

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

In the matter of an application for approvals in relation to the Waitaha Hydro
Scheme

Between **WESTPOWER LIMITED**

Applicant

PANEL CONVENER: WESTPOWER LIMITED MEMORANDUM 1

**MEMORANDUM OF COUNSEL IN ADVANCE OF THE PANEL CONVENER'S
CONFERENCE**

Dated: 10 October 2025

BUDDLE FINDLAY

Barristers and Solicitors

Solicitor Acting: Paul Beverley / David Allen / Rachael Balasingam

Email: david.allen@buddlefindlay.com / paul.beverley@buddlefindlay.com /

rachael.balasingam@buddlefindlay.com

Tel 64 4 462 0423 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

MAY IT PLEASE THE PANEL CONVENER:

1. This memorandum of counsel is filed by the applicant, Westpower Limited (**Westpower**) seeking approvals to develop a hydro scheme in the Waitaha River to provide renewable energy (**Scheme**).¹
2. Westpower agrees with the list of participants for the conference in Minute 2.

Approvals sought

3. In addition to the FTAA, the relevant law is the Resource Management Act 1991 (**RMA**), Conservation Act 1987, Freshwater Fisheries Regulations 1983, and Wildlife Act 1953.
4. The approvals sought are listed in Part A of the Substantive Application (**application**).² In summary they include:
 - (a) Resource consents (district and regional) that would otherwise be applied for under the RMA (s42(4)(a)) including any consents required by a National Environmental Standard;
 - (b) Concessions that would otherwise be applied for under the Conservation Act 1987;
 - (c) Wildlife approvals that would otherwise be authorities applied for under the Wildlife Act 1953; and
 - (d) Complex freshwater fisheries activity approvals that would otherwise be applied for under regulation 42 or 43 of the Freshwater Fisheries Regulations 1983.

Complexity

5. The key matters to be determined were set out in the Buddle Findlay letter supporting the application.³
6. The matter is not overly complex for experienced decision-makers. It will require consideration of the legal (and planning) frameworks, evidence,

¹ See the FTAA, Sch 2 Project description, <https://www.legislation.govt.nz/act/public/2024/0056/latest/LMS943327.html>; the AEE, [Waitaha-Hydro-project-substantive-application-documents.pdf](#); and the Summary of Project Description appended to the AEE, at pg 49 of Appendix 3 Project Overview Report Part 1 [Appendix 3 project overview report part1](#).

² [Waitaha-Hydro-project-substantive-application-documents.pdf](#).

³ https://www.fasttrack.govt.nz/_data/assets/pdf_file/0004/11110/Final-supporting-letter-8-August-2025.pdf

expert opinions and, potentially decisions on matters where there are differing opinions among experts or between parties.

7. Beyond the 'novelty' of the FTAA itself, the base statutory processes involved are not new and the frameworks are well understood. The FTAA is now some 10 months old, and the statutory requirements above have all already been referred to other fast-track panels. Experienced decision-makers, supported by clear process information from Westpower and participants, can work through those frameworks in the normal way.
8. However, and these relate to the timing suggested below:
 - (a) A hydro scheme inherently involves some technical and factual complexity in terms of engineering, hydrology, and specific environmental effects (see the principal issues section below).
 - (b) The application involves multiple statutory approvals reflecting the 'one stop shop' nature of the FTAA. Westpower recognises that this adds some process complexity in terms of needing to work through different statutory regimes within the direction of the FTAA.
 - (c) There is overlap of conditions and management plans across the various statutory approvals. While that reflects the 'one stop shop' the outcome (if approved) must ensure consistency of provisions across different condition sets.
9. In relation to the greater detail on complexity in Schedule 2 to Minute 2:
 - (a) Legal complexity:
 - (i) The FTAA is now, as noted above, some 10 months old so there remain areas of untested law and statutory interpretation, but many panels have now been set up with practices and precedents becoming established. There is nothing in this application that is necessarily more complex than other FTAA processes to date.
 - (ii) As noted above, the process involves multiple approvals and an interface with two or more statutes, but that is not uncommon, and panels have already grappled with the various statutory requirements relevant in this case.
 - (iii) No constitutional or public law issues are engaged.

(b) Evidential complexity:

- (i) There is not an excessive volume, type, or technical nature of evidence in this case. There is a reasonable amount of material, as would be expected for a comprehensive assessment (and required to meet the FTAA completeness requirements) for a hydroelectricity project.
- (ii) Between the parties there are not extensive factual or evidential disputes (see the discussion on principal issues in contention below).
- (iii) There is, as expected for this type of application, technical evidence and scientific analysis that the panel will need to consider. That is not out of the ordinary.

(c) Factual complexity:

- (i) While the information relates to a hydroelectricity scheme there is nothing that would require "*careful management of extensive information*" beyond what is normal.
- (ii) The panel will be required to analyse technical and scientific information. But again, that information is not out of the ordinary and all falls within the types of information regularly analysed through the relevant statutory processes.

Poutini Ngāi Tahu

- 10. As stated in the application,⁴ the Scheme lies within the takiwā of Poutini Ngāi Tahu.
- 11. Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (together Poutini Ngāi Tahu⁵) are partners with Westpower in the Scheme and have confirmed that cultural effects, Treaty settlement matters and environmental, wildlife, taonga species and taonga fish species matters are appropriately addressed.
- 12. The section 18 report identifies Te Rūnanga o Ngāi Tahu, Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio as relevant Treaty settlement entities, and Pokeka Poutini Ngāi Tahu (an environmental consultancy

⁴ Part B, Cultural Context and Values, 5.2.1, pg 150.

⁵ Pg 21, Section 18 report, 29 September 2025, Attachment 4, *Paetae Kotahitanga ki Te Tai Poutini Partnership Protocol*, [Section 18 report](#).

jointly owned by Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio) as a Māori group with relevant interests.⁶

Parties with whom agreement has been reached

13. Westpower has reached agreement with the parties below, who either support or express neutrality for the Scheme:
- (a) Whitewater New Zealand;
 - (b) the owners of the McLean farm;
 - (c) Westland Schist Ltd; and
 - (d) Premier Group Ltd.

Principal issues in contention

14. Westpower has engaged extensively with parties, including, but not limited to the Department of Conservation (**Department**), West Coast Regional Council and Westland District Council.
15. The limited number of principal issues reflects the significant work put in by Westpower through designing, and redesigning, the Scheme to avoid, remedy, mitigate and minimise adverse effects (and when necessary to proffer compensation), as well as the constructive engagement with parties such as the Department.
16. As a result, there are limited matters in contention between those parties. Further details are as follows.

Department of Conservation

17. In Westpower's opinion the **principal** issues in contention with the parties are limited, being:
- (a) the nature and amount of the concession fee to be set and how that fee is set; and
 - (b) a limited number of outstanding issues in relation to the conditions (including for example certification of management plans).
18. These matters are continuing to be worked through with the Department as part of ongoing and constructive engagement on the concession conditions.

⁶ Ibid.

Westpower would like to acknowledge the Department for its constructive approach to the engagement process.

19. The most recent discussion between the applicant and Department occurred today. Westpower is updating the conditions as a result of that discussion and the engagement is ongoing.

West Coast Regional Council and Westland District Council

20. As is standard, especially at this stage of the process, conditions (and management plans) are not fully agreed among the parties.
21. In relation to the conditions there are ongoing discussions with Westland District Council and West Coast Regional Council. This included reviewing draft assessments of environmental effects, ecological management plans (for Sch 5 - RMA approvals), and an initial set of proposed resource consent conditions. Westpower is grateful for the constructive manner in which WDC and WCRC have engaged throughout the process. Westpower has responded to the comments received on the application conditions, and a meeting is scheduled for Monday 13 November 2025 to progress discussions on a limited number of conditions. An update on what remains to be resolved can be provided at the Panel Convenor Conference.
22. Resource consent conditions not yet agreed are generally limited to:
 - (a) conditions regarding the process and timeframes for Council certification of management plans not approved by the Panel and the process for certifying amendments to management plans;
 - (b) conditions confirming which council is the appropriate party to certify certain management plans and / or enforce certain conditions (e.g. public safety requirements, ecological compensation requirements and conditions relating to Westpower's agreement with Whitewater New Zealand);
 - (c) determining the appropriate notification method and timeframe for discharging sediment through the desander sluicing pipe at the tailrace of the power station and for flushing trials; and
 - (d) whether additional conditions are required or necessary (i.e. a bond).

Efficient process for the panel

23. The discussions already underway, as above, will provide an efficient process to enable the panel to understand, resolve or narrow the scope of any likely issues within the timeframe proposed below. Further information will be provided to the panel before (and during) the overview conference (should the panel decide to have one), in the section 51 report from the Department and through the section 53 FTAA comments process (and Westpower's response). If desired by the panel, a site visit can be arranged (with appropriate warning to arrange helicopter availability).
24. Westpower does not consider there to be such complexity (or factual disagreement among the parties) to warrant a hearing under the FTAA (which would be the first hearing to date under the FTAA).

Composition of the panel

25. As noted above, there are no complex factual issues raised. Therefore, in this case, and as is often the case, technical expertise is not as important as having experienced decision-makers who can efficiently (considering s10 of the FTAA) consider and weigh the evidence in the statutory context.

Issues that have arisen during the process to date

26. Westpower has been provided Federated Mountain Clubs' (**FMC**) letter to the Convener, dated 3 September 2025. FMC raises recreational concerns in relation to the Scheme.
27. The application addresses Westpower's engagement with FMC prior to lodging and recreational matters (including a specific technical report). Westpower acknowledges FMC's ongoing opposition to the Scheme which has not changed despite the changes in design and reduced environmental effects as described in the application.
28. The decision on whether to invite comments from FMC (and any other person) is up to the panel. Westpower will address the issue of whether FMC, and any other person, should be invited to comment with the panel (most likely during the panel overview conference).
29. No previous consent applications have been undertaken for the Scheme, so no section 92 RMA further information requests have occurred.

30. No statutory processes coincide with the 30-day working period (with, as below, a longer period proposed by Westpower in this case).⁷

Estimated timeframe

31. The Waitaha panel is not the first fast-track panel established. It is also not the first application using the process for resource consents, concessions, or wildlife approvals. However, as noted above there is inherent process complexity considering multiple approvals that would otherwise be required under separate statutes and different processes.
32. To ensure efficiency through the FTAA process (as the Act intends) Westpower initiated substantial pre-lodgement engagement including with WDC, WCRC and the Department and has entered into a number of agreements.
33. The resource management and wildlife approvals do not warrant extensions of the timeframe to determine the approvals.
34. To ensure the panel has adequate time to navigate and prepare conditions across several statutory regimes (albeit bundled together through the FTAA), Westpower proposes additional time for the panel.
35. The statutory timeframe (in the absence of the Panel Convenor setting one) is 30 working days following receipt of comments from those invited.⁸ In this case Westpower proposes 49 working days. This is a 63% increase in the statutory timeframe.
36. **Schedule One** includes a proposed timeframe that provides a total of 79 working days from the panel commencing.
37. This timeframe:
- (a) ensures sufficient time for quality decision-making; and
 - (b) does not over allocate time contrary to section 10 of the FTAA.

⁷ The substantive application referred to geotechnical investigative drilling permit applications submitted to the Department and the Councils that have since been approved (pg 75, Part B AEE, 3.5.1 Pre-Construction Activities). Relevant approvals will be withdrawn in the Panel Overview Conference. There are ongoing discussions about varying the existing permit to include two more activities relevant to the Application and the Panel will be updated accordingly.

⁸ FTAA, s79(1)(b).

Assistance / availability

38. Westpower is willing to engage and assist the panel, once appointed, as required. As set out above, Westpower is already in ongoing discussions with WDC, WCRC and the Department that are identifying and narrowing issues. Those processes will continue, and it is anticipated a detailed update will be able to be provided at the panel overview conference.

Attendance

39. In addition to counsel, Jon Bright (Westpower Ltd), Phil Mitchell and Mason Jackson (Mitchell Daysh), and Martin Kennedy (West Coast Planning Ltd) will attend the conference for Westpower Ltd.

Dated: 10 October 2025



Paul Beverley / David Allen / Rachael Balasingam

Counsel for Westpower Limited

Schedule One: applicant's estimated timeframe

Task	Working Days	Date
Panel commencement	n/a	30 October
Invite comment from relevant parties	10 w/d later	13 November
Comments close (ss 53 & 54)	20 w/d later	11 December
Comments close for applicants (s 55)	5 w/d later	18 December
Any other procedural steps, evaluation, and decision writing	N/A	N/A
Draft decision is to approve		
Draft decision and conditions to Ministers (s 72)	20 w/d ⁹ later	9 February 2026
Response from Ministers (s 72)	10 w/d later	23 February 2026
Applicant response to Ministers comments (if any)	2 w/d later	25 February 2026
Draft conditions and decision to participants	20 w/d ¹⁰ later (after comments close for applicants)	9 February 2026
Participant comments on draft conditions	5 w/d later	16 February 2026
Applicant response to participants on conditions (s 70(4))	5 w/d later	23 February 2026
Evaluate and finalise decision and conditions and release final decision	13 w/d from 25 February	16 March 2026

⁹ Excluding Christmas period as set out in the Resource Management Act 1991 and public holidays including Wellington Anniversary Day.

¹⁰ Excluding Christmas period as set out in the Resource Management Act 1991 and public holidays including Wellington Anniversary Day.