

BEFORE THE PANEL

IN THE MATTER of the Fast-track Approvals Act 2024 (**FTAA**)

AND

IN THE MATTER of an application by Westpower Limited under section 42
of the FTAA for the Waitaha Hydro Project.

APPLICATION NO. FTAA-2505-1069

**MEMORANDUM FROM THE DEPARTMENT OF CONSERVATION RELATING
TO THE PANEL'S MINUTE #3 INCLUDING THE DECISION INVITING PARTIES
TO COMMENT ON THE SUBSTANTIVE APPLICATION UNDER
SECTION 53 OF THE ACT**

26 November 2025

Barrister Instructed:
Jeremy Prebble
Hawkestone Chambers
Jeremy.prebble@hawkestone.co.nz

Shona Bradley Legal Services Manager DOC Te Papa Atawhai 99 Sala Street Rotorua 3010 Telephone: [REDACTED] Email: [REDACTED]	Emma Fahey Permissions Advisor DOC Te Papa Atawhai PO Box 10420 Wellington 6140 Telephone: [REDACTED] Email: [REDACTED]
--	---

Introduction and DOC's role

1. This memorandum is filed on behalf of the Director-General of Conservation (DOC) in response to the Panel's decision on invitations for comment under section 53 of the Fast-track Approvals Act 2024 (the Act) of today's date (26 November 2025).
2. DOC is the relevant administering agency in respect of the following approvals sought by the applicant under section 42(4) of the Fast-track Approvals Act 2024 (the Act):
 - a) Section 42(4)(e), being a concession as defined in clause 1 of Schedule 6;
 - b) Section 42(4)(h), being a wildlife approval as defined in clause 1 of Schedule 7; and
 - c) Section 42(4)(j), being a complex freshwater fisheries approval as defined in clause 1 of Schedule 9.
3. DOC has been directed to prepare a report under section 51 of the Act in respect of each of the approvals sought set out in paragraph 2 above.¹ These reports will be provided to the Panel by 10 December 2025.
4. DOC's reports will cover the matters as directed by the Panel Convenor's Minute 1, namely the matters set out in clause 4 of Schedule 6 to the Act, clause 3 of Schedule 7 to the Act, and clause 4 of Schedule 9 to the Act.²

Invitation to make comments on the application

5. Section 53(3) of the Act provides that comments may be invited from any person the panel considers appropriate, in addition to those required to be invited under the Act.
6. The Panel's decision as recorded in Minute # 3 is to only invite comments on the substantive application from named additional parties being the New Zealand Transport Agency – Waka Kotahi, and the owners and occupiers of

¹ Minute 1 of the Panel Convenor dated 24 September 2025.

² DOC will not be including recommendations to grant or decline, as discussed with the Panel Convenor at the PC conference on 22 October 2025, and as confirmed by the Panel Convenor in Minute 4 (at [16]).

the properties along Waitaha Road shaded turquoise on the map attached in Appendix 2 to the Minute.

7. It is of note that the Panel has not invited comments from recreational user groups such as Federated Mountain Clubs (FMC).
8. The Panel has set out in paragraph [3] of Minute # 3 what it took into account in deciding who to invite comments from in this case. This includes reference to the applicant's submissions on this matter.
9. In its Memorandum 1 to the Panel dated 7 November 2025, the applicant has submitted in respect of the potential to invite FMC to comment (inter alia) that:³

“...Westpower's position is that the recreational matters raised by FMC have been, or will be, covered by the Councils and DOC and its inclusion would not further assist the panel, or add value to the process. To the degree FMC raises issues of whitewater and paddle sport activities they have also been appropriately addressed through the agreement with WWNZ (with which it disagrees). FMC raises specific issues against relevant technical points in the recreation report with matters should not, and which it disagrees. But disagreement over specific technical minutiae is not sufficient for the panel to exercise its discretion.”

10. DOC strongly disagrees with Westpower's submission, and submits to the contrary - i.e. that inviting comments from FMC would be of assistance and is necessary for the Panel to make an informed decision on the facts.
11. In its Memorandum 1 to the Panel, the applicant has endorsed the approach taken to by the Panels set up to determine the Bledisloe Wharf extension project and the Sunfield urban development in deciding who to invite comments from under section 53.⁴

³ Paragraph 88.

⁴ See footnote 78 on page 21 of the Memorandum 1 of the Applicant: “See for example [Minute 3 of the Panel - 26 May 2025](#) at [16]–[18] and [Sunfield - Minute 2 of the Panel](#) at [14].”

12. For *Bledisloe Wharf* the Expert Panel based its section 53 decision on 8 principles, namely:⁵
- i. The purpose of the FTAA;
 - ii. The statutory requirement that the Panel issue a decision within a very short timeframe.
 - iii. The nature of the proposed development in its factual context.
 - iv. Whether the proposed activity involves novel or contentious legal matters or disputed factual matters, beyond that which might be expected as part of regionally or nationally significant project processed under the FTAA.
 - v. Whether the Project would otherwise be prohibited under the relevant legislation.
 - vi. The comprehensiveness and quality of the applicant's technical information and how the applicant has addressed the issue of consultation.
 - vii. Whether the wide range of entities from whom comment must be sought under s 53(2) would ensure that all relevant information would be before the Panel to enable it to make a robust decision.
 - viii. Whether there are any exceptional factors that would warrant the exercise of a discretion to invite comment from any further person that go well beyond mere public interest – for example, are there any persons affected to such a significant extent that considerations of natural justice might warrant their comments being sought, or is there an absence of information on certain issues that might be filled through seeking comments from any other person?
13. The *Bledisloe Wharf* Expert Panel decided that the application material together with the wide range of entities from whom comment was required to be invited (the names of whom spanned four pages)⁶ would ensure that it would be able to make a robust, fully informed decision within the timeframe required by the FTAA. The Panel therefore decided not to exercise its discretion to invite comment from any other entity under section 53(3) of the Act.

⁵ Minute 3 as above, page 10.

⁶ See [List-of-persons-invited-to-comment-Bledisloe.pdf](#).

14. An alternative approach was taken by the Expert Panel for the Waihi North Oceana Gold project.⁷ There, the Expert Panel invited several entities under section 53(3) on the basis that:

“[4] As for other persons referred to in [1](h), the panel sees them as warranting invitations to comment on the basis of one or more of the following factors: (a) sufficient actual or potential interest in the proposal; (b) arguably being entitled to be invited to comment under s 52(2); and (c) the likelihood that their participation will facilitate a critical testing of the bases on which the proposal is advanced.”

15. While the matters to be covered off in DOC's section 51 reports are substantial, they are matters which DOC is only able to report on from the point of view of the administering agency – i.e. the regulator.⁸
16. DOC will *not* be in a position to speak to the user experience of recreational visitors to the Waitaha Valley, first hand.
17. There is also relevant information that recreational user group organisations such as FMC (who themselves have other recreational groups as members) hold in addition to the information held by DOC. This includes for example information on recreational user numbers beyond the visitor numbers recorded in DOC hut book entries.
18. For the Waitaha hydro application, DOC considers that inviting recreational user groups such as FMC would ensure the Panel can make a robust, fully informed decision. In particular, it would likely assist the Panel regarding the following:

Bledisloe Wharf criteria

- The factual context that the project would be within (*Bledisloe [iii]*).
- Disputed facts (*Bledisloe [iv]*).
- The comprehensiveness of the applicant's technical information (*Bledisloe [vi]*).

⁷ [Waihi-North-Minute-1-1.pdf](#)

⁸ For concessions the Minister of Conservation is the decision-maker, but DOC officers have delegated authority to make decisions on the Minister's behalf.

- All the relevant information the Panel needs to enable it to make a robust decision (*Bledisloe [vii]*).
- To the extent exceptional factors are needed to warrant comments from recreational user groups being invited (*Bledisloe [viii]*):
 - The majority of the land needed for the project is Crown Land held for conservation purposes. This includes providing for its appreciation and recreational enjoyment by the public;⁹ and
 - Given the extent to which recreational users will be affected by the project,¹⁰ natural justice would warrant their comments, or at least comments made on their behalf, being sought.

Waihi North criteria

- Sufficient actual or potential interest in the proposal (*Waihi North (a)*).
- The likelihood that their participation will facilitate a critical testing of the bases on which the proposal is advanced (*Waihi North (c)*).

Conclusion

19. For the above reasons DOC requests that the Panel's invitation to comment under section 53 of the Act be extended to recreational user groups of the Waitaha Valley, including FMC.



Shona Bradley /Jeremy Prebble
Counsel for the Director-General of Conservation

26 November 2025

⁹ See definition of “conservation” in section (2)(1) of the Conservation Act 1987: “**conservation** means the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations”.

¹⁰ The applicant has acknowledged that there will be some significant effects in relation to recreation (at [81]).