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To
Environmental Protection Authority

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By Email
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Tēnā koe

Fast-track Approvals Act 2024: Letter supporting Westpower Limited's Waitaha Hydro Scheme Project Application

1. INTRODUCTION

Purpose

1.1 This letter is written in support of Westpower Limited's (**Westpower**) application under the Fast-track Approvals Act 2024 (**FTAA**) for approvals relating to its Waitaha Hydro Scheme Application (**Application**) lodged today. It confirms our opinion that the Application:

- (a) is consistent with its Schedule 2 listing under the FTAA and within scope;
- (b) is complete in respect of the requirements of s 46(2) of the FTAA;
- (c) does not seek any approvals that are 'competing applications' or are 'existing resource consents for the same activity' under s 47;¹
- (d) does not seek any concession approvals that are incompatible with existing concessions under Schedule 6, cl 7(3)(b);²
- (e) has acceptable environmental effects and significant regional and national benefits; and
- (f) proposes complete and proportionate effects management in accordance with the purpose of the FTAA.

1.2 While the key applicable legal framework and facts are addressed below, the Assessment of Environmental Effects in section 7 provides a detailed assessment of the Application against the relevant provisions and that is not repeated here.

¹ Consistent with the two section 30 letters included. Letters of support from resource consent holders in areas affected by the Project also confirm their view that they can fully exercise their consent if Westpower's Application is approved.

² Letters of support from current concession holders in areas affected by the Project confirm their view that there is no incompatibility between their existing rights and Westpower's Application are provided.

Background

- 1.3 Westpower (as the authorised person) has a project listing in Schedule 2 of the FTAA for "Waitaha Hydro". The project description and approximate geographic location recorded in the Act are:
- (a) Develop a hydro scheme in the Waitaha River to provide renewable energy, including—
 - (i) constructing, operating, and maintaining a weir to divert a portion of the Waitaha River into an approximately 1.5 kilometre tunnel to convey water to a powerhouse;
 - (ii) constructing and maintaining an access road; and
 - (iii) a 66 kV transmission route, conveying power from the scheme to the distribution connection point on State Highway 6; and
 - (b) Within the true right bank of the Waitaha River, between the lower end of Kiwi Flat and Macgregor Creek within Waitaha Valley, 38 kilometres south of Hokitika.³
- 1.4 Westpower Limited (**Westpower**) applies for all necessary approvals required to construct, operate and maintain a Hydro-Electric Power Scheme (**Scheme** or **Project**) on the Waitaha River including:
- (a) Resource consents (district and regional) that would otherwise be applied for under the Resource Management Act 1991 (**RMA**) (s42(4)(a)) including any consents required by a National Environmental Standard;
 - (b) Concession(s) that would otherwise be applied for under the Conservation Act 1987 (s42(4)(e));
 - (c) Wildlife approvals that would otherwise be authorities applied for under the Wildlife Act 1953 (s42(4)(h)); and
 - (d) Complex freshwater fisheries activity approvals that would otherwise be applied for under regulation 42 or 43 of the Freshwater Fisheries Regulations 1983 (s42(4)(j));
- (together, the **Application**).
- 1.5 The Project description and geographic location are within the scope of the description in Schedule 2 of the FTAA.
- 1.6 The Application is for a hydro-generation scheme that will input 23MW of renewable electricity into the regional electricity network (that can also feed into the national transmission grid). It is supported by a suite of expert technical assessments appended to the Assessment of Environmental Effects. A copy of the Environment Court Practice Note 2023 Code of Conduct was provided to all experts.⁴
- 1.7 The relevant land affected by the Application sits within six categories:

³ While different measurements are used, the Application is consistent with this approximate location. 38 km is an aeronautical measurement flying from Hokitika to the Waitaha Valley (the location of the Scheme). The Project Description and technical assessments of effects refer to local road measurements from Hokitika to the Scheme.

⁴ The Assessment of Effects: Recreation will be updated and provided to the EPA with a Code of Conducts statement once the expert has returned from overseas mid-August.

- (a) Crown land, administered by the Department of Conservation (**DOC**);
- (b) Crown land, administered by Land Information New Zealand (**LINZ**);⁵
- (c) private property, owned by the McLean Company Limited;
- (d) land vested in and administered by Westland District Council as Local Road (Waitaha Road);
- (e) land vested in and administered by NZ Transport Agency Waka Kotahi as State highway (State Highway 6 Harihari Highway); and
- (f) land subject to existing Westpower owned electricity infrastructure (from SH6 through to Westpower's connection point at its Waitaha Substation), that will be upgraded.⁶

2. COMPLETENESS

Section 46(2) is met

- 2.1 Consistent with the purpose of the FTAA and the procedural principles,⁷ the "completeness test" is a time-bound procedural check that the minimum statutory information requirements are met. It is not an assessment of the merits of the Application.
- 2.2 The Application meets the tests of section 46(2) which the EPA must decide on within 15 working days of its lodgement.

No competing applications or existing consents for the same activity

- 2.3 Pursuant to s 47,⁸ the EPA can rely on the additional 10 working days to consider⁹ whether the Application has 'competing applications'¹⁰ and whether there are existing resource consents for the same activity.¹¹
- 2.4 Section 30 requires that, before lodgement, relevant councils (here West Coast Regional Council and Westland District Council) confirm whether they consider there are existing resource consents for the same activity.
- 2.5 There are no competing applications. Both councils have confirmed that there are no relevant existing resource consents for the same activities that Westpower seeks approvals for.

⁵ As included in Part A Substantive Application, there are applications made for Crown Land, administered by LINZ: Bed of Allen Creek: For a right of way, right to convey electricity and telecommunication (both areas limited to the transmission line corridor); and Bed of Waitaha River: For right of way, right to convey electricity and telecommunication, and licence for gravel extraction. As included in Part B Assessment of Environmental Effects, the rights sought enable Westpower to traverse the bed of Macgregor Creek and Allen Creek, at the location of the existing farm track crossing (access road and transmission lines) and to use parts of the bed of the Waitaha River (below its confluence with Macgregor Creek) for gravel extraction. There are alternatives with only minor amendment that the Applicant could consider if the LINZ interests were not granted (given their common nature, Westpower has no reason to consider these instruments will not be secured).

⁶ An upgrade is consistent with Westpower's rights under the Electricity Act 1993.

⁷ FTAA, s 10.

⁸ Defined as: *competing application, in relation to a substantive application (application A), means a substantive application or an application for an approval under a specified Act (application B) if the approval sought or applied for by application B—*

(a) *relates to the same natural and physical resources as an approval sought by application A; and*

(b) *could not be fully exercised (if at all) if the approval referred to in paragraph (a) were granted.*

⁹ Under delegation from the Minister for Infrastructure.

¹⁰ Under s 47(3).

¹¹ Under s 47(8).

Relevant information requirements

- 2.6 Focussing on the key sections of the FTAA, the EPA's assessment is whether the information:
- (g) required by clauses 5–7 of Schedule 5, clause 3 of schedule 6, clause 2 of Schedule 7 and clause 3 of Schedule 9 is included; and
 - (h) is "...specified in sufficient detail to satisfy the purpose for which it is required" (s 44 of the FTAA).

Procedural compliance

- 2.7 The Application has been carefully and comprehensively prepared to ensure completeness obligations would be met. That includes, in the Assessment of Environmental Effects extensive information:
- (a) on the regional and national benefits that will result from construction and operation of the Scheme;
 - (b) on the level of residual environmental effects and mitigation included in the proposed conditions and management plans (including compensatory payments for residual levels of effect);
 - (c) that the effects management proposed is proportionate to the Project's benefits;
 - (d) on the Application's overall consistency with the relevant planning provisions and statutory tests; and
 - (e) that the approvals can be granted.
- 2.8 To support the completeness test, Westpower and its consultants have met the EPA's application requirements, being to:
- (a) complete the Fast-track Application Form including checklists A (resource consent), D1 (concession), E (wildlife approval), G (complex freshwater fisheries approval), and J (listed project);
 - (b) include Navigation Guidance Tables in Part A of the Application, both providing cross referenced information requirements to content in the Application; and
 - (c) supply a redacted version of the Application.

3. APPLICABLE LEGAL FRAMEWORK AND KEY FACTS

Purpose and decision-making approach

- 3.1 The FTAA is designed to facilitate the delivery of infrastructure and development projects that will provide significant regional or national benefits. It consolidates multiple statutory approval processes into a single, alternative approval regime, replacing the usual processes under various specified Acts. All functions, duties and powers under the Act must be performed proportionately, taking all practicable steps to use timely, efficient, consistent, and cost-efficient processes.¹²
- 3.2 There is a strong presumption in favour of enabling projects with significant benefits, and the panel must give the greatest weight to the FTAA's purpose in its decision-making.

Key facts

- 3.3 The key facts about the Application are:
- (a) It will provide regional benefits to the West Coast and national benefits to New Zealand by:
 - (i) giving substantial support to the local economy during construction;
 - (ii) increasing renewable electricity;
 - (iii) increasing the resilience of the region's electricity supply;
 - (iv) reducing electricity customer's risk and costs at times of nationally low electricity supply;
 - (v) producing benefits for mitigating climate change by contributing to New Zealand's emissions reductions goals (including protecting biodiversity);
 - (vi) supporting regional electrification and growth;
 - (vii) supporting Poutini Ngāi Tahu (who are a Project partner);
 - (viii) supporting energy efficiency (by reducing transmission losses by generating electricity closer to demand); and
 - (ix) improving resource use efficiency by increasing the geographic diversity of supply of electricity from hydro-generating stations.
 - (b) There is strong support for the Application from Poutini Ngāi Tahu (a Project partner) who has confirmed that cultural effects and Treaty settlement matters including environmental, wildlife, taonga species and taonga fish species have been appropriately addressed. Poutini Ngāi Tahu, who exercises tino rangatiratanga within and kaitiakitanga of natural resources on the West Coast (including the Waitaha River) is the representative entity for Ngāti Waewae and Ngāti Makaawhio.
 - (c) Environmental effects are appropriately mitigated and are overall no more than minor. More specifically:

¹² FTAA, s 10.

- (i) two residual significant effects **at a local-scale** (meaning locally confined to the Headworks and Power Station site) remain in relation to recreation being:
 - (1) a temporary perceptual effect, during construction works; and
 - (2) a permanent perceptual effect as to the change in the remote back-country experience because of the visible structures, relating to the Scheme;
- (ii) at a wider scale (beyond the extraction reach and Kiwi flat) none of the effects are considered significant;
- (iii) while at the local-scale recreation effects above are assessed as significant, the corresponding natural character assessment determines the residual perceptual effect, again at a local-scale, as more than minor (but not significant); and
- (iv) some positive ecological effects over the long-term may result from the compensation packages Westpower propose in the conditions and management plans.

No mandatory or discretionary reason to decline the approvals

- 3.4 The key decision-making criteria for the Panel is that it must decline an approval if one or more of the following matters apply:
- (a) the approval is for an ineligible activity;¹³ and/or
 - (b) the Panel considers that granting an approval would breach section 7 of the FTAA, which sets out obligations relating to Treaty settlements and recognised customary rights;¹⁴ and/or
 - (c) for the concession, if giving effect to the concession would result in the conferral of an interest in land that is incompatible with an existing interest in land.¹⁵
- 3.5 There are no applicable mandatory grounds to decline the Application.
- 3.6 The only ground on which the Panel has discretion to decline an approval is if, in making its decision,¹⁶ it forms the view that:
- (a) there are one or more 'adverse impacts'¹⁷ in relation to the approval sought;¹⁸ and
 - (b) those adverse impacts are sufficiently significant to be out of proportion to the Project's regional or national benefits considered when giving weight to the FTAA,¹⁹ even after taking into account of:²⁰
 - (i) any conditions that the Panel may set in relation to those adverse impacts; and

¹³ FTAA, ss 5 and 85(1)(a). There is no land required for the Project that fits within the "meaning of ineligible activity" in s 5.

¹⁴ FTAA, ss 7 and 85(1)(b).

¹⁵ FTAA, s 85(1)(e) and sch 6 cl 7(3)(b). Clauses 7(3)(a) and (c), (4) and (5) of sch 6 do not apply to the Scheme. The application is not for a lease, licence, permit, or easement in respect of a reserve other than a Crown-administered reserve; and the term sought is less than 50 years. Letters of support are provided for the Application from current concession holders in areas affected by the Project.

¹⁶ In accordance with s 81(2)(f) of the FTAA.

¹⁷ FTAA, s 85(5). This term is broadly defined as meaning any matter "*considered by the panel in complying with section 81(2) that weighs against granting the approval*".

¹⁸ FTAA, s 85(3)(a).

¹⁹ In accordance with s 81(4) of the FTAA.

²⁰ FTAA, s 85(3)(b).

- (ii) any conditions or modifications that Westpower may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.

3.7 There are no reasonable grounds on which the Panel can decline the Application because the residual adverse effects are appropriately mitigated and are proportionate to the significant regional and national benefits of the Application (that is, the benefits outweigh the residual adverse effects).²¹

4. THE APPROVALS CAN BE GRANTED

4.1 The FTAA establishes a streamlined, purpose-driven process for approving major projects, with a strong presumption in favour of enabling projects with significant benefits, subject to robust but proportionate consideration of adverse effects and compliance with Treaty and other statutory obligations.

4.2 The Application is consistent with the purpose of the FTAA and its criteria, and the approvals sought can be granted.

Yours faithfully
Buddle Findlay



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²¹ Section 85(4) of the FTAA additionally provides that a panel cannot decide that an adverse impact is out of proportion to an Application's regional and national benefits solely because it is inconsistent with a provision of a specified Act or any other document the panel must consider.