

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

**EXPERT PANEL: WESTPOWER LTD MEMORANDUM #15
MEMORANDUM OF COUNSEL ON THE CONCESSION ACTIVITY FEE**

Dated: 27 February 2026

BUDDLE FINDLAY
Barristers and Solicitors

Solicitor Acting: Paul Beverley / David Allen / Rachael Balasingam
Email: paul.beverley@buddlefindlay.com / david.allen@buddlefindlay.com /
rachaelbalasingam@buddlefindlay.com
Tel 64 4 463 0423 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

MAY IT PLEASE THE PANEL:

1. This memorandum is filed on behalf of the applicant, Westpower Limited (**Westpower**) and clarifies requests made in Memorandum #14.

Confidential nature of the information filed on 23 February 2026

2. In Memorandum #14 and its appendices, Westpower provided the Panel, in confidence, commercially sensitive information relating to the proposed long-term concession fee. To enable the Panel to publish the information received (if it wished to do so), Westpower also provided redacted versions for that purpose.
3. In paragraph 12 of that Memorandum, it was requested that the Panel make an order under s 58(4) of the FTAA to withhold publication of the confidential and commercially sensitive information identified in the documents.
4. The Panel has correctly noted that s 58(4) provides a panel may make an order that prohibits or restricts the publication or other means of communications of information supplied to the panel or obtained in the course of a hearing.
5. Westpower appreciates the Panel identifying this matter and sets out below the correct statutory provisions to support the request that the confidential and commercially sensitive information is protected:¹
 - (a) The EPA and panels appointed under the FTAA are subject to the Official Information Act 1982 (**OIA**).² Information obtained under the FTAA is 'official information' and the EPA and a panel can withhold it where it considers there are good reasons to do so under the OIA.
 - (b) Under s 93(3) of the FTAA, the EPA has the general power to withhold information that would otherwise need to be published where good reasons exist to do so under the OIA.
 - (c) Under s 70(2)(c) of the FTAA, the EPA may withhold information in the draft conditions provided for comment where good reasons exist to do so under the OIA.

¹ As the Panel is the aware, it can regulate its own procedure under Schedule 3, cl 10 FTAA, which extends to the publishing of memoranda received from the applicant (outside of the specific requirements of s 67 and 93 of the FTAA). It has been common practice for panels to choose not to publish all memoranda received from applicants.

² Schedule 1 of the Official Information Act 1982 (OIA) lists "*Panel convener and panels appointed under the Fast-track Approvals Act 2024*" as a Schedule 1 organisation. Any information held by a panel convener, panel or the EPA is "official information" and subject to the OIA (s 2, definitions of "official information" and "organisation"). The EPA is subject to the OIA by virtue of being listed in Part 2 of Schedule 1 of the Ombudsmen Act 1975.

- (d) Under s 88(4) of the FTAA, the EPA may withhold information from the final decision documents where good reasons exist to do so under the OIA.
6. Further, s 17U(1)(g) of the Conservation Act 1987 (**Conservation Act**) provides that, in considering an application for a concession, the Minister must have regard to *"any relevant information which may be withheld from any person in accordance with the Official Information Act 1982 or the Privacy Act 2020"*. Section 17U(1)(g) of the Conservation Act is applied in Schedule 6, clause 7(1)(a)(ii) and (6) of the FTAA by providing that:
- (a) the panel must take into account Part 3B of the Conservation Act applies (with two exceptions) as if the application were an application for a concession under Part 3B;³ and
- (b) all references to the Minister in s 17U of the Conservation Act must be read as "to a panel".⁴
7. For the same reasons as set out in Memorandum #14, Westpower considers that there are good reasons to withhold that information under s 9(2) of the OIA and these are not outweighed by the public interest in the information. Making the confidential and commercially sensitive information available would:
- (a) unreasonably prejudice the commercial position of both Westpower and the Department of Conservation in terms of s 9(2)(b)(ii) of the OIA; and
- (b) likely prejudice the supply of similar confidential information, and it is in the public interest that such information should continue to be supplied through these processes (under s 9(2)(ba)(i) of the OIA).
8. In terms of paragraph 12 of Memorandum #14, Westpower requests the Panel withhold publication, or any other form of communication, of the redacted information in Memorandum #14, the valuer's memorandum (Appendix 2) and valuation report (Appendix 4).⁵ For completeness, the request is that the EPA and the Panel do not publish or otherwise

³ FTAA, Sch 6, cl 7(1)(a)(ii) states *"Part 3B of the Conservation Act 1987 (except sections 17SB and 17U(3) of that Act) as if the application were an application for a concession under Part 3B;.."*

⁴ FTAA, Sch 6, cl 7(6) states *"For the purposes of this clause, the provisions referred to in subclause (1) must be read with all necessary modifications, including that a reference to the Minister of Conservation in section 17U of the Conservation Act 1987 or section 49 of the National Parks Act 1980 must be read as a reference to a panel."*

⁵ Acknowledging again, irrespective, the Panel has discretion to regulate its own procedures under FTAA, Sch 3, cl 10.

communicate the confidential and unredacted versions of those documents, **Memorandum #14 – confidential/unredacted**, and **Appendices 1 and 3**).

9. Westpower also requests that the Panel keeps the final concession fee percentage confidential. Sections 70(2)(c), 88(4) and 93(3) of the FTAA enable the EPA to withhold that information from publication where good reasons exist to do so under the OIA. Westpower requests the grounds explained above are also applied to the final concession fee in the draft and final decisions and condition sets.
10. As explained in Memorandum #14, Westpower understands that the Department's standard practice is to withhold the concession fee information and percentages for concessions granted by the Minister, for similar reasons.
11. It is important that panels and the EPA are able to receive and protect confidential and commercially sensitive information in order to carry out their role under the FTAA in an effective and efficient manner.

Next steps

12. Westpower acknowledges the Request for Further Information received today and will respond by 5 March 2026. Westpower is willing to provide further information on any matters that would assist the Panel.

Dated: 27 February 2026



Paul Beverley / David Allen / Rachael Balasingam

Counsel for Westpower Limited