manawa would be likely to sell shaped hedges in the counterfactual. Based on the evidence before it, the Commission should be satisfied that there is no "real chance" of Manawa selling shaped hedges, i.e., that scenario is not likely in the counterfactual. This position is entirely consistent with:
- 221.1 statements Manawa provided to the Commission when interviewed;
 - 221.2 additional information Manawa provided to the Commission on 6 December 2024 about its strategy including why the **[Confidential]** hedge contracts it has previously entered do not provide any guide as to what it would do in the future;
 - 221.3 contemporaneous Manawa board documents which Manawa provided to the Commission and which evidence its strategy;
 - 221.4 commentary in its investor communications supporting this strategy, which is widely available given Manawa is a publicly listed company;
 - 221.5 Manawa's conduct in the market; and

⁵⁹ That default was, by a significant margin, the worst bad debt loss Manawa (or Trustpower before it) had ever experienced.

- 221.6 the way IPPs have operated in New Zealand previously and operate in overseas markets.
222. And while Manawa determined its strategy in 2023 and early 2024, events since then have only served to highlight the increasing volatility of the wholesale energy market and reinforce Manawa's view that its strategy is the correct one.
223. Manawa submits that there is no basis for the Commission to substitute a different commercial strategy for Manawa to the strategy which Manawa's Board has decided on and which has described and evidenced to the Commission.
224. More generally, the Commission should be satisfied that the acquisition will not substantially lessen competition in any market in New Zealand for the reasons outlined in this submission but also those outlined in Contact's submission.
225. In short, Manawa is a small generator with only 4% of New Zealand's total generation in a market characterised by rapid development of new generation. The merged firm will be, at best, the second largest generator in New Zealand and, as explained in Contact's submission, strong competition will remain and constrain the merged firm on all fronts and at all levels of the market.
226. Moreover:
- 226.1 while Manawa is an independent generator not a gentailer, Manawa is neither a price setter nor a disrupter in the market; and
- 226.2 as described in this submission, Manawa is not a viable and economic provider of shaped hedges such as peak and super peak contracts.
227. None of this will change absent the transaction.
228. In contrast, as Contact has outlined in its submission and to the market more generally, the benefit of this transaction is that it enables Contact to harness Contact and Manawa's complementary hydro generation inflows, thereby creating a broader and more resilient portfolio to the benefit of competition in the New Zealand market.
229. Manawa is happy to provide any further information the Commission may need, or answer any further questions.

Attachment A: Timeline of key events

[Confidential]

Attachment B

[Confidential]