

10 December 2025

# Waitaha Hydro – DOC s51 covering report

Waitaha Hydro Project - FTAA-2505-1069 – s51 FTAA covering  
report – Department of Conservation



Department of  
Conservation  
*Te Papa Atawhai*

**Te Kāwanatanga  
o Aotearoa**  
New Zealand Government

# 1. Introduction

- 1.1** On 8 August 2025, Westpower Limited (Westpower/the Applicant) lodged a substantive application with the Environmental Protection Agency (EPA) for Waitaha Hydro (the Project). On 29 August 2025, the EPA determined that the Application was complete and complied with section 46(2) of the Fast-track Approvals Act 2024 (FTAA/the Act). The Application was deemed to not have any competing applications or existing resource consent concerns under section 47 of the Act by the EPA on 12 September 2025.
- 1.2** The Application is to develop a hydro scheme in the Waitaha River to provide renewable energy, including a weir, an access road, and a 66 kV transmission route.
- 1.3** The Department of Conservation (DOC) has prepared three reports on behalf of the Director-General of Conservation, in accordance with section 51 of the Fast-track Approvals Act 2024 (FTAA), in response to the Panel Convener's Minute 1 of 24 September 2025. The three s 51 reports relate to:
- an approval described in section 42(4)(e) (concession)
  - an approval described in section 42(4)(h) (wildlife approval)
  - an approval described in section 42(4)(j) (complex freshwater fisheries activity).
- 1.4** These reports (the conservation approval reports) are set out in **Appendices C to E**.
- 1.5** DOC has also prepared a report (the weighting report), on behalf of the Director-General, advising how the weighting of relevant matters should be approached (requested in Minute 1 of 24 September 2025 for each approval). This report is provided in **Appendix A**.
- 1.6** This preliminary section (the **Covering report**) addresses matters that relevant to all three of the conservation approval reports and should be read as forming part of each of the reports.
- 1.7** DOC has sought input from a range of technical experts to inform the preparation of the conservation approval Reports. These experts and their credentials are listed in **Appendix B**, together with an indication of the topics to which they have contributed.
- 1.8** In full, the structure of the DOC reports is as follows:
- Covering report
  - Appendix A: Weighting of relevant matters to be taken into account
  - Appendix B: Technical expert credentials
  - Appendix C: Concession report
  - Appendix C1: Landscape peer review
  - Appendix C2: Recreation technical report
  - Appendix C3: Concession conditions – lease licence (short-term)
  - Appendix C4: Concession conditions – lease licence (long term)
  - Appendix C5: Concession conditions - easements
  - Appendix D: Wildlife approval report

- Appendix E: Complex freshwater fisheries report
- Appendix F: Legal memorandum in relation to section 51 reports

## 2. Overview of the Project

**2.1** Westpower is proposing to construct, operate and maintain a run-of-the-river hydroelectric scheme ('the Scheme') in the Waitaha River, approximately 60 km south of Hokitika. The Scheme is expected to generate approximately 120-140 GWh of electricity per year, equivalent to the electricity needs of approximately 12,000 households.

**2.2** The Scheme consists of low-profile weir and intake structure at the top of Morgan Gorge that diverts up to 23 m<sup>3</sup> /s of Waitaha River water into a 1.5 km long pressurised water tunnel, to a 23 MW Power Station located below Morgan Gorge. An associated access road and 66 kV transmission line corridor will also be constructed to allow site access and transmission of the generated power away from site.

**2.3** The project site is within the true right bank of the Waitaha River, between the lower end of Kiwi Flat and Macgregor Creek within Waitaha Valley, 38 kilometres south of Hokitika. To describe the Project Site and the proposed activities, the site is separated into four areas:

- **Area 1** - comprising the Scheme's weir and intake structures at the southern extent of the Project;
- **Area 2** - including the Power Station Site and sections of the site access track and transmission line located south of McLean farm;
- **Area 3** - comprising the area proposed for land-based gravel extraction and construction spoil material disposal and will include the main Construction Staging Area; and
- **Area 4** - including sections of the site access track and transmission lines located on McLean Farm and transmission lines located further north within local and SH6 land and also including the Waitaha Substation at the northern extent of the Project.

## 3. Engagement with the Applicant

**3.1** DOC has engaged with the Applicant, Westpower, on this project since approximately 2013. An initial application for a concession by Westpower was applied for in 2014. This was declined by the Minister for the Environment in August 2019 (the decision was transferred from the Minister for Conservation). Westpower submitted a reconsideration application in 2022 after further consultation with DOC. This application was put on hold to pursue a fast-track application. The reconsideration application was retracted by Westpower on 5 September 2025.

**3.2** Since February 2025, DOC has engaged consistently with Westpower on their fast-track Application. This has included attending fortnightly meetings as well as conditions workshops. Westpower lodged its Application under the FTAA on 8 August 2025, DOC has continued engagement since lodgement.

- 3.3** The engagement has been constructive, and many issues have been resolved and/or appropriately addressed to DOC's satisfaction. The conservation approval reports identify where outstanding issues remain.
- 3.4** There has been considerable effort expended in relation to the condition set proposed with the Application, including workshops with Westpower and councils on 10 October 2025, 26 November 2025, 8 December 2025, in addition to the fortnightly meetings with Westpower. A further workshop on the resource consent and concession conditions is proposed by Westpower on 18 December 2025.

## **4. Treaty of Waitangi considerations**

### **Treaty of Waitangi settlement obligations**

- 4.1** Section 7 of the Act requires all persons performing and exercising functions, powers, and duties under the Act to act in a manner consistent with obligations arising under existing Treaty settlements.
- 4.2** The Application site is within the takiwā (area) of Te Rūnanga o Ngāi Waewae and Te Rūnanga o Makaawhio, collectively referred to as Poutini Ngāi Tahu. Poutini Ngāi Tahu exercise tino rangatiratanga within their respective takiwā and are the kaitiaki of the natural and physical resources on the West Coast.
- 4.3** The Deed of Settlement (1997) between the Crown and Te Rūnanga o Ngāi Tahu which was given legislative effect through the Ngāi Tahu Claims Settlement Act 1998 (together the Treaty settlement), acknowledges past injustices suffered by Ngāi Tahu, provides redress, and settles historical Ngāi Tahu claims. DOC acknowledges that the Ngāi Tahu Treaty settlement is highly significant to Poutini Ngāi Tahu.
- 4.4** The Treaty settlement provides Ngāi Tahu the right of first refusal where a lease could potentially be granted for 50 years or longer. In this case, the Applicant seeks a concession term of 49 years for all long-term land occupation and use activities associated with the Scheme, and a term of no less than 15 years for all short-term leases and licenses required for the construction period.<sup>1</sup> DOC's understanding is that these concessions are intended to run consecutively, which means a total term of 64 years. Accordingly, assuming the Applicant continues to seek this extended combined term, the right of first refusal may be triggered. See 6.8 of the concession report in **Appendix C**.
- 4.5** The Treaty settlement requires DOC to manage historic resources on lands that are significant to Ngāi Tahu, which includes wāhi tapu, wāhi taonga and places of historic significance. Several taonga species are potentially present and affected by the project, including native birds.

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<sup>1</sup> AEE, Section 4.2.2.

- 4.6** Poutini Ngāi Tahu have provided a letter to the Panel dated 13 May 2025 confirming its strong support for the project<sup>2</sup> and advising that they have entered into a partnership agreement with Westpower<sup>3</sup>.
- 4.7** The partnership is noted to deliver financial benefit to Poutini Ngāi Tahu, as well as provide for their iwi, visitors and the wider West Coast community through improved electrical resilience and employment opportunities for the region. Poutini Ngāi Tahu also indicate that the project will support the Ngāi Tahu Climate Change strategy: He Rautaki mō te Huringa o te Āhuarangi through provision of renewable energy to support the conservation of taonga within the takiwā.
- 4.8** The 'Partnership Report' prepared by Peter Armstrong (Chief Executive Officer - ElectroNet Group)<sup>4</sup> provides some detail on the partnership arrangement and discusses the role of Poutini Ngāi Tahu in the preparation of the Application documents, which includes identifying the key species of interest requiring protection in the design of the Scheme.
- 4.9** Poutini Ngāi Tahu have confirmed through their 13 May 2025 letter that Te Rūnanga o Ngāi Tahu supports the position of Poutini Ngāi Tahu and the project itself,<sup>5</sup> that there are no statutory areas, statutory acknowledgements, deeds of recognition or other specific redress mechanisms or documents that apply to the project area. Their letter also confirms that they consider:<sup>6</sup>
- the project is consistent with the relevant principles and provisions of the Treaty settlement; and
  - cultural effects and the effects on the environment, wildlife, taonga species and taonga fish species have been appropriately addressed to their satisfaction.

## Section 18 report

- 4.10** DOC has reviewed the section 18 report prepared by the Ministry for the Environment (MFE).<sup>7</sup> The report at paragraph 3 acknowledges that Poutini Ngāi Tahu have entered into a partnership agreement with Westpower in relation to the Project, and that if the necessary approvals to develop the Project are granted and the Project proceeds, they will remain project partners with Westpower and have a financial interest in the Project.
- 4.11** DOC acknowledges the discussion in the report regarding the potential effects of the project on taonga species, with reference to the provisions of the Treaty settlement.
- 4.12** The report notes that the project area is within the boundaries of a Mana Whakahono ā Rohe between Te Rūnanga o Ngāi Waewae, Te Rūnanga o Makaawhio, Te Rūnanga o Ngāi Tahu, and West Coast Regional Council. As the relevant provisions of the Mana Whakahono ā Rohe concern resource consents, this does not apply to the concession approval framework. Poutini Ngāi Tahu

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<sup>2</sup> [Appendix 8 letter from Poutini Ngāi Tahu](#).

<sup>3</sup> See [Appendix 8 letter from Poutini Ngāi Tahu](#), paragraph 3.

<sup>4</sup> [Appendix-14-partnership-report.pdf](#)

<sup>5</sup> 13 May 2025 letter to the Panel from Poutini Ngāi Tahu [Appendix 8 letter from Poutini Ngāi Tahu](#) at [10].

<sup>6</sup> Letter to the Panel from Poutini Ngāi Tahu at [9].

<sup>7</sup> [Section 18 report](#)

have nevertheless confirmed the project is consistent with their Mana Whakahono a Rohe with West Coast Regional Council and other relevant documents.<sup>8</sup>

- 4.13** The report also notes that the project area is not within a customary marine title area, protected customary rights area, or within or adjacent to ngā rohe moana o ngā hapū o Ngāti Porou.

### **Treaty of Waitangi principles**

- 4.14** DOC has sought to prepare its conservation approval reports in a manner that as far as possible gives effect to the principles of the Treaty of Waitangi,<sup>9</sup> in accordance with DOC's obligation under section 4 of the Conservation Act.

- 4.15** DOC considers that the Treaty Principles most applicable to the application are:

- **Partnership – mutual good faith and reasonableness** - The Crown and Māori must act towards each other reasonably and in good faith. These mutual duties of reasonableness and good faith describe the nature of the relationship between the Crown and Māori. They are the core of what has been described as the Treaty partnership.
- **Informed decision-making** - Both the Crown and Māori need to be well informed of the other's interests and views. Consultation is a means to achieve informed decision-making.
- **Active protection** - The Crown must actively protect Māori interests retained under the Treaty as part of the promises made in the Treaty for the right to govern. This includes the promise to protect tino rangatiratanga and taonga. Active protection requires informed decision-making and judgement as to what is reasonable in the circumstances.
- **Redress and reconciliation** – The Treaty relationship should include processes to address differences of view between the Crown and Māori. The Crown must preserve capacity to provide redress for proven grievances from not upholding the promises made in the Treaty. Māori and the Crown should demonstrate reconciliation as grievances are addressed.

### ***Partnership – mutual good faith and reasonableness, and Informed decision-making***

- 4.16** DOC has engaged in good faith directly with Poutini Ngāi Tahu on the application. The scope of engagement has recognised DOC's role to provide reports and comments on the application, and not in its usual role as decision-maker. This has included:

- identifying for the Panel any relevant information from Protocols or relationship agreements prepared in accordance with settlements (e.g. taonga species);
- ensuring that the content of the conservation approval reports are informed by any information provided from Poutini Ngāi Tahu and the effects of the project on their interests.

- 4.17** DOC acknowledges the importance of respecting and properly representing Poutini Ngāi Tahu concerns and interests.

- 4.18** DOC has engaged with Poutini Ngāi Tahu on the application in the following ways:

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<sup>8</sup> Letter to the Panel from Poutini Ngāi Tahu at [11].

<sup>9</sup> See [Principles of the Treaty of Waitangi and DOC: Apply for permits](#)

- DOC previously engaged with Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio in 2014 regarding the original application from Westpower. The Rūnanga supported and had a neutral position regarding the application respectively.
- On 30 June 2025, the Operations Manager of the Western South Island Region confirmed through a conversation with Mr Tumahai the Chairperson of Te Rūnanga o Ngāti Waewae, that engagement with Westpower constitutes engagement with Poutini Ngāi Tahu and no additional mana whenua consultation from DOC on the proposal would be required.
- On 1 October 2025, DOC emailed the Poutini Ngāi Tahu Chairs to advise that the proposal had been accepted as complete and was in process, and of the obligations of DOC and relevant iwi authorities. The email advised that DOC is not the decision-maker for the application and that it will be decided by the panel, however DOC does have a role to provide the panel with reports, advising on the wildlife, concession, and complex freshwater fisheries activity approvals. DOC advised that these reports would address the effects of the project and will be informed by relevant Treaty settlement obligations and any relevant information provided regarding impact on Treaty partner interests. DOC invited Poutini Ngāi Tahu to provide information to DOC for that purpose, however that invitation was not taken up.

**4.19** As well as providing updates at regular fortnightly meetings, on 5 December 2025 DOC representatives met with Messrs Tumahai and Madgewick to ensure as far as possible that the conservation approval reports would be informed by the relevant Treaty settlement obligations. At that meeting, DOC:

- Acknowledged the points made in the 2022 letter, including in particular their view that DOC did not consult adequately with Poutini Ngāi Tahu, and the refusal to grant the concession without further consulting them came as a surprise.
- Explained that the lack of focus on the benefits last time was based on the situation at that time as we understood it<sup>10</sup>. At that time there had been no mention of a partnership arrangement with Westpower being in place, therefore our concentration was on the adverse effects of the project on iwi interests. The situation is different this time.
- Explained that it would likely be commenting on the adequacy and composition of the compensation packages and the analysis of consistency with the CMS, and provided an opportunity to hear from Messrs Tumahai and Madgewick on those issues.
- Explained DOC's view that the combined concession term sought by Westpower would constitute an interest in the Land for a total of 64 years, and that this may trigger the right of first refusal provisions of the Treaty settlement and exceed the maximum term a concession can be granted for under the Conservation Act and discussed the implications of this.
- Sought clarification regarding authorship of the West Coast Te Tai o Poutini Conservation Management Strategy 2010. Messrs Tumahai and Madgewick confirmed that while Ngāti Waewae and Ngāti Makaawhio had inputted into the document, they did not consider it to be co-authored by the Rūnanga.

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<sup>10</sup> DOC's understanding as set out in the Decision Report to the Minister was that Ngāti Waewae supported the project while Ngāti Makaawhio had a neutral position)

- 4.20** Engaging directly with Poutini Ngāi Tahu has assisted in ensuring that views of both Rūnanga have been properly explored and understood.

#### ***Active protection, redress and reconciliation***

- 4.21** DOC acknowledges the strong support of Poutini Ngāi Tahu for the project, and the opportunities the project brings to support and enable Māori wellbeing and the exercise of Māori rangatiratanga, particularly through accessing and using resources.

- 4.22** DOC acknowledges the Poutini Ngāi Tahu view that:

- The project will be of significant benefit to Poutini Ngāi Tahu and will provide an opportunity for them to reconnect with the whenua and to benefit economically from the project.<sup>11</sup>
- The project will also benefit the wider West Coast community. There is a shared vision between Poutini Ngāi Tahu and Westpower to protect and advance the interests of the West Coast, its economy and the environment. The project would provide electricity resilience to the region through green-renewable energy. Poutini Ngāi Tahu is keen to ensure security of supply for the West Coast, noting:
  - additional power generation will reduce the amount of energy being transmitted to the region, reducing transmission charges; and
  - the sharing of the benefits of the project with comparatively cheaper power (and line charges) for the West Coast.<sup>12</sup>

- 4.23** The above is important to Poutini Ngāi Tahu as part of their responsibility is to provide for their iwi and manaaki visitors and the community.<sup>13</sup>

- 4.24** Security of supply is also an important consideration in the Ngāi Tahu Climate Change strategy: He Rautaki mō te Huringa o te Āhuarangi. In particular, Poutini Ngāi Tahu see the impact of climate change on us and the conservation of taonga within its takiwā as hugely significant issues. Poutini Ngāi Tahu see renewable energy as part of the solution and therefore strongly support the project.<sup>14</sup>

- 4.25** The project would also create much-needed employment and training opportunities and would provide significant investment for the region supporting existing and new industry to grow.<sup>15</sup>

- 4.26** When the original decision was made to decline the concessions in 2019, far too much focus was made on natural character and amenity with no consideration of, for example, the interests of Poutini Ngāi Tahu, the Treaty principles or their broader context.<sup>16</sup>

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<sup>11</sup> Poutini Ngāi Tahu letter to the Panel at [4].

<sup>12</sup> Poutini Ngāi Tahu letter to the Panel at [5].

<sup>13</sup> Poutini Ngāi Tahu letter to the Panel at [6].

<sup>14</sup> Poutini Ngāi Tahu letter to the Panel at [7].

<sup>15</sup> Poutini Ngāi Tahu letter to the Panel at [8].

<sup>16</sup> Poutini Ngāi Tahu letter to the Minister of Conservation in support of Westpower's reconsideration application, 30 May 2022, at [Waitaha Hydro Reconsideration - appendix 3 - Poutini Ngāi Tahu letter 30 May 2022](#), at [12].



## 5. Overarching points of issue

### 5.1 Compensation

- 5.1.1 DOC's position is that compensation conditions should be embedded within each approval in an operative sense, rather than being tied solely to the resource consent. This approach ensures alignment with statutory criteria, clarity on which approval authorises the adverse effect, and appropriate monitoring and enforcement by the relevant regulator. Compensation may be required by the panel under clause 21 of Schedule 6 to the Act.
- 5.1.2 Further details on compensation can be found within each conservation approval report and within the legal memorandum in **Appendix F**.
- 5.1.3 DOC considers that the current proposal does not adequately address recreation and landscape effects which remain unmitigated.

#### **Recreation**

- 5.1.4 DOC considers that Westpower's current proposal of a one-off contribution toward track and hut maintenance is inadequate given the scale and duration of the Scheme's effects. This payment does not address the permanent loss of naturalness that is central to the backcountry-remote recreational experience, nor is it clear who would receive the payment, creating uncertainty about its effectiveness.
- 5.1.5 DOC has proposed a compensation value based on the loss of recreational opportunities to trampers over a 20-year period, as detailed in the Recreation Report (Appendix C2), and expects this funding to be paid directly to DOC. Effects that cannot be mitigated should have appropriate compensation, and DOC's proposed package is intended to reasonably address these unmitigated impacts.

#### **Landscape Values**

- 5.1.6 While DOC acknowledges Westpower's efforts to remedy, mitigate, or avoid adverse landscape effects, the scheme inherently detracts from the very high Natural Character and Landscape Values of the area. These effects cannot be fully remedied, mitigated, avoided, or offset despite those efforts.
- 5.1.7 As such, DOC considers that compensation for these residual impacts should be included in the operative conditions of the approvals to reflect the enduring harm to these nationally significant values.

### 5.2 Approach to draft conditions

- 5.2.1 Minute 1 of the Panel Convener directed the Director-General of Conservation to address "any proposed amendments considered necessary to conditions proposed in the application in the event of a recommendation to grant" the approvals sought.

- 5.2.2 Westpower has continued to update its condition sets to reflect feedback received from DOC and other administering agencies (i.e. the relevant councils). DOC received the latest suite of concession conditions on 27 November 2025, and other conservation approval and resource consent conditions on 17 November 2025. Westpower provided clean copies of these condition sets to the Panel on the same dates. Westpower has arranged a further workshop on these conditions on 18 December 2025.
- 5.2.3 Many of DOC's issues with the original proposed conditions have been resolved through the engagement process. Other issues remain unresolved. As part of its reports therefore, DOC has provided comments on the conditions sets based on the latest versions provided to the Panel on 17 November 2025 and 27 November 2025. In the time available, DOC has marked up these versions to red-line track changes where possible; and provide commentary on issues that remain outstanding and where DOC considers further engagement is needed with the Applicant and/or other participants before drafting can be proposed.
- 5.2.4 Specific matters are addressed individually in the conservation approval reports as relevant to each approval. Westpower's approach to the use of management plans for the purposes of the conservation approvals is addressed generally below.

### 5.3 Certification of management plans

- 5.3.1 Throughout engagement, DOC has raised concerns with Westpower regarding the proposed use of management plans. Westpower currently proposes a set of plans to be approved by the Panel and another set by the councils.
- 5.3.2 DOC's view is that any management plans relating to wildlife approvals or activities on public conservation land should include a certification role for DOC. This approach is lawful and ensures that plans and any subsequent amendments are fit for purpose before construction begins on conservation land under both resource consent and concession approvals.
- 5.3.3 DOC and the councils agree that DOC should hold this certification role, as councils have acknowledged they lack the necessary expertise to certify all management plans.
- 5.3.4 Current conditions requiring DOC to respond within 20 working days are considered unlawful, and DOC has discussed this issue with Westpower as part of ongoing engagement. DOC maintains that certification is essential for approvals involving DOC land to ensure compliance and protect conservation values.
- 5.3.5 Further explanation on the certification of management plans can be found within the legal memorandum in **Appendix F**.

## **LIST OF ATTACHMENTS**

APPENDIX A: Weighting of relevant matters to be taken into account

APPENDIX B: Technical expert credentials

APPENDIX C: Concession Report

APPENDIX D: Wildlife Approval Report

APPENDIX E: Complex Freshwater Fisheries Report

APPENDIX F: Legal memorandum in relation to section 51 reports

## APPENDIX A: Weighting of relevant matters to be taken into account

### Introduction

1. This report responds to each of the Panel Convener's Minute 1 dated 24 September, directing the Director-General to "file a report advising how weighting of matters ... should be approached, having regard to relevant senior court decisions."
2. The Minute refers to the matters set out in Schedule 7, Clause 3 of the FTAA (wildlife approval); Schedule 6, Clause 4 of the FTAA (concession); and Schedule 9, Clause 4 of the FTAA (freshwater fisheries regulations approval). The matters listed in the schedules are those which the FTAA directs must be addressed by the Director-General's s 51(2) reports.<sup>17</sup> For reasons of efficiency, this report responds to all three approvals collectively.

### Weighting generally

3. Generally, the weighting to be accorded to relevant considerations by a statutory decision maker is for that decision maker to determine,<sup>18</sup> however where a statute directs the weight to be given to a matter, that direction must be given effect to.<sup>19</sup>
4. The senior courts have recognised that apparently disproportionate, inadequate or undue weight attached to a relevant factor can lead to judicial consideration of whether the weighting applied was within the limits of reason, and hence, whether the ultimate decision was unreasonable in an administrative law sense. A court may set aside an administrative decision which has failed to give adequate weight to a relevant factor of great importance, or which has given excessive weight to a relevant factor of no great importance.<sup>20</sup>
5. Accordingly, mandatory relevant considerations must be given genuine consideration and weighting by statutory decision makers.

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<sup>17</sup> The schedule clauses referenced in the Minutes exclude consideration of the purpose of the FTAA from the ambit of the request. However, in order to respond to the Panel Convener's request in relation to consideration of weighting, it is necessary to refer to the purpose of the FTAA given the statutory directive that this consideration be given "the greatest weight" relative to other mandatory considerations (i.e. relative to the matters that must be addressed by the Director General's s 51 reports). This advice has therefore been prepared on that basis.

<sup>18</sup> See, for example *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR (HC) 188 at 223: The weight to be given to the evidence in the balancing exercise ... is a matter for the primary tribunal and the Planning Tribunal on appeal.

<sup>19</sup> *Quarantine Waste (New Zealand) Ltd v Waste Resources Ltd* [1994] NZRMA 529 (HC) at 540: "Unless the statute otherwise directs, the weight to be given to particular relevant matters is one for the consent authority, not the Court, to determine."

<sup>20</sup> See, for example *Thames Valley Electric Power Board v NZFP Pulp and Paper Ltd* [1994] LGHNZ 17 (CA).

## Weighting under the Fast-track Approvals Act 2024

6. The Schedules to the FTAA list mandatory considerations that decision-making Panels must take into account, when determining applications for the various approvals that can be granted under the Act.<sup>21</sup>
7. The only directive regarding weighting contained in the FTAA, is that the “greatest weight” is to be given to the purpose of the FTAA.<sup>22</sup>
8. While described in the FTAA as “criteria”,<sup>23</sup> the mandatory matters to be taken into account can be described as “factors”, in the sense that they are matters to be assessed on the basis of their qualities, rather than quantities. They establish the foundation for assessment rather than the outcome of it.<sup>24</sup> Accordingly, the criteria, or factors, are not tick-boxes to be crossed off a list but are matters that must be qualitatively assessed.
9. The FTAA does not direct how much relative weight should be given to, or between, relevant matters other than the purpose of the FTAA. Nor does the FTAA specify how much greater weight should be accorded to its purpose relative to other mandatory considerations. It may be the case (as set out in the conservation approval reports for the Waitaha Hydro Project) that some of the factors listed in the relevant clauses may be found to have no relevance. Consequently, that factor will have no weight accorded to it in the balancing exercise.
10. While the purpose of the FTAA is to be given the greatest weight, the purpose of the FTAA does not automatically outweigh all other considerations. By listing other considerations besides the purpose of the FTAA, it is implicit that weight be attached to them, and that they should receive genuine consideration where relevant.<sup>25</sup>
11. Accordingly, while the greatest weight is to be accorded to the purpose of the FTAA, it does not follow that when qualitatively assessed, the regional or national benefits of a project must necessarily outweigh other considerations, in combination or in isolation, such as the adverse environmental effects of a project. The extent of regional or national benefits will vary between projects. Also, adverse effects will vary between projects in nature and severity. Each factor must be qualitatively assessed and those assessments weighed. Where they pull in different directions, they must be weighed against each other.

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<sup>21</sup> See Schedule 7, Clause 5 (wildlife approval); Schedule 6, Clause 7 FTAA (concession); and Schedule 9, clause 5 (complex freshwater fisheries activities approval).

<sup>22</sup> This directive occurs multiple times in the FTAA, including at Schedule 6, Clause 7 (concessions); Schedule 7, Clause 5 (wildlife approval); and Schedule 9, Clause 5 (complex freshwater fisheries activities approval).

<sup>23</sup> This is the terminology used in the titles for each of the relevant clauses listed in fn 5.

<sup>24</sup> *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 147, at [117]-[118].

<sup>25</sup> See also s 85(3)(b) of the FTAA which provides for the decline of a FTAA application if the adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits that the panel has considered.

12. The issue of legislatively directed weighting was considered by the Court of Appeal in *Enterprise Miramar Peninsula Inc v Wellington City Council*,<sup>26</sup> when considering the application of s 34 the Housing Accords and Special Housing Areas Act 2013 (HASHAA). Section 34 provides:

34 Consideration of applications

An authorised agency, when considering an application for a resource consent under this Act and any submissions received on that application, must have regard to the following matters, giving weight to them (greater to lesser) in the order listed:

- (a) the purpose of this Act:
- (b) the matters in Part 2 of the Resource Management Act 1991:
- (c) any relevant proposed plan:
- (d) the other matters that would arise for consideration under—
  - (i) sections 104 to 104F of the Resource Management Act 1991, were the application being assessed under that Act:
  - (ii) any other relevant enactment (such as the Waitakere Ranges Heritage Area Act 2008):
- (e) the key urban design qualities expressed in the Ministry for the Environment’s *New Zealand Urban Design Protocol (2005)* and any subsequent editions of that document.

13. The Court held that all the listed matters must first be individually assessed prior to the exercise of weighing them in accordance with the prescribed hierarchy. The listed matters in subsection (1)(b)–(e) cannot properly be weighed alongside the purpose of HASHAA under subs (1)(a) if that purpose has first been used to effectively neutralise the matters listed in subs (1)(b)–(e).<sup>27</sup>
14. Applying that approach to the FTAA, the relevant matters should first be individually assessed, uninfluenced by the purpose of the FTAA, “before standing back and conducting an overall balancing” where the purpose of the FTAA is to be given greatest weight.<sup>28</sup> It would be an error of law to use the purpose of the FTAA to eliminate or reduce individual assessment of the other specified mandatory relevant considerations.<sup>29</sup>

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<sup>26</sup> *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541.

<sup>27</sup> *Enterprise Miramar Peninsula Inc*, at [53].

<sup>28</sup> *Enterprise Miramar Peninsula Inc*, at [52]. Note that the FTAA does not take the same cascading hierarchy of “greater to lesser” weight, but only that the “greatest weight” be given to the purpose.

<sup>29</sup> *Enterprise Miramar Peninsula Inc*, at [55]–[59].

## APPENDIX B: Technical expert credentials

DOC has relied on the advice of the following technical experts:

- a. Marine Richarson (freshwater ecology)
- b. Rogan Colbourne (avifauna)
- c. Jacqui Wairepo (lizards)
- d. Jason Malham (whio)
- e. Moira Pryde (bats)
- f. Shelley Sidley (visitors and recreation)
- g. Jeremy Head (landscape architect)

Their credentials are set out below.

### Marine Richarson

I am currently employed as a Senior Science Advisor by the Department of Conservation Te Papa Atawhai (DOC). I have been in this position since April 2020.

I have worked as a freshwater ecologist since August 2007. My principal area of expertise concerns diadromous fish species, i.e., species with a life cycle featuring both marine and freshwater phases, and their ecological requirements. My experience relevant to the current process includes:

- conducting applied and fundamental research in the ecology of aquatic organisms
- providing technical and scientific advice in freshwater ecology, in matters such as environmental impact assessments, ecological surveys and monitoring in river, lake, pond and wetland systems, and fish passage provisions managing research as well as operational programmes.

In my current role, I lead the Department's scientific research strategy and implementation on threatened diadromous species. I also lead the Department's work programme on longfin eel (*Anguilla dieffenbachii*). Finally, I provide technical support and advice for DOC's work on freshwater species and ecosystems.

I hold a Diplome d'Ingenieur (Engineering Diploma) in Water Sciences and Technologies from Institut des Sciences de l'Ingenieur de Montpellier (Institute of Engineering Sciences), Universite Montpellier II, which I received in 2006. I undertook an Honours programme in ecology at the Queensland University of Technology as an additional part to this curriculum. During that time, I completed a thesis on the reproduction patterns of green turtle (*Chelonia mydas*), and a thesis on the dietary ecology of sand whiting (*Sillago cilliata*).

I completed my Doctorate in Zoology at the University of Otago in 2020. My PhD research focused on the effects of interspecific and intraspecific interactions on ecological niches. I studied the effects of antagonistic interactions, particularly competition, predation, and their combination, on the dietary and habitat preferences of an indigenous New Zealand freshwater fish, the common bully (*Gobiomorphus cotidianus*).

### **Rogan Colbourne**

I am employed as a Technical Advisor (Terrestrial Fauna) with the Department of Conservation Te Papa Atawhai (DOC) in the Terrestrial Biodiversity Unit and am based at Conservation House, Wellington. I have been employed by the NZ Forest service 1980-82, then the NZ Wildlife Service 1982-87 and Department of Conservation 1987 to present.

My role at DOC is to provide ecological advice to conservation practitioners both within DOC and external to DOC (such as iwi and community groups). I also provide advice to DOC decision-makers in relation to DOC's permissions system. For Wildlife Act applications, I am tasked with providing ecological advice as to whether a permission should be granted and, if so, what conditions should be attached to the permission.

I am a founding member of the Kiwi Recovery Group and have been involved in research of all taxa of kiwi for most of my employment. This involves early research with little spotted kiwi with the effect of weka predation on kiwi eggs, establishment and monitoring of new populations, genetics and helping write species plans. I helped establish research projects that led to creation of five kiwi sanctuaries. My work establishing Operation Nest Egg in the early 1990s has resulted in the Rowi species increasing from about 150 individuals to almost 1000 birds today as well as through ONE in helping change the conservation status of brown kiwi to non-threatened.

I have supported other wildlife programmes including gannet research on islands around the Coromandel Peninsula, Kakapo research on Rakiura and Hauturu, Taiko on the Chatham Islands and Whittaker Skink conservation at Pukerua Bay.

I have authored or coauthored over 20 publications, mainly on kiwi.

### **Jacqui Wairepo**

Jacqui Wairepo is an experienced herpetologist, having worked with indigenous lizards since 2010, and holds a Master's Degree in Conservation Biology (1st Class Hons) in lizard-based research. Jacqui has worked as a specialist herpetologist since 2016, having gained a high level of experience in lizard management and research on projects throughout New Zealand. Jacqui has been a Northland-based independent wildlife and herpetological specialist since late 2021. Jacqui is experienced in the



conservation management and/or ecological requirements of a high proportion of Not Threatened, At-Risk and several Threatened lizard species throughout the North and South Islands.

Jacqui is known to all members of DOC's national lizard TAG (Technical Advisory Group) and has been a named authority on numerous Wildlife Act Authority permits since 2016. Jacqui's experience with herpetofauna includes all aspects of survey, salvage, translocation and population management for a wide range of skink and gecko species throughout New Zealand. Jacqui has also led and been involved with numerous surveys for Hochstetter's frogs throughout Auckland and Northland. During her years as a Consultant Jacqui has worked on national infrastructure and large-scale development projects for roading, wind farms, solar farms, dams and rural developments. Jacqui has prepared and implemented Lizard Management Plans for projects throughout the country both small and large-scale, as well as preparing evidence for multiple hearings for nationally significant infrastructure projects. Jacqui has been a SRARNZ member since 2013 and also sits on the SRARNZ Council and serves as the SRARNZ Secretary. Jacqui is also a member of the New Zealand Ecological Society.

### **Jason Malham**

I am employed as a Science Advisor (Fauna Science Team Terrestrial Biodiversity – Biodiversity, Heritage & Visitor Group) with the Department of Conservation Te Papa Atawhai (DOC) and am based at the Nelson office. I have held this position since 2023 but have been employed in scientific research work in the department since 2009.

My role at DOC is to provide scientific/technical advice mostly relating to whio/blue ducks to conservation practitioners both within and external to DOC (such as community groups). I also provide technical advice to DOC decision-makers in relation to DOC's permissions system. This includes assessments for Resource Management Act 1991 (RMA), Fast Track and Wildlife Act 1953 applications. I am typically tasked with providing advice as to whether a permission will impact whio and if so if so, what conditions should be attached to the permission.

I started my adult working life in 1988 straight from school as a science technician at Manaaki Whenua Landcare Research; working on a range of species projects including South Island kākā, Rōroa great spotted kiwi, kererū, but my main involvement was with the team studying the impact of introduced wasps in the honeydew beech forests of the South Island. This work involved carrying out large scale field experiments comparing treated and untreated sites (i.e. sites where we controlled wasps v not controlled) by measuring bird abundance with 5 minute bird counts, nesting success of small forest passerines, honeydew abundance and forest insect abundance. There was a concurrent study on population dynamics of the same social wasps in honey dew beech forest and I was heavily involved with this work too. I was a contributing author on several scientific publications that resulted from the wasp project.

After seven years with Manaaki Whenua I started a position with DOC in 1996 as a Kākāpō Programme Officer (AKA ranger) based on Maud Island (Marlborough Sounds). This work involved intensive management of kākāpō through the year and all the intricacies of maintaining a year-round presence living on a remote island (e.g. maintaining off grid power supply, running a 6m outboard powered boat etc). I moved on from this role in 2001.

Between 2001 and 2008 I was based on the island of Mauritius in the Indian Ocean as programme coordinator on the Echo Parakeet programme. The echo parakeet, endemic to Mauritius, was at the time critically endangered (probably the worlds rarest bird in the early 1990's) and this work involved managing a field team where we carried out intensive management of the wild population through the breeding season (included protecting nest sites from predators, clutch and brood manipulations, rescuing sick chicks), overseeing the hand rearing and release teams, overseeing release of hand and captive reared chicks back to the wild and planning/organising the teams for the next season

In 2008 after returning from Mauritius I spent some months working on the Takahe team in Fiordland's Murchison Mountains before moving to Whenua Hou/Codfish Island January 2009 for the 2008/09 Kākāpō breeding season.

In late 2009 I started work as a science technician in a DOC science team based in Nelson. We carried out research into the costs/benefits of landscape scale aerial 1080 on forest birds. The work included measuring forest bird abundance annually, and nest and adult survival studies in treated versus non treated sites on kākā, ruru and tititipounamu/rifleman in South Westland and weka, tititipounamu and kakaruai/south island robin the Marlborough Sounds. I managed the South Westland part of this project that ran for six years. I am a lead author on the scientific paper we wrote on the results of the kākā project and a contributing author on the rifleman, ruru and bird abundance papers (in prep).

In 2016 at the end of the South Westland work I led a nest, duckling and adult survival study on whio in Kahurangi National Park (KNP), comparing a site that has traps and 1080 with a 1080 only site. I am a contributing author on a scientific paper we wrote on the effect of traps + 1080 on whio nesting success, duckling and adult survival. In 2020 at the end of this study I took the lead on a survey of whio distribution and abundance across KNP. The field work of this project wound up in 2024, and we are close to beginning analysis of the results with a plan to write a scientific paper.

My many years of experience with various bird species and projects has led to my current science advisor work role. I have been a member of DOCs Whio Recovery Group since 2023 as a science advisor. My nine years of intensive whio experience has put me in a position where I am now recognised for that and I am often called on for whio specific advice from around the country. In recent times I have provided advice for proposed whio translocations, hydroelectric power schemes, gold suction dredging and jet boating.

## **Moira Pryde**

I am employed as a Technical Advisor for the Department of Conservation. My qualifications include a Post-Graduate Diploma in Wildlife Management in Ecology from Otago University, Dunedin (2001) and a Resource Studies degree from Lincoln University, Christchurch (1996).

I have been employed by the Department of Conservation (DOC) since 1997 initially working on a variety of research projects focussed on predator management and the outcomes for birds and bats. I have 20 years continuous experience of working with bats in New Zealand. I have extensive direct experience of radio-tracking; studying movements, survival of bats and finding roosts in native forests and fragmented habitats for example Eglinton (Fiordland), Grand Canyon (Waikato), Hanging Rock in South Canterbury and Whirinaki (Whakatane).

I have evaluated the significance of bats and potential impacts of development schemes in various cases including Amberfield housing development, Peacocke Structure Plan, roading projects and power schemes.

I obtained a permanent job with DOC in 2005 as a wildlife researcher. My work has involved active research and management of threatened species as well as an advisory role where I comment as a bat expert on DOC permissions and Resource Management Act matters as well as giving advice to DOC operations staff and externals on monitoring birds and bats.

My role with DOC is wide ranging but has largely focused on forest birds and bats and the impacts predators have on these fauna as developing conservation recommendations to reverse population declines. An example is in the Eglinton Valley where we have been monitoring kākā, robins, bats and morepork.

The Eglinton Valley is a long-term study site in southern Fiordland that has been running since 1993. Various management methods have been applied involving predator control by trapping, bait stations and aerial 1080 operations. Outcome monitoring looks at endemic species abundance and survival. I analyse long-tailed bat data for this project to identify survival and population changes. I was also involved in the Canterbury (Hanging Rock) and Waikato (Grand Canyon) projects where we compared bat survival with the Eglinton data.

I belong to the Natural Heritage Group for Bats that advise on bat research in New Zealand.

I have been assessed as an E band trainer by the Department of Conservation Bat Recovery Group which means I am highly competent to catch, handle and mark bats as well as undertake survey and monitoring. This qualification also allows me to train others.

I run the National Database for the distribution of bats in New Zealand.

My current research involves comparing bat acoustic recorder data with mark-recapture studies to develop a low-cost monitoring technique for bats.

I have published 11 peer reviewed scientific papers 5 of which are on bats. I have produced management reports and best practice documents for bats in New Zealand.

### **Michelle (Shelly) Sidley**

I am a Senior Visitor Advisor with the Department of Conservation, based in Nelson. I have worked for DOC since 2000. I hold a Master Degree in Social Ecology from the University of California, Irvine.

Over the past 25 years, my career has focused on community engagement, environmental education, and regional planning. For the last eight years, I have specialized in strategic and regional planning before joining the Biodiversity, Heritage and Visitor Directorate.

My background involves designing and advising on strategic planning projects, and in facilitating engagement with community stakeholders and Treaty partners. My experience includes leading complex projects that integrate conservation priorities with visitor management strategies, ensuring outcomes that are both environmentally sustainable and responsive to community/stakeholder aspirations.

### **Jeremy Head**

My qualifications are a BLA (Hons) from Lincoln University (1993). I am a Registered NZILA Landscape Architect and have been registered since 2000. I was an Associate member of the NZILA (1996) which was superseded by the registration process. I operate my own private practice which is based in Christchurch.

I was employed by LA4 Landscape Architects (Auckland) from 1993 – 1995, then Lucas Associates (Christchurch) from 1995 - 2005. While working for LA4 I assisted one of LA4's Principals to prepare the landscape study for Rodney District. After returning to Christchurch, I assisted Di Lucas over an eight-year period with several district wide landscape studies including for Queenstown Lakes District ('Land Types / Ecosystems of the Queenstown Lakes District') and Hurunui District ('Landscapes of the Hurunui District'). From October 2006, I operated my own practice sharing office space with other senior landscape architects and a planner where I practised largely in the field of landscape assessment and planning - both for private clients and on behalf of Councils and central government departments, including the Department of Conservation (DOC). I prepared the landscape assessment for DOC for the Paparoa Track. From 2018 I moved to WSP first as a Senior, then Principal Landscape Architect and at the end was South Island Team Lead for landscape and urban design. While at WSP, I prepared a landscape report for DOC for the Oparara Basin track upgrades. I lead several large-scale landscape assessment projects including several NoRs around New Zealand. At the end of 2022 I left WSP to return to private practice where I could focus on landscape assessment work at varying scales for varying organisations,

including private clients and the public sector throughout New Zealand. As well as this I assisted Di Lucas with the modelling for a land typing study for the entirety of New Zealand ([landtyping.nz](http://landtyping.nz)). Since 2023 I have been part of the Queenstown Lakes District Council's landscape planning team working on the ONL/F and Rural Character Landscape Priority Areas aspect of the Proposed District Plan.

In November 2017, I contributed to a day-long workshop with four other senior landscape architects as part of a national 'roadshow' with regards to developing an agreed landscape assessment methodology. This was facilitated by the late Environment Court Judge Gordon Whiting and is now borne out in the book: *Te Tangi a te Manu Aotearoa - New Zealand Landscape Guidelines* which I regularly rely on.

As an independent expert, I am regularly required to peer review others work and prepare and present evidence in Council hearings. I have mentored several landscape architects to achieve registration status in the NZILA.