

Concession Number: [to add]

27 November 2025 21 January 2026: Easement

## Concession Document (Easement)

Concession Number: [to add]

**THIS CONCESSION** is made this       day of

**PARTIES:**

**Minister of Conservation** (the Minister)

**Westpower Limited or Waitaha Hydro Limited** (the Concessionaire)

**Name** (the Guarantor) delete if not required

**BACKGROUND**

- A. The Department of Conservation (**Department**) Te Papa Atawhai is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- B. The Department is under the control of the Minister.
- C. The carrying out of these functions may result in the Minister granting concessions to carry out activities on public conservation land.
- D. The Minister administers public conservation lands described in Schedule 1 as the Easement Land.
- E. The Concessionaire has proposed to construct, operate and maintain the Waitaha Hydro Scheme (**Scheme**).
- F. The Concessionaire has applied for concessions under the Fast-track Approvals Act 2024 in relation to the Scheme.
- G. A concession granted under the Fast-track Approvals Act 2024 has the same force and effect for its duration, and according to its terms and conditions, as it if were granted under the Conservation Act 1987, except that section 17A of the Conservation Act 1987 does not apply.
- H. This Concession under the Fast-track Approvals Act 2024 in relation to the Scheme gives effects to the decision to grant, including the conditions, by an Expert Panel on [add date].
- I. The Concessionaire wishes to carry out the Concession Activity on the Easement Land subject to the terms and conditions of this Concession.
- J. The parties wish to record the terms and conditions of this Concession.

**OPERATIVE PARTS**

- K. The Concessionaire has been granted an **EASEMENT** to carry out the Concession Activity on the Easement Land subject to the terms and conditions contained in this Concession, including its Schedules.

**Commented [WP1]:** This has been included to reflect that Waitaha Hydro Ltd may operating the scheme under this concession (and hence the provision relating the Waitaha Hydro Ltd has been removed from the 'assignment' clause).

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<p>_____ SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate] acting under delegated authority</p> <p>in the presence of:</p> <p>_____ Witness Signature</p> <p>Witness Name: Witness Occupation: Witness Address:</p> <p><b>OR</b></p> <p><b>If decision maker is signing by way of electronic signature, use this option</b></p> <p>[INSERT DIGITAL SIGNATURE]</p> <p>_____ SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate] acting under delegated authority</p> <p>in the presence of:</p> <p>[INSERT DIGITAL SIGNATURE]</p> <p>_____ Witness Signature</p>	<p>_____ SIGNED for [insert name of Company] Limited by: Director Name</p> <p>AND</p> <p>_____ SIGNED for [insert name of Company] Limited by: Director Name</p>
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~~If there is a Guarantor select one only of the following execution clauses and delete the other four - if no Guarantor delete the whole box~~

~~Guarantor~~

~~1. Individual~~

~~\_\_\_\_\_~~  
~~SIGNED by [insert name of Concessionaire if an individual]~~

~~in the presence of:~~

~~\_\_\_\_\_~~  
~~Witness Signature~~

~~Witness Name: \_\_\_\_\_~~

~~Witness Occupation: \_\_\_\_\_~~

~~Witness Address: \_\_\_\_\_~~

**SCHEDULE 1**

1.	<p><b>Easement Land</b></p> <p>(burdened land - the land where the easement activity occurs)</p> <p>(Schedule 4)</p>	<p>As marked on the attached plan or map in Schedule 4 being:</p> <p>Physical Description/Common Name: Conservation Area / Waitaha Forest</p> <p>Land Status: Stewardship Land</p> <p>Area: [FBC]</p> <p>Legal Description: Part Reserve 1672 (as shown on: SO Plan 11209 and including and Section 1 Survey Office Plan 12094, as generally identified on [insert reference to plan]); and the land occupied by the access road and transmission line over:</p> <p>a) any marginal strip extending along and abutting the landward margin of either side of Allen Creek (including any changes to that marginal strip as a result of alterations to the course of Allen Creek affecting the existing marginal strip), within records of title 306023 and WS5D/1294 as generally identified on [insert reference to plan]</p> <p>b) any marginal strip extending along and abutting the landward margin of the true right bank of Macgregor Creek (including any changes to that marginal strip as a result of alterations to the course of Macgregor Creek affecting the existing marginal strip), within record of title 306023 as generally identified on [insert reference to plan]</p> <p>Map Reference: [FBC]</p>
2.	<p><b>Benefitted Land</b></p>	<p>The easement is in gross.</p>
3.	<p><b>Concession Activity</b></p> <p>(clause 2)</p>	<p>An easement in gross for:</p> <p>a) a right of way;</p> <p>b) a right to convey electricity; and</p> <p>c) a right to convey telecommunications:</p> <p>for the purpose of the Waitaha Hydro Scheme.</p>
4.	<p><b>Easement Area</b></p> <p>(Schedule 4 and 5)</p>	<p>The areas of the Easement Land marked on the plan attached as Schedule 4 as ["transmission line"] and ["access road"].</p>
5.	<p><b>Term</b></p> <p>(clause 3)</p>	<p>49 years commencing on the date of Commencement of Generation</p> <p>The lapse period for this is 20 years from the date of the execution of this concession document by both parties.</p>
6.	<p><b>Final Expiry Date</b></p>	<p>49 years from the date of Commencement of Generation.</p>

**Commented [W2]:** Updated to include the marginal strip land as requested by the Department.

**Commented [W3]:** Change suggested by the Department (specifying the parts of the Scheme that will be used for these easement purposes) has not been made. This is set out in Schedule 4.

**Commented [W4]:** Changes suggested by the Department (commencement from date of granting and lapse addressed in sch 2 or 3) have not been made. Westpower's position on Term is explained in Memorandum #7.

**Commented [W5]:** Change suggested by the Department (date of grant not Commencement of Generation) has not been made.

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	(clause 3)	
7.	<b>Concession Fee</b> (clause 4)	[TBC]
8.	<b>Concession Fee Payment Date</b> (clause 4)	[TBC]
9.	<b>Penalty Interest Rate</b> (clause 4)	Double the current Official Cash Rate (OCR). <a href="#">See Reserve Bank of New Zealand website</a>
10.	<b>Concession Fee Review Date(s)</b> (clause 5)	Three (3) yearly on the anniversary (and for the duration) of this Concession
11.	<b>Insurance</b> (To be obtained by Concessionaire) (clause 11)	Public Liability Insurance for general indemnity for an amount no less than <del>[\$TBC]</del> \$5,000,000 Subject to review on each Concession Fee Review Date.
12.	<b>Addresses for Notices</b> (clause 20 <del>22</del> )	The Minister's address is: <a href="#">Department of Conservation</a> <a href="#">265 Princes Street</a> <a href="#">Dunedin 9016</a> <a href="#">[Permissions team email address]</a>  Postal address: <a href="#">Department of Conservation</a> <a href="#">Att: National Transaction Centre</a> <a href="#">PO Box 5244</a> <a href="#">Dunedin 9054</a> <a href="#">Phone: (03) 477 0677</a> <a href="#">Email: transactioncentre@doc.govt.nz</a>  [add]  The Concessionaire's address in New Zealand is:  146 Tainui Street  PO Box 375  Greymouth  Phone: <a href="#">03 768 9300</a> [add]

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		Email: <a href="mailto:info@Westpower.co.nz">info@Westpower.co.nz</a> [add]
13.	<b>Special Conditions</b> (clause 2528)	See Schedule 3
14.	<b>Processing Fee</b> (clause 4)	[TBC as this process is under the Fast-track Approvals Act 2024]

Note: the clause references are to the clauses in Schedule 2.

## SCHEDULE 2 – STANDARD TERMS AND CONDITIONS

### 1. Interpretation

1.1 In this Concession, unless the context otherwise requires:

**Application documentation** means the [the document titled “Westpower Limited Waitaha Hydro Project: An Application made under the Fast-track Approvals Act \(2024\)” dated 8 August 2025, including all technical assessments and supporting reports, substantive application submitted by Westpower Limited on 8 August 2025 under the Fast-track Approvals Act 2024 including as amended through the FTAA or any subsequent statutory process.](#)

**Concessionaire** means [Westpower Limited or Waitaha Hydro Limited and any person acting with the permission \(including implied permission\) of Westpower Limited or Waitaha Hydro Limited as if the concession had been granted to that person as well as to Westpower or Waitaha Hydro Limited, includes a reference to a person acting under this concession with the permission \(including implied permission\) of the concessionaire as if the concession has been granted to that person as well as the concessionaire.](#)

**Expert Panel** means the panel appointed to make the concession decision under the Fast-track Approvals Act 2024.

**Waitaha Hydro Scheme** means a run-of-river hydro-electricity generation scheme along [the Waitaha River, generally including headworks at the top of Morgan Gorge \(comprising low weir and intake structure\), tunnels and turbines, and a tailrace discharging into the Waitaha mainstream in the vicinity of the confluence of Alpha Creek, as well as an access road and transmission line, and any related or ancillary structures, to be constructed by the Concessionaire under the construction concession, and in accordance with the Application documentation.](#)

- 1.2 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Land). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Land), as if the breach had been committed by the Concessionaire.
- 1.3 Where this Concession requires the Minister to exercise a discretion or give any approval or provides for any other actions by the Minister, then the Minister must act reasonably and within a reasonable time. When a consent is required under this Concession such consent must not be unreasonably withheld.

### 2. What is being authorised?

- 2.1 The Concessionaire is only allowed to use the Easement Land for the Concession Activity.
- 2.2 The Concessionaire must not commence the Concession Activity until the Concessionaire has signed the Concession Document and returned one copy of this Document to the Minister, as if it were a notice to be given under this Concession.

**Commented [W6]:** Amendments by Westpower to align with the definitions in the short-term and long-term lease licence concessions.

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**3. How long is the Concession for - the Term?**

3.1 This Concession commences on the date specified in Item 5 of Schedule 1 and ends on the Final Expiry Date specified in Item 6 of Schedule 1.

**4. What are the fees and when are they to be paid?**

4.1 The Concessionaire must pay the Processing Fee (Item ~~fx~~14 of Schedule 1) to the Minister in the manner directed by the Minister. Except where the Minister's written consent has been given, the Concessionaire cannot commence the Concession Activity until the Processing Fee has been paid.

4.2 The Concessionaire must pay to the Minister in the manner directed by the Minister the Concession Fee ~~and any other payment comprised in the Total Payment~~ specified in Item ~~fx~~7 of Schedule 1 in the instalments and on the Concession Fee Payment Date specified in Items ~~fx~~ and ~~fx~~8 of Schedule 1.

4.3 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item ~~fx~~9 of Schedule 1.

**5. When can the fee be reviewed?**

5.1 The Minister is to review the Concession Fee on the Concession Fee Review Dates in the following manner:

- (a) The Minister must commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving notice to the Concessionaire.
- (b) Subject to clause [x] the notice must specify the Concession Fee which the Minister considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
- (c) If, within 28 days of receipt of the Minister's notice, the Concessionaire gives notice to the Minister that the Concessionaire disputes the proposed new Concession Fee, the new Concession Fee is to be determined in accordance with clause [5.2](a) or (b).
- (d) If the Concessionaire does not give notice to the Minister under clause [x] the Concessionaire is to be deemed to have accepted the Concession Fee specified in the Minister's notice.
- (e) Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Minister's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Minister or by the Concessionaire, whichever is applicable.

5.2 Immediately the Concessionaire gives notice to the Minister under clause [5.1(c)] the parties are to endeavour to agree on a new Concession Fee. If the parties are unable to reach agreement within 28 days the new Concession Fee is to be determined either:

- (a) By one party giving notice to the other requiring the new Concession Fee to be determined by the Disputes clause (clause [x]) or, if the parties agree,
- (b) by registered valuers acting as experts and not as arbitrators as follows:

**Commented [W7]:** As per Westpower's Memorandum #7, the s 78 condition wording has not been incorporated to this version.

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- (i) Each party must appoint a valuer and give notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.
- (ii) If the party receiving a notice does not appoint a valuer within the 14 day period the valuer appointed by the other party is to determine the new Concession Fee and that valuer's determination is to be binding on both parties.
- (iii) Before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
- (iv) The valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987. If they fail to agree the Concession Fee is to be determined by the umpire.
- (v) In determining the Concession Fee the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide access to the Land.
- (vi) Each party is to be given the opportunity to make written or oral representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
- (vii) The valuers or the umpire must have regard to any such representations but are not bound by them.

5.3 The valuers or umpire must give written notice to the parties once they have determined the new Concession Fee. The notice is to be binding on the parties and is to provide how the costs of the determination are to be borne.

5.4 If a Concession Fee Review Date is postponed because of a moratorium imposed by law the Concession Fee Review is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and

- (a) the Concession Fee Review is to establish the market value for the Concession Activity as at that date instead of the date fixed under clause [5.3] having regard to the matters specified in section 17Y(2) of the Conservation Act 1987; and
- (b) each subsequent Concession Fee Review is to take place in accordance with the procedure fixed in clause [5].

## **6. Are there any other charges?**

6.1 The Concessionaire must pay all utility charges payable in respect of the Easement Land or for the services provided to the Easement Land, that relate to the Concessionaire's use of the Easement Land or the carrying on of the Concession Activity.

6.2 The Minister is not liable for any cost incurred in reestablishing the supply of any utilities to the Easement Land in the event it becomes unavailable for any reason.

6.3 Where the Minister pays any such levies, rates, or other charges, the Concessionaire must on receipt of an invoice from the Minister pay such sum to the Minister within 14 days of receiving the invoice. If payment is not made within the 14 days, then the Concessionaire is to pay interest on the unpaid sum

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from the date payment was due until the date of payment at a penalty interest rate of 15%.

## 7. When can the Concession be assigned?

- 7.1 The Concessionaire must not transfer, sublease, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the Assignee) other than the Concessionaire) without the prior written consent of the Minister.
- 7.2 The Minister may in the Minister's discretion under clause 7.17-1:
- (a) decline any application for consent; or
  - (b) grant consent subject to such conditions as the Minister thinks fit.
- 7.3 Sections 17S to 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Minister, in the Minister's discretion, decides otherwise.
- 7.4 If the Minister gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.
- 7.5 The Concessionaire must pay the costs reasonably incurred by the Minister incidental to any application for consent, whether or not such consent is granted.
- 7.6 If the Concessionaire is not a publicly listed company any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Minister.
- 7.7 ~~Notwithstanding the provisions of this clause 7, the Concessionaire may transfer or assign its interest in this Concession to Waitaha Hydro Limited without the consent of the Minister, but will provide the Minister with at least [5] working days' prior notice of such transfer or assignment.~~ [To avoid doubt, Waitaha Hydro Limited is named as a Concessionaire under this Concession and this clause 8 does not apply to the role of Waitaha Hydro Limited as Concessionaire under this Concession.](#)

**Commented [W8]:** Change suggested by the Department has not been made. Amended instead to reflect that Waitaha Hydro is named as a concessionaire.

## 8. What are the obligations to protect the environment?

- 8.1 The Concessionaire must not, without the prior consent of the Minister:
- (a) cut down or damage any vegetation (subject to clause 8.2); or
  - (b) damage any natural feature or historic resource on the Easement Land; or
  - (c) light any fire on the Easement Land.
- 8.2 The Concessionaire may, without the consent of the Minister, cut back or remove any vegetation or other structure if, in the Concessionaire's reasonable opinion, such vegetation or structure poses a risk to the infrastructure it has installed under this Concession, or such vegetation or structure breaches any minimum clearance requirements (whether imposed by legislation or in accordance with the Concessionaire's own minimum clearance requirements).
- 8.3 The Concessionaire must, at its cost:

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- (a) keep the easement facility (as defined in Schedule 5) now or hereafter upon the Easement Land, in good order, condition and repair; and
- (b) must keep those parts of the Easement Land that it accesses or uses under this Concession in a clean and tidy condition.

8.4 The Concessionaire must not store hazardous materials on the Easement Land nor store other materials on the Easement Land where they may obstruct the public or create a nuisance.

**9. When can structures be erected?**

9.1 The Concessionaire must not erect, nor place any structures on, under or over the Easement Land without the prior consent of the Minister.

**10. What if the Concessionaire wishes to surrender the Concession?**

10.1 If the Concessionaire wishes to surrender this Concession during the currency of the Term, then the Minister may accept that surrender on such conditions as the Minister considers appropriate.

**11. What are the liabilities and who insures?**

*Liabilities*

11.1 The Concessionaire agrees to use the Easement Land at the Concessionaire's own risk and releases to the full extent permitted by law the Minister and the Minister's employees and agents from all claims and demands of any kind and from all liability that may arise in respect of any accident, damage, or injury occurring to any person or property on or about the Easement Land.

11.2 The Concessionaire indemnifies the Minister against all claims, actions, losses, and expenses of any nature that the Minister may suffer or incur or for which the Minister may become liable arising from any breach by the Concessionaire of this Concession. Where the Concessionaire is found to be liable in accordance with this clause, the total extent of the Concessionaire's liability in respect of each event of damage, is limited to \$1,000,000.

11.3 This indemnity continues after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.

11.4 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Land).

11.5 The Minister is not liable and does not accept any responsibility for damage to or interference with the Land, the Concession Activity, or to any structures, equipment, or facilities on the Easement Land or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where such damage or interference is caused by any wilful or negligent act or omission of the Minister, the Minister's employees, agents, or contractors.

11.6 Where the Minister is found to be liable in accordance with this clause, the total extent of the Minister's liability in respect of each event of damage, is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment, and facilities.

11.7 Despite anything else in this clause, neither the Minister nor the Concessionaire are liable for any indirect or consequential damage or loss howsoever caused.

**Commented [W9]:** The Department's proposed deletions are not adopted: Westpower should only be liable for breaches of the concession.

**Commented [WP10]:** This is to reflect the limitation on the Minister's liability as set out below.

**Commented [W11]:** Change suggested by the Department (deletion) not made.

**Commented [W12]:** Change suggested by the Department (deletion) not made.

### *Insurance*

- 11.8 Without prejudice to or in any way limiting its liability under this Concession, the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance with a substantial and reputable insurer in the types and amounts determined in accordance with this clause.
- 11.9 The Minister will set the initial types and amounts of insurance required following an independent assessment using a methodology set by the Minister.
- 11.10 After every three year period of the Term the Minister may, on giving 10 working days' notice to the Concessionaire, alter the types and amounts of insurance required, following an independent assessment using a methodology set by the Minister. On receiving such notice, the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 11.11 The Concessionaire must provide to the Minister within 5 working days of the Minister so requesting:
- (a) Details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term.
  - (b) A copy of the current certificate of such policies.

### **12. What about Health and Safety?**

- 12.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety at Work Act 2015 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession.
- 12.2 The Concessionaire may temporarily restrict access to any part of the easement areas (as defined in Schedule 5) by the Minister and/or members of the public if the Concessionaire considers such restriction is necessary:
- (a) while it is carrying out work authorised by this Concession; and/or
  - (b) for any other health and safety reason(s)
- In that event the Concessionaire will notify the DOC's area office in advance of that temporary restriction
- 12.3 The Minister must:
- (a) adhere to the Concessionaire's reasonable instructions when accessing or using the easement area (as defined in Schedule 5) (including in relation to any temporary restrictions on access to the easement area for health and safety reasons); and
  - (b) notify the Concessionaire of any hazards or incidents it becomes aware of in relation to the easement area (as defined in Schedule 5).

### **13. What are the compliance obligations of the Concessionaire?**

- 13.1 The Concessionaire must comply where relevant:
- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part IIA of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, Reserves Act 1977, National Parks

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Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Easement Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and

- (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, Wildlife Act 1953 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Easement Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
- (c) with all notices and requisitions of any competent authority affecting or relating to the Easement Land or affecting or relating to the conduct of the Concession Activity; and
- (d) with all Department signs and notices placed on or affecting the Easement Land.

13.2 The Concessionaire must comply with this Concession.

#### 14. Compensation for unauthorised disturbance

14.1 The Minister may require the Concessionaire to pay additional compensation for any breaches of this Concession by the Concessionaire that cause the Minister loss or damage in relation to proximate land administered by the Department of Conservation.

#### 15. When can the Concession be terminated?

15.1 The Minister may, as a last resort, terminate this Concession (in whole or in part) by notice in writing to the Concessionaire (a **Termination Notice**), stating the date of termination of the Concession (**Termination Date**), in any of the following circumstances:

- (a) **Non-payment:** if the Concession Fee or any other money payable to the Minister under this Concession is not paid within 60 Working Days of the Concessionaire receiving from the Minister a notice in writing specifying the amount due, the due date for payment and noting the Minister's right to serve a Termination Notice if non-payment is not remedied.

Where clause 15.1~~18.1~~(a) applies, the Termination Date shall be no earlier than 30 Working Days after the date of the Termination Notice;

- (b) **insolvency:** if there is an event of insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Concessionaire (an **Insolvency Event**), and the Concessionaire has not assigned or novated its interest under this Concession to a solvent third party within a reasonable period of the Insolvency Event occurring (such period being no less than twelve months).

Where clause 15.1(b)~~18.1(b)~~ applies, the Termination Date shall be no earlier than 30 Working Days after the date of the Termination Notice.

- (c) **Material breach:** If:

- (i) the Minister issues a notice in writing to the Concessionaire setting out, in reasonable detail, an alleged material default or breach by the Concessionaire in the

**Commented [W13]:** The Department's suggestion to delete this wording has not been adopted. This Westpower wording has been retained in order to reiterate the significantly adverse impact of terminating of a concession for a ~\$200m infrastructure project: that should be a very last resort.

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performance or observance of any of a material provision of this Concession which has led to a significant impact on the Land (**Default Notice**); and

- (ii) the Concessionaire has not remedied such alleged default or breach within six months of the date of the Default Notice

provided that the Minister may not give a Termination Notice where:

- (iii) remedying such default will take longer than six months, and the Concessionaire has begun (and is thereafter diligently carrying out) the necessary steps to remedy the breach or default; and/or
- (iv) the Concessionaire disputes the alleged default or breach (including a dispute in relation to the timeframe required to remedy such breach or default), unless and until the parties have completed the dispute resolution process in clause 21~~(x)~~ of this Concession, and it has been agreed and/or determined that the Concessionaire is in breach. In this event, the date of such agreement and/or determination shall be deemed to be the date of the Default Notice under this clause.

**Commented [W14]:** The Department's additional wording has not been adopted: that creates too much uncertainty for the exercise of this power.

Where this ~~clause 15.12-1~~(c) applies, the Termination Date shall be no earlier than 60 Working Days after the date of the Termination Notice,

- 15.2 The Minister may exercise the Minister's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to act by the Minister or any indulgence granted by the Minister for any matter or default.
- 15.3 Termination of the Concession does not prejudice or affect the accrued rights or claims and liabilities of the parties.
- 15.4 The Concessionaire may refer any proposed termination under this clause ~~(x)~~ to the dispute resolution process set out in clause 21~~(x)~~.

#### **16. What happens on termination or expiry of the Concession?**

- 16.1 On expiry or termination of this Concession, either as to all or part of the Easement Land, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Easement Land.
- 16.2 The Concessionaire may, with the Minister's written consent, remove any specified structures and other improvements on the Easement Land. Removal under this clause must occur within a reasonable time specified by the Minister and the Concessionaire is to make good any damage and leave the Easement Land and other public conservation land affected by the removal in a clean and tidy condition.
- 16.3 The Concessionaire must, if the Minister gives written notice, remove any specified structures and other improvements on the Easement Land. Removal under this clause must occur within the time specified by the Minister and the Concessionaire is to make good any damage and leave the Easement Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Easement Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term. If before the expiry of the Term the Concessionaire makes an application for a further concession in respect of the same Concession Activity on the Easement Land then the

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Minister cannot require such removal and reinstatement until such time as that concession application has been determined. If a new concession is granted then removal and reinstatement cannot be required until the expiry or termination of the new concession.

## 17. Monitoring

17.1 Provided reasonable notice has been given to the Concessionaire, the Minister, its employees, and contractors may enter the Easement Land to:

- (a) Inspect the Easement Land and facilities on or within the Easement Land and to monitor compliance with this Concession. Monitoring may include the taking of samples and photographs.
- (b) Do any work necessary for the exercise of the Minister of Conservation's functions and powers in respect of the Easement Land, provided that the Minister will not:
  - (i) carry out any work to the Concessionaire's structures on the Easement Land; and/or
  - (ii) interfere with the Concessionaire's rights under this Concession.

## 18. When is the Minister's consent required?

18.1 Where the Minister's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Minister may have given approval or consent for a like purpose on a prior occasion. Any such consent or approval may be made on such conditions as the Minister considers appropriate and is subject to clause 1.3.

**Commented [W15]:** Added to align with wording in the short and long term lease licence concessions.

## 19. Are there limitations on public access and closure?

19.1 The Concessionaire acknowledges that the Easement Land is open to the public for access and that the Minister may close public access during periods of high fire hazard or for reasons of public safety or emergency. To avoid doubt, the Minister may not close or restrict the Concessionaire's access to the Easement Land under this clause.

**Commented [W16]:** Change suggested by the Department (deletion) not made.

## 20. What about other concessions?

20.1 Nothing expressed or implied in this Concession is to be construed as preventing the Minister from granting other concessions, whether similar or not, to other persons provided that the Minister must not grant another concession:

- (a) in respect of the easement area (as defined in Schedule 5); or
- (b) that would derogate in any way from the Concessionaire's ability to carry out the Concession Activity.

**Commented [W17]:** Change suggested by the Department (deletion) not made.

## 21. How will disputes be resolved?

21.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent

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expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.

- 21.2 If the dispute cannot be resolved by agreement within 30 working days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation, where relevant, or to arbitration, which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.
- 21.3 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 21.4 The arbitrator must include in the arbitration award reasons for the determination.
- 21.5 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

**22. How are notices sent and when are they received?**

22.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, by pre-paid post or email to the receiving party at the address, or email address specified in Item 12+ of Schedule 1. Any such notice is to be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of post, on the 3rd working day after posting;
- (c) in the case of email,
  - (i) if sent between the hours of 9am and 5pm on a working day, at the time of transmission; or
  - (ii) if subclause (i) does not apply, at 9am on the working day most immediately after the time of sending.

Provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

22.2 If either party's details specified in Item 12+ of Schedule 1 change then the party whose details change must within 5 working days of such change provide the other party with the changed details.

**23. What about the payment of costs?**

- 23.1 The Concessionaire must pay the Minister's legal costs and expenses of and incidental to preparing and signing this Concession or any extension or variation of it, other than those costs already recovered by the Minister under the Fast-track Approvals Act 2024.
- 23.2 The Concessionaire must pay to the Minister all costs associated with applications for approvals under this Concession determined at the standard rates then applying in the Department of Conservation for cost recovery.
- 23.3 The Concessionaire must pay in full immediately and on demand all costs and fees (including

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solicitor's costs and fees of debt collecting agencies engaged by the Minister) arising out of and associated with steps taken by the Minister to enforce or attempt to enforce the Minister's rights and powers under this Concession including the right to recover outstanding money owed to the Minister.

**24. What about the powers implied by statute?**

24.1 The rights and powers implied in easements by Schedule 5 to the Land Transfer Regulations 2018 are deleted and replaced with the rights and powers set out in Schedule [5] of this Concession.

24.2 The rights and powers implied by Schedule 5 to the Property Law Act 2007 do not apply to this Concession.

**25. Jointly and severally liable**

25.1 In the event that this Concession is held by multiple Concessionaires, they will be jointly and severally liable.

**26. Heritage**

26.1 The Concessionaire must take reasonable care to comply with the Heritage New Zealand Pouhere Taonga Act 2014.

**27. Supply of services**

27.1 Nothing contained or implied in this Concession requires the Minister or the Concessionaire to supply services on or under the Easement Land or entitles the Concessionaire to interfere with the services of any other user of the Easement Land.

**28. Are there any Special Conditions?**

28.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.

**29. The Law**

29.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.

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### SCHEDULE 3: SPECIAL CONDITIONS

1. [The rights and powers implied in easements under Schedule 5 of the Land Transfer Regulations 2018 (Regulations) are deleted and replaced with the amended terms from the Regulations, as set out in Schedule 5.]

**Commented [W18]:** Westpower and the Department will update the panel on whether the s 78 condition wording for a bond is required in Schedule 3.

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#### SCHEDULE 4: PLAN OR MAP

Area(s) <a href="#">as shown on Maps 1 – 5</a>	Activity <sup>1</sup>
1, 15, 4, 5, 8, 9, 10, 12, 14, 17, 18, 19, 20, 21, 22, 29, 30, 31, 32	A right to convey electricity; and A right to convey telecommunications:
2, 3, 5, 8, 9, 10, 12, 14, 17, 18, 19, 20, 26, 27, 29, 31	A right of way;

<sup>1</sup> This table is a summary only: the Concession authorises all activities within the definition of Concession Activity.

## SCHEDULE 5: RIGHTS AND POWERS IMPLIED IN EASEMENTS

### Land Transfer Regulations 2018

[The following are the rights and powers implied in easements as set out in Schedule 5 of the Land Transfer Regulations 2018, which have been amended to apply to this Concession.]

#### 1 Interpretation

In this schedule, unless the context otherwise requires,—

**burdened land**, means the Easement Land defined in Schedule 1, and includes the easement area.

**easement** means an easement (or the easements as context requires) granted by this Concession).

**easement area**, in relation to each easement, means the area to which that easement applies, as described in Schedule 1, and shown on the plan in Schedule 4.

**easement facility**, means together the electricity and telecommunications easement facility, and the right of way easement facility.

**electricity and telecommunications easement facility**, for the right to convey electricity and right to convey telecommunications, means wires, cables (containing wire or other media conducting materials), ducts, surface boxes, towers, poles, transformers, switching gear, other equipment, including equipment the grantee determines is suitable or required for the transmission of up to 66kV of electricity and associated telecommunications (whether above or under the ground), and anything in replacement or substitution:

**right of way easement facility**, for the right of way, means the surface of the land described as the easement area, including any road, track, bridges, culverts, accessways, and other related structures installed or to be installed within the easement area for access purposes:

**grantor** —

- a. has the meaning given by section 107 of the Land Transfer Act 2018; and
- b. in clause 2, includes that persons' agents, employees, contractors, tenants, licensees, and invitees.

**repair and maintenance**, in relation to an easement facility, includes the construction, replacement and upgrade of the easement facility.

**telecommunication** means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not.

any reference to **grantee** in this schedule is to be read as **Concessionaire** and includes the Concessionaire's agents, employees, contractors, tenants, licensees and invitees.

#### 2 Right of way

1. The right of way includes the right for the grantee, in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to go over and along the right of way easement facility.

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2. The right to go over and along the right of way easement facility includes the right to go over and along the right of way easement facility with or without any kind of vehicle, machinery, equipment or implement whatsoever.
3. The right of way includes the right to have the right of way easement facility kept clear at all times of obstructions (whether caused by parked vehicles, deposits of materials, or unreasonable impediment) to the use and enjoyment of the right of way easement facility.
4. The right of way easement facility is the surface of the land described as the easement area, including any easement facility laid or to be laid along the easement area in accordance with this easement.

### **3 Right to convey electricity**

1. The right to convey electricity includes the right for the grantee, at all times, to lead and convey electricity and electrical impulses without interruption or impediment, from the point of entry through the electricity and telecommunications easement facility and over the easement area.
2. The electricity and telecommunications easement facility is the easement facility laid or to be laid along the easement area in accordance with this easement.

### **4 Right to convey telecommunications**

1. The right to convey telecommunications includes the right for the grantee, at all times, to lead and convey telecommunications without interruption or impediment through the electricity and telecommunications easement facility and over the easement area.
2. The electricity and telecommunications easement facility is the electricity and telecommunications easement facility laid or to be laid along the easement area in accordance with clause 5(1).

### **5 General Rights**

1. All the easements referred to in this schedule include—
  - a. the right to use any easement facility already situated in the easement area for the purpose of the easement granted; and
  - b. if no suitable easement facility exists in the easement area, the right to lay, install, and construct in the easement area (including the right to excavate land for the purpose of that construction) an easement facility that the grantee reasonably requires and:
    - i. which are contemplated by the Application Documentation; or
    - ii. for which the grantor has given prior consent; and
  - c. the right to repair, maintain, upgrade and replace the easement facility.
2. The grantor must not unreasonably withhold consent under subclause (1)(b).
3. The grantor must not do and must not allow to be done on the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.

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4. The Concessionaire may, without the consent of the Minister, cut back or remove any vegetation or other structure if, in the Concessionaire's reasonable opinion, such vegetation or structure poses a risk to the easement facility, or such vegetation or structure breaches any minimum clearance requirements (whether imposed by legislation or in accordance with the Concessionaire's own minimum clearance requirements).

## **6 Repair, maintenance, and costs**

1. The grantee is responsible for arranging the repair and maintenance of the easement facility, and for the associated costs, so as to keep the facility in good order and to prevent it from becoming a danger or nuisance.
2. The grantee bears the cost of all work done by the grantee outside the burdened land in relation to this easement.
3. The grantee, in carrying out maintenance under subclause (1) or (2), must meet any associated requirements of the relevant local authority.
4. Any repair or maintenance of the easement facility that is attributable solely to an act or omission by the grantor will be carried out by the grantee at the grantor's sole cost.
5. However, if the repair and maintenance of the easement facility is only partly attributable to an act or omission by the grantor, the work will be carried out by the grantee, but the grantor must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission.

## **7 Rights of entry**

1. The grantee may, for the purpose of exercising any right or power, or performing any related duty, in this easement,—
  - a. enter upon the burdened land by a reasonable route and with all necessary tools, vehicles, and equipment; and
  - b. remain on the burdened land for a reasonable time for the sole purpose of completing the necessary work; and
  - c. leave any vehicles or equipment on the burdened land for a reasonable time if work is proceeding.
2. The grantee must ensure that as little damage or disturbance as possible is caused to the burdened land or to the grantor.
3. The grantee must ensure that all work is performed properly.
4. The grantee must ensure that all work is completed promptly.
5. The grantee must immediately make good any damage done to the burdened land by restoring the surface of the land as nearly as possible to its former condition.
6. The grantee must compensate the grantor for all damage caused by the work to any crop (whether ready for harvest or not) or to any buildings, erections, or fences on the burdened land.

## 8 Restriction on Grantor's use

1. The grantor must not do (or permit to be done) any act or thing which may interfere with or affect the rights of the grantee or the operation of the easement facility. In particular, the grantor must not (and must not permit), without the prior written consent of the grantee:
  - a. on the easement area, or within the minimum distance from the electricity and telecommunications facility as advised by the grantee (having regard to relevant statutory or regulatory requirements, codes of practice and engineering standards applicable from time to time), erect or permit the erection of any buildings or structures, alter or allow to be altered the overall dimensions of existing buildings or structures, plant or cultivate any vegetation or crop, carry out any earthworks or stockpiling, construct or permit the construction of any roads, dams, walls or driveways, or remove or permit the removal of any soil, rock, sand, gravel or other substance;
  - b. burn off crops, trees or undergrowth on the burdened land within 50 metres of the electricity and telecommunication easement facility;
  - c. operate or permit to be operated any machinery or equipment whatsoever in close proximity to any tower, pole, ground stay or support comprising part of the electricity and telecommunications easement facility;
  - d. disturb any survey pegs or markers placed on the burdened land by the grantee;
  - e. impede the grantee's access over the burdened land, or to the easement facility;
  - f. do anything on or in the burdened land which would or could damage or endanger the easement facility;
  - g. develop, use, or grant any rights in, the burdened land, in a way which would prevent the grantee from exercising its rights under this easement; and
  - h. erect or permit the erection of any structures or make alterations or additions to any structure on the burdened land, except those that meet the required clearances from live electric power lines from time to time, as at the date of this easement as stated in the current [Code of Practice for Electrical Safety Distances (NZECP 34:2001)].