

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 #16
MEMORANDUM OF COUNSEL ON CONCESSION FEE AND TERM**

Dated: 5 March 2026

BUDDLE FINDLAY
Barristers and Solicitors

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MAY IT PLEASE THE PANEL:

1. This memorandum is filed on behalf of the applicant, Westpower Limited (**Westpower**).
2. The Panel issued RFI #6 on 27 February 2026. This memorandum:
 - (a) attaches Mr Penrose's response to questions from the Panel; and
 - (b) addresses recent discussions between the Panel and Poutini Ngāi Tahu about the concession term.

Applying the purpose of the FTAA to the concession fee

3. In the appended memorandum, Mr Penrose clarifies that he did not take into account the purpose of the FTAA in his valuation report. He considers that:
 - (a) it may be appropriate for the Panel to apply a discount to his assessed concession fee;¹
 - (b) he did not take into account the public good benefits of the Scheme because they sit outside the definition of market value; and
 - (c) *"the panel may consider it appropriate to adopt Mr Griffith's suggested rate to give effect to the purpose of the FTAA"*.²
4. In Westpower's view, the Panel should consider setting the concession fee by taking the following into account:
 - (a) Mr Penrose's recommended fee which applies the Conservation Act 1987 framework to come to an appropriate fee (as sought by the Department of Conservation).
 - (b) The purpose of the FTAA to *"facilitate the delivery of infrastructure and development projects with significant regional and national benefits"*.
 - (c) Mr Penrose's valuation and fee could be reduced to facilitate delivery of the Scheme:
 - (i) that conditions are to be no more onerous than necessary (s 83, FTAA);

¹ At page 1 of the appendix.

² At page 33 of Appendix 3 (confidential and unredacted) and Appendix 4 (redacted) of Memorandum #14.

- (ii) incorporating a discount to Mr Penrose's recommended fee based on:
- the "*increased risk of being uneconomic*"³ as addressed by Mr Griffiths in Memorandum #14, Appendix 1;⁴ and
 - the regional and national benefits of the Scheme associated with a hydro generation project; and
- (iii) setting a fee no more than what Mr Griffiths recommends in Memorandum #14.

Reducing the concession term to 49 years

5. There have been various documents filed and discussions with the Panel in relation to the concession terms. Westpower never intended to trigger the Ngāi Tahu right of first refusal (RFR) and had applied for two concessions for two quite distinct activities (construction (up to 15 years) and operation (up to 49 years)). Westpower's understanding was that would not trigger the RFR.
6. Westpower has a strong partnership with Poutini Ngāi Tahu and fully respects that the RFR is a key Ngāi Tahu Treaty settlement mechanism which is the responsibility of Te Rūnanga o Ngāi Tahu. Westpower acknowledges and appreciates the constructive discussions that have been had in relation to this matter.
7. Westpower understands that there may be different views and some uncertainty as to whether the RFR is triggered in the context of these two concession terms (15 years plus 49 years). Westpower also understands that the Panel raised this matter in its recent session with Poutini Ngāi Tahu and inquired whether it would be possible to provide a waiver of the RFR, in the event that the Panel did not agree with Westpower's view or decided to grant one combined concession with a term of 50 years or more (which would trigger the RFR).
8. In light of those developments and the uncertainty, Westpower has decided to seek a reduced combined term of 49 years for both concessions. As noted, Westpower had no intention to trigger the RFR or to seek a waiver of

³ As put by Mr Penrose in pg 2 of his 5 March 2026 memorandum.

⁴ https://www.fasttrack.govt.nz/_data/assets/pdf_file/0014/21524/Westpower-Memorandum-14-Attachment-Mr-Griffiths-Concession-Fee-REDACTED.pdf

the RFR, and at this point in the process Westpower considers that is the most appropriate and respectful step to take.

9. Westpower therefore respectfully seeks that the Panel proceeds on the basis that the application is now for a total combined term for both concessions of 49 years.

Dated: 5 March 2026



Paul Beverley / David Allen / Rachael Balasingam

Counsel for Westpower Limited