

Appendix 2: Table of responses from Mr Jackson on Westpower’s behalf to comments on draft resource consent conditions

Condition No.	Comment / Suggested Edit	Response
Department of Conservation Comments		
<p>CC7 new Advice Note</p>	<p><u>Advice Note: The same Avifauna Management Plan, Bat Management Plan, and Lizard Management Plan will be submitted to the Department of Conservation for written certification under the requirements of Wildlife Authority [Add Wildlife Authority number]. The same Freshwater Ecology and Monitoring Plan will be submitted to the Department of Conservation for written certification under the requirements of the Complex Freshwater Fisheries Permit [Add Permit number].</u></p>	<p>Reject</p> <p>Agree the Panel’s draft conditions requiring Westpower to seek feedback from DOC with certification by the relevant consenting authority, including providing DOC feedback and rationale for any comments not adopted.</p>
<p>CC9</p>	<p>All management plans must:</p> <ul style="list-style-type: none"> a. be prepared and implemented in accordance with the relevant management plan condition(s); b. be prepared by a SQEP having regard to the subject matter of the management plan; c. if relevant, include commentary in accordance with Condition CC10(e) <u>where Department of Conservation consultation is required</u>; d. include sufficient detail relating to the management of effects associated with the relevant activities <p>and/or Project Construction Work Component to which it relates; and</p>	<p>Agree</p> <p>On the basis that the Panel is not “approving” selected final management plans that were provided in support of the application, <u>all</u> management plans now require DOC feedback (as above).</p>

Condition No.	Comment / Suggested Edit	Response
	<p>e. once certified, be uploaded to the Project website or equivalent virtual information source as required by Condition CC4 and CC5.</p>	
CC10	<p>Prior to submitting the management plans for the following Project Construction Work Components for certification, the Consent Holder must invite the <u>DOC Liaison Officer Department of Conservation</u> to review the management plans and <u>provide written confirmation that they meet the requirements comments, suggest amendments or additions to each plan</u> within 20 working days of the management plan being provided to the Department:</p>	<p>Agree and Reject Agree to “invite the DOC Liaison Officer” to review and provide feedback Reject DOC’s request that the Liaison Officer “provides written confirmation that they meet the requirements”. This results in the condition becoming ultra vires on the basis it requires an action to be undertaken by a third party.</p>
RC7	<p>Unless otherwise stated in these Consents, in the event of any breach of compliance with the conditions of these Consents and in the event of any fuel spillage in excess of 20 litres that occurs onto the land surface or into water, the Consent Holder must notify the Consent Authority <u>and the Department of Conservation</u> immediately after becoming aware of the breach</p>	<p>Agree</p>
RC11	<p>Prior to Construction, the consent holder must:</p> <p>(a) in consultation with Department of Conservation, design the alternative track access in accordance with the Tramping Track Standard described in the New Zealand Handbook Tracks and Outdoor Visitor Structures SNZ HB8630:2004.</p> <p>(b) construct the alternative track access <u>on the true right bank of the Waitaha River, in general accordance with the location shown in Appendix B.</u></p>	<p>Reject</p> <p>Requiring an “approval” by a third party is ultra vires.</p> <p>It is sufficient that the conditions require the consent holder to consult with DOC on the specific final location and details of the alternative track and that the general location be specified to provide an appropriate level of certainty as to what is being constructed. As drafted by DOC the condition could be used by DOC to require its preferred option which has been rejected by the Panel [at para 732], of a new access track, with bridge crossing, being constructed on the true left bank. The</p>

Condition No.	Comment / Suggested Edit	Response
	<p><u>in a location, and with a design, approved by the Department of Conservation.</u></p> <p><i>Advice Note: The alternative access track is provided to minimise visitor views of the new access road, transmission line corridor and Power Station Site construction areas and activities.</i></p>	<p>effects of such a track were not assessed and such a track does not form part of the listed project under the FTAA.</p>
RC19A	<p><u>Clearance of potential lizard habitat may only be undertaken outside of the approved lizard management season (October – April inclusive) in areas that have been subject to pre-clearance salvage effort during the March / April months that immediately precede and do not result in the detection of lizards. Any area that is found to contain resident lizards may not be subject to any winter habitat clearance activities.</u></p>	<p>Reject</p> <p>As per the comment to DOC’s previous request for this condition (Refer Westpower memorandum 13), lizard effects will be appropriately managed through LizMP implementation and the required compensation payment (Condition DC63).</p>
RC110A	<p><u>The Consent Holder must notify the Department of Conservation prior to undertaking any in-stream sediment excavation work above the Headworks</u></p>	<p>Partially Agree</p> <p>This requirement is reasonable, but only for any “planned” in-stream sediment excavation work above the Headworks. Suggested edit:</p> <p><i>The Consent Holder must notify the Department of Conservation prior to undertaking any planned in-stream sediment excavation work above the Headworks.</i></p>
RC111	<p>a. <u>There must not be on average more than 15 in-stream maintenance works events using an excavator (in-stream excavation works) during any year of operation of the scheme and of no more than four hours duration per event.</u></p> <p>b. <u>The Consent Holder must submit a report at the end of each year (by 31 December) detailing the number of</u></p>	<p>Reject</p> <p>This has been explored and explained in detail and at length through the process. Having a maximum limit on in-stream maintenance works above the Headworks is unworkable on the basis that it cannot control the frequency of large floods or other natural events that may generate additional sediment. Instead, it is proposed to retain the current conditions requiring a monitoring, 5-year reporting and reviewing</p>

Condition No.	Comment / Suggested Edit	Response
	<p><u>occurrences of in-stream excavation works undertaken each year to enable the council to consider whether to initiate a review of the consent.</u></p> <p>c. <u>If</u>, for any consecutive five (5) year period following the Commencement of Generation, the average annual <u>frequency number</u> of in-stream sediment excavation work events undertaken above the Headworks exceeds fifteen (15) the Consent Holder must prepare an In-stream Works Review Report. The purpose of the In-stream Works Review Report is to identify practicable measures for minimising the frequency of in-stream sediment excavation work events.</p> <p>d. The In-stream Works Review Report must (as a minimum):</p> <ol style="list-style-type: none"> i. Be prepared by a suitably qualified and experienced professional; ii. Include a detailed analysis of the likely <u>root</u> causes for all in-stream sediment excavation events recorded within the five (5) year period; iii. If the <u>root</u> causes are not considered "unique" to the preceding five (5) year period, include a detailed review of the Headworks operating procedures set out in the SOMP to identify potential operational and/or set-point changes that could reduce the average frequency of in-stream sediment excavation events; iv. Include a summary of other options considered to reduce the average frequency of in-stream sediment excavation events; and v. Identify any recommended changes to the 	<p>process to manage related effects. That was accepted by the Panel in its Draft Decision [at paras 716 - 718]</p>

Condition No.	Comment / Suggested Edit	Response
	operating procedures set out in the SOMP and/or any recommended physical changes to the headworks structure including any technical information to support any recommendations made	
RC112	If an In-stream Works Review Report is required to be prepared under Condition CG111 RC111, the Consent Holder must provide the Report to WCRC and WDC for their information no later than three months following the end of the relevant five (5) year review period.	Agree Typo
RC87A	<u>No instream works shall be undertaken during peak spawning and migration times for the native fish species present in the waterbody as determined by the survey required in accordance with Condition RC77 (with the exception of instream works associated with the Headworks and intake weir, and water bodies that are ephemeral/intermittent and dry at or downstream of the works area at the time of the works).</u>	Reject These effects are managed through condition 20 of the complex freshwater fishery approval which states: 20. The permit holder will not undertake the following activities: a. Instream works that prevent fish passage during peak spawning and migration times for the native fish species present in the waterbody as determined by the survey required in accordance with Condition 11 (with the exception of instream works associated with the Headworks and intake weir, and water bodies that are ephemeral/intermittent and dry at or downstream of the works area at the time of the works or where such works last less than one week in duration); If a similar condition is considered appropriate for the resource consents, which is not accepted as necessary, then it must be aligned with the above wording.

Condition No.	Comment / Suggested Edit	Response
DC54	<p>(a) The objective of the BMP is to specify the procedures and methods to be applied during construction and operation of the Scheme minimise manage potential adverse effects on long-tailed bats (<i>Chalinolobus tuberculatus</i>).</p> <p>(b) To achieve this objective, the BMP must include (as a minimum):</p> <ul style="list-style-type: none"> (i) Methods, procedures or protocols to avoid, remedy or mitigate effects on bats with the first priority being to avoid adverse effects given their threat status; (ii) the Protocols for minimising the risk of felling occupied bat roosts, Version 4: October 2024 (Bat Roost Protocols) and any other measures to be adopted prior to, during and after bat habitat removal; (iii) Compensation details designed to address residual construction related effects in accordance with Conditions DC59, DC61 and DC62; (iv) Compliance monitoring and reporting processes; and (v) Clear roles, responsibilities, and minimum competency requirements for personnel implementing the BMP. 	<p>Reject</p> <p>Retain “manage”. Para (b) provides details of how that management will occur.</p>
DC58	<p>(a) The objective of the LizMP is to specify the procedures to be applied for the management of to minimise potential adverse impacts on lizards associated with the</p>	<p>Reject</p> <p>Retain “for the management of” for the reasons above.</p>

Condition No.	Comment / Suggested Edit	Response
	<p>construction of the Scheme.</p> <p>(b) To achieve this objective, the LizMP must include (as a minimum):</p> <p>(i) A description of methodology for survey, trapping and relocation of lizards rescued including but not limited to:</p> <p>(1) salvage methods including timeframes;</p> <p>(2) lizard handling and relocation protocols (including method used to identify suitable relocation site(s));</p> <p>(3) data collection; and</p> <p>(4) habitat clearance/transfer protocols;</p> <p>(i) <u>A detailed contingency plan for if green gecko are found on site;</u></p> <p>(ii) A description of the release site(s);</p> <p>(iii) Clear roles, responsibilities, and minimum competency requirements for personnel implementing the LizMP;</p> <p>(iv) Compensation details designed to address residual construction related effects in accordance with Conditions DC63 of this consent; and</p> <p>(v) Compliance monitoring and reporting processes.</p>	<p>It is unnecessary to have specific Green Gecko contingency plans. The management plan can deal with all species in the same way. It was not sought by Westpower's expert highlighting Appendix 38 to the AEE, Lizard Management Plan repeats the assessment finding that "No lizards have been found within the Scheme footprint; however, it is considered that there is a moderate likelihood that forest gecko, West Coast green gecko, and grass skink may be present, albeit in very low numbers" (pg 22).</p>
DC61	<p>From and including the eleventh year following the Commencement of Construction, and then for the duration of the consents, and in consultation with the DOC, the Consent Holder must make an annual payment of</p>	Reject

Condition No.	Comment / Suggested Edit	Response
	<p>\$35,000 to an ecosystem programme in the region <u>nominated by DOC</u> as a contribution to support the West Coast region's wider ecosystem or locally in the Waitaha Valley. <u>The detail of the ecosystem programme will be set in consultation with DOC at the end of Year 10 and will be informed by the state of the environment at that time.</u></p>	<p>No need to include "nominated by DOC". It is sufficient that Westpower consults with DOC regarding an appropriate eco system programme. Codifying an "action" by DOC (i.e. to nominate something) is also ultra vires.</p> <p>This condition does not require "the details of the ecosystem to be determined", moreover, as drafted by Westpower, it more appropriately requires Westpower to financially contribute to one.</p>
<p>Westland District Council Comments</p>		
<p>N/A</p>	<p>It is unclear why the wording at the start of Schedule Three refers to regional consents as highlighted in bold below:</p> <p>These conditions apply to regional consents held by Westpower Limited in relation to Land use consent authorising the construction, operation and maintenance of the Waitaha Hydro Scheme including temporary vegetation clearance, investigative drilling, use of helipads and aggregate mining, and permanent flood protection works, signs and water level and river flow recording devices.</p>	<p>Agree</p> <p>Recommend the Panel makes the following edits:</p> <p><i>These conditions apply to regional land use consent held by Westpower Limited in relation to Land use consent authorising the construction, operation and maintenance of the Waitaha Hydro Scheme</i></p>
<p>West Coast Regional Council Comments</p>		
<p>CC2 and CC4</p>	<p>In conditions such a CC2 and CC4 there is inconsistent wording with shall used instead of must. Where appropriate, the WCRC would prefer must to be used as a stronger word.</p>	<p>Agree</p>
<p>RC127(c)</p>	<p>In condition RC127(c), should it state in the table above?</p>	<p>Agree</p> <p>This was also a recommended edit in Westpower's comments on conditions (Westpower Memorandum 18)</p>

Condition No.	Comment / Suggested Edit	Response
RC130	RC130 have a requirement to notify WCRC at the same time.	<p>Reject</p> <p>Westpower is required to publish no-take days on the project website (Condition CC4). This is sufficient.</p>
N/A	WCRC would prefer that management plans are approved rather than certified.	<p>Reject</p> <p>This is a topic that has already been discussed at length with WCRC. As per these discussions, it was explained that consenting authorities do not provide approvals (this is done by the Panel) and that current best-practice is to have management plans “certified” by the consenting authorities (acting in a technical certification capacity).</p> <p>Certification is undertaken against relevant consent conditions.</p> <p>Consenting authorities can commission expertise to assist them in this role of the required expertise is not held in-house.</p>

Condition No.	Comment / Suggested Edit	Response
N/A	<p>The proposed conditions contain a significant amount of material that appears to regulate private arrangements between third parties, rather than matters within the Council’s statutory functions. As such, a number of these conditions are not consistent with sections 108 and 108AA of the Resource Management Act 1991.</p> <p>We reiterate that the overall condition set is unwieldy and would be costly and time-consuming to monitor for compliance, while offering limited scope for effective enforcement, particularly where no environmental effects arise from any breach.</p> <p>We also note that many of the conditions do not relate to the avoidance, remedying, or mitigation of adverse effects on the environment. In such cases, there would be little to prevent a consent holder from successfully applying for the cancellation or variation of those conditions, given the absence of an effects-based justification.....</p>	<p>Reject</p> <p>While the consent conditions are more complex than usual, this complexity is considered aligned with the nature and scale of the project and its effects. This complexity will require more compliance monitoring effort than is likely typical for the region, however, this is appropriate considering the nature of the site and the particulars associated with the project.</p> <p>The conditions relate to the avoidance, remedying, or mitigation of adverse effects on the environment. If there is a future s127 application its outcome is not a given – it will need to be assessed on its own merits, and importantly, the effects associated with any proposed condition variation will need careful assessment.</p> <p>The conditions are lawful, robust and consistent with best practice.</p>
CC10; CC33(e); RC69; RC130 -135	<p>Of particular concern are:</p> <ul style="list-style-type: none"> • CC10; • CC33(e); • RC69; • RC130 -135 <p>Which will be particularly hard to enforce.</p>	<p>Reject</p>
CC10(f)	<p>CC10(f) - I agree, not something we can enforce and does not sit with us under RMA, only our own fees and charges.</p>	<p>Reject</p> <p>This is an Augier condition agreed between Westpower and DOC</p>
CC16	<p>CC16 - Agree - this should be reworded. It could say that minor amendments must be submitted to the relevant</p>	<p>Reject</p>

Condition No.	Comment / Suggested Edit	Response
	Council for approval, prior to implementation, or something to that effect. Also, what constitutes minor or major amendments. What would be classed as a materially different outcome?	This condition (and similar variants) has been used successfully in other consents throughout NZ.
CC30 (a)	CC30 (a) - This is a H&S related condition.... regardless, how will people know what the siren means? Should there be signage associated with the sirens, maybe?	Signage will be installed. Health and safety of people associated with consents related to diverting and discharging water is a relevant effect for WCRC jurisdiction
CC33 (e) & (f)	CC33 (e) & (f) - talks about compensation....not sure this is relevant to us or something we can enforce, that's third party arrangements we don't get involved with.	Reject Compensation is a relevant and common effects management method and commonly prescribed in consent conditions. Westpower has previously discussed this issue with WCRC at length. To assist enforcement, Westpower subsequently proposed these additional reporting conditions.
RC6 & RC7	RC6 & RC7 - should have an advice note to say where to send this notification to - wcrccompliance@wrc.govt.nz	Agree
RC13	RC13 - are there no requirements to monitor dust with gauges?? I think there should be.	Reject Given the absence of any nearby sensitive receivers (dwellings) the requirement to install dust gauges is considered significantly more onerous than is necessary. No expert evidence was called by WCRC in relation to this matter to support such a requirement.
RC18	RC18 - Gravel extraction - volume allowed is 100,000m3, but it does not give a timeframe, i.e. is that the total they can take over the life of the consent or per year, etc.	For clarification - the intent is that this is a maximum total for the duration of the consent.
RC25(c)	RC25(c) - delete the "above recorded natural background levels of the receiving site" - this will be difficult	Reject

Condition No.	Comment / Suggested Edit	Response
	to determine and enforce. Just leave it as "not contain hazardous substances or contaminants."	The onus is on the consent holder to demonstrate this.
RC28–RC30	RC28–RC30 – again, things missing around timeframes.	For clarification - the intent is that this is a maximum total for the duration of the consent.
RC37	RC37 – The site should be tidied up immediately after the extraction operation, not 5 working days after.	<p>Reject</p> <p>There will be some time needed before the commencement of restoration to remove relevant plant and equipment and this also provides some flexibility to deal with inclement weather etc.</p> <p>Also, there are no concerning environmental impacts associated with having a maximum 5-day period between completing gravel extraction and commencement of restoration.</p>
RC40	RC40 – I have noted in newer gravel consents that returns are required 6 monthly, not annually. Should this consent align with the new consents?	Reject
RC41–43	RC41–43 – should there be conditions around measuring and monitoring their take?	Reject
RC46	RC46 – Should the diversion work be undertaken with a SQEP supervising?	<p>Agree</p> <p>Current conditions require this (RC49)</p>
RC54	RC54 – There should be no discharge of any contaminants..... (take out the word "direct")	<p>Reject</p> <p>Given the concrete batching plant adopts ground soakage, it is possible there will be indirect discharges to surface water (i.e. via groundwater / baseflow).</p>

Condition No.	Comment / Suggested Edit	Response
RC57	RC57 – I think the condition should specify that the design plans must be done by a SQEP.	Agree
RC58	RC58 - I added the "use of on-tool extraction"	Reject Unclear what this refers to
RC63	RC63 – I think it should read "spoil", not soil? I did tracked changes in the document.	Agree Typo
RC68	RC68 – Should the fish passage be added here as a consideration? (See tracked changes)	Reject Fish passage performance standard is covered in RC71. RC68 is about the consultation process required to develop and finalise the design.
RC69	RC69 – Agree - this is not our agreement to manage, should not be in the consent.	Reject
RC87	RC87 – Should be "No" concrete, not just wet concrete? I.e., we should not see any concrete dust or residue dry bags etc. in the waterways?	Reject Solid concrete will be placed in waterways. When constructing the weir, there will be a need to have other construction plant and equipment temporarily in the (dewatered) waterway. No need (or benefit) to have a specific condition prohibiting unauthorised discharges to surface water.
RC92	RC92 – The FEMP should include details of the SQEP who undertook the surveys.	Reject Not necessary on the basis the FEMP itself is required to be prepared by a SQEP (Condition CC9)

Condition No.	Comment / Suggested Edit	Response
RC93	RC93 – Should include requirement/conditions to install and maintain measuring devices installed which should be monitored.	Reject This is covered by the Monitoring Plan (Condition RC126)
RC100	RC100 – again - how will this flow rate be measured and monitored?	Not relevant Westpower is seeking this groundwater flow rate limit to be removed (refer Westpower Memorandum 18)
RC104(ii)1)	RC104(ii)1) – should include that fish monitoring should be done by a SQEP.	Reject Requirement for a SQEP covered off in RC103 (trials)
RC105	RC105 – Do we want to restrict ourselves to 60 days? Doing the review itself might take a while? Could we say we can review at any time after receiving the RRAMR?	Reject 60 days is considered an appropriate amount of time for WCRC to decide if review is required while also providing Westpower a sufficient level of certainty.
RC106 & RC107	RC106 & RC107 – How is this measured?	Refer RC126 (Monitoring Plan)
RC109	RC109 – 5 years is too long, in my view, giving how much things will change over the course of the project. I think the SOMP should be reviewed annually.	Reject There is no reason to assume things will change markedly over the course of the project (and no detail as to the concern has been provided by WCRC). Typically, once bedded in, hydro operations change very little. This condition doesn't restrict more frequent reviews by Westpower.
RC111(e)	RC111(e) – why the number 15? Why not make it 12 as that would account for one event a month? 15 is a strange number to me? Goes back to the plan being reviewed on a 5 year basis (RC109 & RC112) - it's too long, they won't know there is an issue for 5 years???	Reject This comment has been made in absence of knowing about the considerable discussion that has occurred on this topic.

Condition No.	Comment / Suggested Edit	Response
RC114	RC114 – Instead of 1 week, make it 5 working days to be consistent with timeframe language in the rest of the consent?	Agree
RC115	RC115 – I might be missing something here, but the Report should also talk about how safe fish passage is maintained during these trials?	Reject This is not the purpose of the flushing trials. The objective of the flushing trials is set out in RC113.
RC118–RC120	RC118–RC120 – How is this rate measured?	Refer RC126 (Monitoring Plan).
RC120(f)	RC120(f) – Should also have contingency plan for dealing with any change in water clarity?	Reject This is the whole purpose of the trials.
RC121	RC121 – Change time frame to 5 working days, for consistency with rest of document. Also added "Control measures in (c)."	Agree to 5 working days. Reject adding “control measures”. Unclear what this is referring to and unclear how this is different to “methodology”
RC124	RC124 – made addition in (vi) to also state where MSDS are stored on site.	Agree
RC125	RC125 – as per other management plans, I think 5 yearly reviews are too long, should be shortened to annually.	Reject Nothing related to this Management Plan is conceivably going to change within 1 year and this condition already provides for more frequent reviews if needed.
RC126	RC126 – A SQEP should have input into this monitoring plan.	Reject This condition hard-wired monitoring requirements that have been developed throughout the fast-track process (which has included SQEPs). At this stage, this is

Condition No.	Comment / Suggested Edit	Response
		not something that can be altered with SQEP input (apart from any potential future s127 proposals).
RC127(c)	RC127(c) – Agree, it refers to a table below, rather than above. What other issues did you have with this condition?	Agree with the table “above” comment. This was also suggested change in Westpower’s Memorandum 18.
RC132	RC132 – I am happy with (a), but not (b)	<p>Reject</p> <p>As discussed at length with WCRC to date, this condition has been agreed with WWNZ and its inclusion in the consent forms part of the agreement Westpower has reached with WWNZ.</p> <p>Compensation is a relevant and common effects management method and commonly prescribed in consent conditions. To assist enforcement, Westpower subsequently proposed these addition reporting conditions.</p>
RC133	RC133 – delete this condition.	<p>Reject</p> <p>See comment regarding RC132.</p>
RC134	RC134 – Agree, delete this.	<p>Reject</p> <p>See comment regarding RC132.</p>
RC139	RC139 – Again, can we take out the 60 days and leave it at any time?	<p>Reject</p> <p>Not reasonable, nor standard practice, to provide for a review at any time.</p>
Various	I also have concerns with the wording to "certify" management plans. Compliance staff can approve management plans, but we would not be certifying them. (This is throughout the consent).	<p>Reject</p> <p>This is a topic that has already been discussed at length with WCRC. As per these discussions, it was explained that consenting authorities do not provide approvals (this is done by the Panel) and that current best-practice is to have management</p>

Condition No.	Comment / Suggested Edit	Response
		<p>plans “certified” by the consenting authorities (acting in a technical certification capacity).</p> <p>Certification is undertaken against relevant consent conditions.</p> <p>Consenting authorities can commission expertise to assist them in this role of the required expertise is not held in-house.</p>
Various	It also does not state who is to certify/approve these plans. I think it needs to be made clear as to where the management plans are to be sent and who is to approve them. (e.g. send to compliance team and approved by compliance team).	<p>Neutral</p> <p>Not considered necessary but Westpower does not oppose.</p>