

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 #18  
MEMORANDUM OF COUNSEL COMMENTING ON THE DRAFT CONDITIONS  
OF THE FOUR APPROVALS**

Dated: 27 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 its Draft Decision and Minute #12 on 13 March 2026 indicating it will grant the approvals Westpower has sought for the Waitaha Hydro Scheme.
3. Westpower recognises the complexity and volume of information the Panel has considered. Westpower's comments provided on the draft conditions of each approval relate to key matters to ensure the efficient delivery of the Scheme and identify minor corrections to assist the Panel to finalise the documentation in a short timeframe.
4. This memorandum briefly addresses some key matters where further explanation may assist. All requested changes are in the marked-up versions of each set of conditions in **Appendices 1 to 4**:
  - (a) **Appendix 1: resource consent conditions**
  - (b) **Appendix 2a: lease licence concession conditions**
  - (c) **Appendix 2b: easement concession conditions**
  - (d) **Appendix 2c: list of concessions**
  - (e) **Appendix 3: wildlife approvals**
  - (f) **Appendix 4: freshwater fisheries approvals**
5. Westpower will, in accordance with the FTAA and Minute #12 provide an additional memorandum and response to comments on the draft conditions by other parties, by 7 April 2026. This will include a final, fully cross referenced and numbered, set of the conditions from Westpower.

### **Draft resource consent conditions**

#### *Condition: RC97 Deviations from ramping requirements*

6. The Panel considered unplanned emergency station outages and that the effects are assessed in the Application, notably public river safety and freshwater ecology.<sup>1</sup> The deviations from ramping requirements listed in

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<sup>1</sup> At paras [199], [215] to [218], [234], [292(e)], [485(i)], [544(f)], [651(c)], [738], and in the Panel's evaluation and findings at para [745]: [Waitaha Hydro Draft Decision – Te 13 o Māehe 2026 \(Draft Decision\)](#).

Condition RC97 do not, however, include emergency station outages as an accepted circumstance for non-compliance with the prescribed ramping rates for a 'controlled' power station shut-down in Condition RC96.

7. Westpower requests that Condition **RC97** includes as new (i):

[Any unplanned emergency station outages.](#)

*Condition RC100: Groundwater diverted through the access tunnel*

8. The Panel has considered the diversion of groundwater through the access tunnel in relation to geotechnical and natural hazards.<sup>2</sup>
9. The Panel has imposed Condition RC100 with a limit of 200 L/s on abstraction of groundwater that is diverted through the access tunnel.
10. Westpower cannot, in advance of delivering the Scheme, be confident this will be an achievable limit. As recorded by the Panel, the 200 L/s estimate provided by Westpower relates to its experience at the Amethyst Hydro Station.<sup>3</sup> This was solely provided by way of estimate rather than to have as a condition.
11. Westpower has managed any potential water quality effect, as proposed and accepted by the Panel in Condition RC101.
12. Westpower considers that in the context of this high rainfall and wet environment, a 200L/s limit on groundwater diverted through the access tunnel is more onerous than necessary. As explained in Memorandum #6, the rate of water flow can only be tested through the borehole surveys and only confirmed once the tunnelling occurs / has occurred. Groundwater inflow can, if needed to address geotechnical and natural hazard risks, be managed by various industry standard techniques but those come at cost and first the risk needs to be identified by an expert (as proposed in the condition amendments below). Finally, for the condition as drafted, two monitoring sites would be required to measure discharges at the tailrace and the Kiwi Flat entrance to the access tunnel adding unnecessary cost and complexity.
13. Westpower requests that Condition RC66(d) relating to the Site Specific Seismic Hazard Assessment also considers constraints that include

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<sup>2</sup> At section F18.

<sup>3</sup> At pg 16, [Appendix-34-erosion-and-sediment-control-plan.pdf](#), and para [22], Westpower's Memorandum #6 dated 26 March 2026.

groundwater diverted through the access tunnel. This assessment must be submitted prior to the Final Weir and Intake Structure Design Report and will enable a Chartered Professional Engineer to consider whether groundwater diversion in this context is relevant to any seismic-related geotechnical constraints at this location (with sufficient information before them).

14. Westpower requests that Conditions **RC66** and **RC100** are amended as follows:

- (a) Condition **RC66(d)** includes:

Identify any seismic-related geotechnical constraints relevant to the structures including, but not necessarily limited to, any constraints associated with groundwater diversions into the access tunnel and provide recommended design parameters for use in structural and geotechnical design to address any seismic-related geotechnical issues.

- (b) Condition **RC100(a)** is deleted and new text added:

~~All~~ Groundwater diverted into the access tunnel must be:

~~controlled to be no more than 200 L/s;~~ directed to the Waitaha River either via a dedicated drain or pipe that directs flow to the Power Station tailrace and via a dedicated drain, pipe or swale that directs flow to Kiwi Flat.

*Condition DC53: Avifauna Management Plan*

15. Condition DC53 requires that, to the extent practicable, Westpower must undertake Streamworks maintenance activities at the Headworks outside of the who breeding seasons and minimise helicopter trips within the Site during the who breeding season. This is consistent with Westpower's intended proposal. Formatting and language in the proposed condition is ambiguous, however, and clarification will assist. The intention of the Panel is clear from the Draft Decision<sup>4</sup> and Westpower requests amendment to align Condition DC53 with its intent.
16. Westpower requests that Condition **DC53** is amended (numbering needs to be uniformly updated in the final RM conditions):

- (b) To achieve this objective, the AMP must include (as a minimum):

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<sup>4</sup> At [408].

- (i) methods, procedures or protocols for managing effects on indigenous avifauna including, to the extent practicable;

[indent]

- (1) ~~undertaking~~minimising Streamworks maintenance at the Headworks outside of the who breeding season (September – December);
- (2) minimising helicopter trips within the Site during the who breeding season; and
- (3) minimising construction activities and use of outdoor lighting between dusk and dawn.

*Condition DC54: DOC Bat Roost Protocols*

- 17. Westpower sought five minor variations to the DOC Bat Roost Protocols (**Protocol**) being:<sup>5</sup>
  - (a) an approved bat worker will identify low and high potential roost trees taking into consideration knowledge about bat activity and habitat in the area;
  - (b) low risk potential bat roosting trees can be felled at any time of the year;
  - (c) an approved bat worker can agree to perform acoustic monitoring in weather conditions that differ (but remain appropriate) for it;
  - (d) tree felling must cease only within the immediate vicinity of where a bat is detected; and
  - (e) if a bat roost remains occupied after ten days, an approved bat worker, in consultation with DOC will arrange a method to shift the bats.
- 18. The Panel has not accepted the minor variations and imposed Condition DC54 in the consents and 10.1 in the Wildlife Approvals.<sup>6</sup>
- 19. Westpower proposed the minor variations because:
  - (a) The expert advice as set out in Appendix 21: Terrestrial Fauna Report is:<sup>7</sup>

<sup>5</sup> At [2.2], [Appendix-37-bat-management-plan.pdf](#).

<sup>6</sup> At [370].

<sup>7</sup> [Appendix-21-terrestrial-fauna-report.pdf](#).

"The DOC protocol specifies that trees with a diameter of  $\geq 15$  cm dbh require further assessment to determine whether they may provide a bat roost. However, for the reasons set out above it is unlikely bats would select these smaller trees for roosting when there is an abundance of larger more suitable roost trees (mostly outside the Scheme's footprint). This assessment is supported by the surveys."

It is acknowledged that the minor variations sought did not include a parameter to categorise 'small' trees and this has now been rectified in line with the evidence.

- (b) Strict compliance with the Protocol could delay, by multiple years, the critical first stage of construction (vegetation clearance to construct the access road). This is because of:
- (i) Rainfall.<sup>8</sup> In the Draft decision the Panel recognised that *"The upper Waitaha catchment receives some of the world's highest annual rainfall."*<sup>9</sup> The Panel expanded on this later in its Draft Decision stating:<sup>10</sup>
- "... The catchment experiences significant annual rainfall, from 5,500mm at the Kiwi Flat intake area to 12,000-14,000mm at the Main Divide. The average annual total in this location is among the highest yearly rainfall in the world."
- (ii) Temperature.<sup>11</sup> The West Coast is a cooler climate environment with low temperatures all year (Hokitika data is used but it will be colder at the Project site).
- (iii) The combination of the two. The critical factor is that dry weather and warmer temperatures seldom overlap. The probability of getting a dry five-day period<sup>12</sup> is only above 50% between January and March, and otherwise materially lower as shown in

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<sup>8</sup> National Institute of Water and Atmospheric Research (NIWA):

*Mean number of wet days per month in Hokitika, New Zealand: Mean values for 1991–2020* (days with 1 mm or more of rain) [Data set]. Figure.NZ. Retrieved March 9, 2026, from: [Mean number of wet days per month in Hokitika](#) [ncdc.noaa.gov];

*Wet days — Mean number of days per month with 1 mm or more of rain (1991–2020)* [XLSX data file]. Retrieved March 9, 2026, from [Mean number of days per month with 1mm or more of rain \(excel\)](#) [[data.noaa.gov](#)]; and

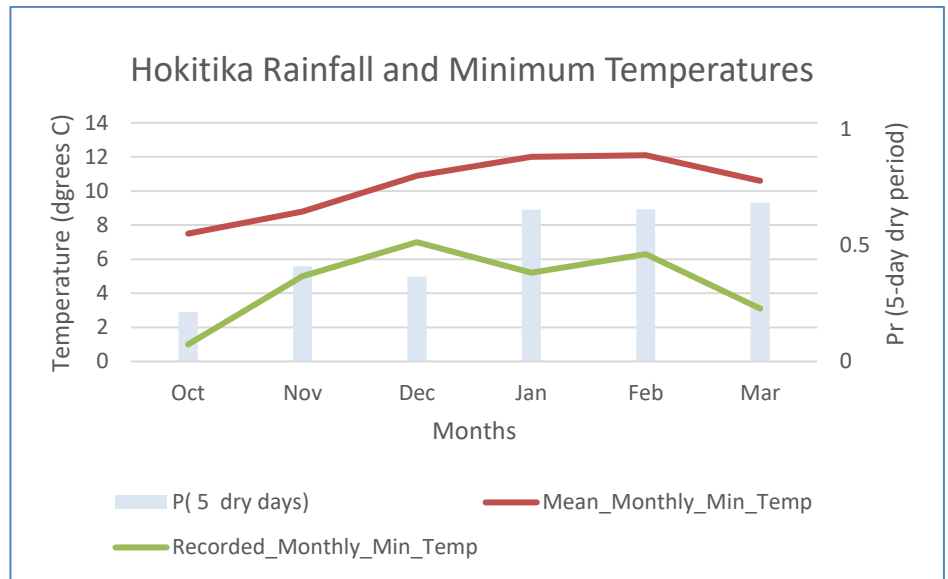
<sup>9</sup> At [4].

<sup>10</sup> At [185].

<sup>11</sup> National Institute of Water and Atmospheric Research (NIWA): *Mean minimum and maximum temperatures in Hokitika, New Zealand (1991–2020)*. Figure.NZ. [Mean minimum and maximum temperatures in Hokitika](#); and [Average temperatures and precipitation Hokitika \(Meteoblue\)](#)

<sup>12</sup> The Protocol requires consecutive surveys after sunset at temperatures above 7 degrees Celsius and no to light precipitation. If bats are recorded, further consecutive nights of surveying under the same conditions is required. Five days has been used as a proxy to provide one travel day for the approved bat worker and others to site and four consecutively dry nights for surveys.

Figure 1. There are low temperatures below 7 degrees Celsius recorded January to March:



**Figure 1: Hokitika rainfall and minimum temperatures (data from NIWA)**

- (c) There is an effects backstop and expert oversight as a suitably qualified and experienced professional (approved bat worker under the Protocol) must agree to the minor variations to ensure there is no increased harm to bats in this uniquely wet and cold environment.
20. Westpower has reconsidered the minor variations sought, its evidence, and challenges to the constructability of the Scheme. It considers that the minor variations in paragraph 21(a), (b) and (c) are sufficiently important to efficient constructability of the Scheme to continue to pursue changes to the conditions proposed by the Panel. It could add significant time to the construction of the access road, and hence delay the delivery of the benefits of the Project.
  21. Westpower agrees with the Panel that they are standard protocols that DOC applies across the country. However, New Zealand is not uniform. Strict compliance to non-statutory guidelines across the country irrespective of the context or circumstances of the specific area and project does not align with effects and the requirements for consent conditions and the FTAA as set out by the Panel in the Draft Decision.<sup>13</sup> Put simply, condition DC54 is more onerous than necessary.

<sup>13</sup> Section L4.

22. To address the Panel's concerns and ensure a proportionate condition that appropriately recognises the potential adverse effects, Westpower requests that Condition **DC54(b)(ii)** is amended as follows:

- (i) 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 including three minor variations to the Protocol that, if a SQEP (approved bat worker) considers it will not increase the risk of harm to bats in this environment:
  - (1) an approved bat worker will identify low potential bat roost trees between 15 cm dbh and 30 cm dbh taking into consideration knowledge about bat activity and habitat in the area;
  - (2) low risk potential bat roosting trees smaller than 30 cm dbh identified under step (1) can be felled at any time of the year;
  - (3) an approved bat worker can agree to perform acoustic monitoring in weather conditions that differ (but remain appropriate) for it;...

### **Wildlife approvals**

23. The Wildlife Approvals impose different wording in Schedule 3, Special Conditions, Condition **10.1**:

10.1 The Wildlife Approval Holder shall follow the Bat Roost Protocols, as attached at Schedule 7 of this Wildlife Approval when felling occupied bat roost trees during vegetation clearance.

24. While this wording was proposed by the Department of Conservation in their Section 51 Report,<sup>14</sup> it is not clear from it whether the Protocol applies to all felling or felling where there is a risk of occupied bat roost trees. We assume the latter was intended.

25. In any event, clearer wording is preferable and Westpower request Condition **10.1** is amended as follows:

The Wildlife Approval Holder shall follow the Bat Roost Protocols, as attached at Schedule 7 of this Wildlife Approval ~~when~~ to minimise the risk of felling to occupied bat roost trees during vegetation clearance with three minor

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<sup>14</sup> At [2.7.3], Appendix D, Section 51 Report: [https://www.fasttrack.govt.nz/\\_data/assets/pdf\\_file/0015/17313/Appendix-D-Waitaha-Hydro-s512c-wildlife-approvals-report.pdf](https://www.fasttrack.govt.nz/_data/assets/pdf_file/0015/17313/Appendix-D-Waitaha-Hydro-s512c-wildlife-approvals-report.pdf).

variations, if the Approved personnel listed in Schedule 1 considers it will not increase the risk of harm to bats in this environment:

- (a) an approved bat worker will identify low potential bat roost trees between 15 cm dbh and 30 cm dbh taking into consideration knowledge about bat activity and habitat in the area;
- (b) low risk potential bat roosting trees smaller than 30 cm dbh identified under step (a) can be felled at any time of the year;
- (c) an approved bat worker can agree to perform acoustic monitoring in weather conditions that differ (but remain appropriate) for it.

26. If the Panel's preference is to avoid duplication, then the Panel can refer to "minor variations agreed by a SQEP" in one set of conditions and leave the detailed variations listed in the other.

## **Concession Approvals**

### *Concession activity*

27. Westpower considers that the last bullet point in 'Concession Activity' in item 2 of Schedule 1 of the lease / licence could create uncertainty, and should be updated as follows:

all activities authorised or proposed to be undertaken by the Concessionaire in relation to the construction, operation and maintenance of the Waitaha Hydro Scheme as set out in Appendix C to the decision of the Expert Panel;

28. Westpower had previously sought the inclusion of "as set out in the Application".<sup>15</sup> The draft decision explains that the Panel has removed that reference because it was unnecessary and could give rise to complexity and uncertainty.<sup>16</sup> The draft decision goes on to state that:

- (a) Appendix C to the decision contains a full list of the concessions sought; and
- (b) the concessions listed in Appendix C are granted subject to the conditions set out in Appendix D.

29. Westpower anticipates that adding an explicit link to Appendix C reflects the Panel's intention and assists in providing clarity as to the scope of what is included in the concession activity.

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<sup>15</sup> See for example [Attachment-2-Concession-conditions-lease-licence-short-term-21-January-2026.pdf](#)

<sup>16</sup> At [1152].

30. Appendix C appears to have been based on Table 13 of the Application.<sup>17</sup> Westpower has suggested:

- (a) Removing the 'concession type' column as in some cases these descriptions seemed to not align with schedule 4 in the concession documents. For example, the concession type for the take and diversion of Waitaha River flows is noted as "Licence/easement". In Table 13 it was noted as a lease, and schedule 4 of the lease / licence records the take under lease land.
- (b) Adding back words that were in Table 13 but are no longer in Appendix C. For example, reference to construction related discharges to air, or helicopter use for transmission line construction.

#### *Concession fee*

31. In the lease / licence conditions there are issues in terms of when the concession fee is due. Item 11 of schedule 1 provides for the concession fee payment date by reference to clause 5 (see clause 5.2). However, clause 6.2 provides that the concession fee is to be paid annually on the anniversary of the term, with the first payment due at the start of the term. The issues with this approach are as follows:

- (a) The concession fee for the construction is noted in item 6 of schedule 1 as being "\$15,000 (excl. GST) per annum for the period of construction." That is payable from commencement of construction, not the start of the term. Given there is a 10-year lapse period, the commencement of construction could be some years after the commencement of the term.
- (b) The concession fee for the operation of the Scheme is a percentage of revenue which can only be calculated following a period of generation (in other cases this is done at the end of each quarter). A period of time is required after the end of that generation period to confirm the revenue from that period and then calculate the percentage of revenue that is payable to the Department.

32. Westpower has raised this matter with the Department and anticipates it will need to be worked through following the completion of the fast-track process.

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<sup>17</sup> Table 13 of the application detailed the type of concession for which Westpower was applying. It was updated in [Attachment 6](#) to Memorandum #2.

### *Avoidance of duplication*

33. In respect of the schedule 3 special conditions in the lease / licence, the Panel indicated that it was not clear why it was necessary to have duplicated conditions in both the resource consent and concession conditions.<sup>18</sup> Westpower agrees with that observation and has consequently removed duplicated conditions. Westpower has, however:
- (a) included a new table providing more specificity on which resource management conditions are 'relevant'; and
  - (b) retained the DOC liaison officer conditions because that provides a pragmatic mechanism for interaction between Westpower and the Department through the construction period (and was provided for in Westpower's Amethyst conditions and was very successful).
34. The concession conditions expressly include a condition that Westpower is bound to comply with the resource management conditions, and Westpower agrees there is no need to repeat those resource management conditions at length in the concession conditions.
35. The Panel has removed the s 78 bond condition from the easement, to avoid confusion as to whether two bonds are required, as that condition is already met through the lease / licence condition. Westpower considers it is important that the same confusion is avoided in respect of the insurance required and the concession fee.

### *Updates to align with memorandum #12 and inclusion of Maps 1 – 5*

36. Westpower is conscious that the Panel has had to deal with a large volume of information in a short timeframe. In the lease / licence, Westpower has made changes to the following matters to align with the updates in Memorandum #12:
- (a) the figures in condition 23 of schedule 3 (indigenous vegetation disturbance area) have been updated; and
  - (b) licence land in schedule 4 has been updated, included reference to location 8b.

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<sup>18</sup> At [1136].

37. Schedule 4 as issued in the final decision should include Maps 1 – 5 in schedule 4, including using the 17 February version of map 002.<sup>19</sup>

**Dated:** 27 March 2026



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Paul Beverley / David Allen / Rachael Balasingam

**Counsel for Westpower Limited**

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<sup>19</sup> Appendix E to Memorandum #12 dated 17 February 2026.