

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

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**EXPERT PANEL: WESTPOWER LTD MEMORANDUM #7  
MEMORANDUM OF COUNSEL IN RESPONSE TO COMMENTS RECEIVED  
UNDER SECTIONS 51 AND 53, AND REQUEST FOR INFORMATION #3**

Dated: 21 January 2026

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## MAY IT PLEASE THE PANEL:

### 1. INTRODUCTION

- 1.1 This document provides Westpower Limited's (**Westpower**) response to:
- (a) the reports and comments of the Director-General of Conservation under section 51 of the Fast-track Approvals Act 2024 (**FTAA**);
  - (b) the comments received from parties invited to comment on the Waitaha Hydro Scheme Project (**Project**) under section 53 of the FTAA; and
  - (c) the Request for Further Information issued by the Panel on 22 December 2025 (**RFI #3**) in relation to the implications for the Application<sup>1</sup> of the National Policy Statements (**NPS**) released on 18 December 2025, and in effect from 15 January 2026.

### Structure

- 1.2 This memorandum adopts the following structure:
- (a) **Part 1** provides this introduction.
  - (b) **Part 2** provides a Westpower's response to the comments made by the Department of Conservation (**Department**) on behalf of the Director-General in the s 51 report (and associated documents, including for each type of approval sought under the FTAA and the legal opinion accompanying the reports; altogether referred to as the **s 51 Report**).
  - (c) **Part 3** provides a summary of Westpower's response to each set of comments received from those invited to comment under s 53,<sup>2</sup> namely:
    - (i) Poutini Ngāi Tahu;
    - (ii) Westland District Council (**WDC**) and West Coast Regional Council (**WCRC**);
    - (iii) the relevant portfolio Ministers that responded;
    - (iv) invited landowners; and

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<sup>1</sup> Waitaha Hydro Substantive Application, lodged on 8 August 2025: [Waitaha-Hydro-project-substantive-application-documents.pdf](#).

<sup>2</sup> And its response to unsolicited material.

- (v) the Department, New Zealand Conservation Authority (**NZCA**) and the West Coast *Tai Poutini* Conservation Board (**Conservation Board**).
  - (d) **Part 4** explains Westpower's response to RFI #3.
  - (e) **Part 5** provides comment on further information.
- 1.3 To assist the Panel to locate the key documents relevant to the approvals, the attachments to this Memorandum #7 first include the suite of updated conditions, then the updated wildlife and complex freshwater fisheries approval conditions, and next the response to RFI #3. The remaining attachments are statements of Westpower's experts responding to comments and two updated management plans.
- 1.4 Attached to this document and forming part of Westpower's response are:
- (a) **Attachment 1**: Proffered resource consent conditions;
  - (b) **Attachment 2**: Concession conditions – short-term;
  - (c) **Attachment 3**: Concession conditions – long-term;
  - (d) **Attachment 4**: Concession conditions easement;
  - (e) **Attachment 5A**: Wildlife approval conditions;
  - (f) **Attachment 5B**: Complex Freshwater Fisheries conditions;
  - (g) **Attachment 6**: Response by Mr Mason Jackson to the Panel's RFI #3;
  - (h) **Attachment 7**: Response by Mr James Bentley in relation to landscape, natural character and visual effects;
  - (i) **Attachment 8**: Updated Landscape Management Plan;
  - (j) **Attachment 9**: Response of Mr Rodger Griffiths in relation to various matters;
  - (k) **Attachment 10**: Response of Mr Rob Greenaway in relation to recreational effects;
  - (l) **Attachment 11**: Response of Mr Michael Copeland in relation to economic benefits;
  - (m) **Attachment 12**: Mr David Jan Derks in response to various matters;

- (n) **Attachment 13:** Response of Mr Martin Kennedy in relation to the CGP and the CMS;
- (o) **Attachment 14:** Updated Lizard Management Plan;
- (p) **Attachment 15:** Response of Mr Jackson in response to the s 51 report and s 53 comments; and
- (q) **Attachment 16:** Response of Mr Erik Westergaard in relation to electricity resilience benefits.

## 2. SECTION 51 REPORTS

### OVERVIEW

- 2.1 Westpower appreciates the detailed comments provided by the Department. The Department acknowledges the extensive and constructive engagement undertaken with Westpower, with many issues having been resolved and/or appropriately addressed to the Department's satisfaction.<sup>3</sup> Westpower's response below addresses the key outstanding issues remaining with the Department.
- 2.2 The s 51 FTAA process and the Department's response do not relate to RMA matters.<sup>4</sup> However, there is inevitably a degree of overlap. Matters raised by the Department in its s 51 Report requiring an RMA response by Westpower are, for the Panel's efficiency, addressed in the responses to s 53 FTAA comments below.

### SECTION 51 TECHNICAL REPORTS

#### Landscape Report

- 2.3 There is considerable alignment as to landscape effects. In his Landscape Peer Review Mr Head states that "I agree with a substantive part of the content and conclusions reached in the Landscape Report". He also agrees with Mr Bentley's:
- (a) assessments as to the operational effects of the headworks structures and at the powerhouse site to be "fair and reasonable"; and
  - (b) high construction effects assessment.

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<sup>3</sup> Section 51 covering report at [3.2]–[3.3].

<sup>4</sup> Aligned with [Minute 1 of the Panel Convener](#).

2.4 Mr Bentley's response is in **Attachment 7**. He addresses:

- (a) **Construction effects.** He explains his discussion with Mr Head and amends his Table 2 to reflect that discussion. As Mr Bentley explains he was heavily involved in working with Westpower to design the Project to first avoid adverse construction-based effects and, where avoidance was not practicable then mitigate those effects. Further, numerous constructed related conditions and management practices are provided, thereby further reducing effects. He considers this to have been a best-practice process.<sup>5</sup> But, to construct the Project high effects (localised and temporary) will occur. Overall, both he and Mr Head agree on the construction effects and the approach applied.
- (b) In addition, to further minimise construction effects (and pick up on comments by Mr Head) Mr Bentley has recommended:
  - (i) That the vegetative buffer area between Construction Staging Area 1 and the Waitaha River as shown on the plans and stipulated in the conditions (Part D, Condition 41); and
  - (ii) That, at the Power Station site, Westpower must use all reasonable endeavours to retain a buffer margin (as contained in Part D, Condition 45 and the amended LMP in **Attachment 8**).
- (c) **Excavator Use and Access.** Mr Bentley notes that the excavator will seldom be used (estimated at 5-15 times per year for only short periods (four hours). Mr Griffiths (**Attachment 9**) has confirmed that a 20-tonne excavator is favoured as its longer arm enables greater maintenance to occur with the machine out of the wet riverbed. Mr Griffiths also confirms that it will not be visible when stored as it will be located at least 100 m inside the tunnel (to be above the maximum predicted flood level) (Part D, Condition 43). Mr Bentley has assessed the natural character effects of this as moderate-high during the times when the digger is in operation (as otherwise it will be parked in the access tunnel). To further mitigate potential effects Mr Bentley has recommend that the colour of the digger be a dark recessive colour (Part D, Condition 43). Mr Bentley has prepared, in response to requests from the Department, simulations with at 20-tonne excavator included as shown in Appendix B to **Attachment 7**.

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<sup>5</sup> Attachment 7, Statement of James Bentley, 21 January 2026.

- (d) Mr Head also commented on the 12m width of the access track from the tunnel to the river and sought that it be reduced. Mr Bentley agrees and recommends that the track be a maximum of 5m wide which Westpower confirm it can accommodate (Part D, Condition 42).
- (e) **Slope stabilisation treatments.** Mr Head comments on the use of shotcrete. Mr Bentley agrees that it is not a preferred technique from a landscape perspective, but that it may be required at certain locations due to engineering or health and safety requirements. He recommends an approach whereby other options are prioritised in sensitive areas (i.e. head works and tunnel batter slopes) unless shotcrete is required for engineering, protection of infrastructure and / or health and safety requirements. Where shotcrete is used it must be minimised as far as is practicable (Part D, Condition 39) and the LMP has been amended to provide additional provisions (**Attachment 8**).
- (f) **Viewpoints and simulations.** Mr Bentley responds to the matters raised by Mr Head and notes that additional simulations were provided to the Panel on 10 December 2025 (in response to RFI #1<sup>6</sup>).
- (g) **Colour of power station.** Mr Head recommended that the Power Station exterior and roof are one colour (natural grey / green / brown hues with maximum light reflectance value (LRV) of 12% maximum). Mr Bentley accepts that, and it is now conditioned (Part D, Condition 43).
- (h) **Power station access route and transmission line.** Mr Bentley considers, due to the height of vegetation and viewing locations that it is unlikely that it would be possible for people using the existing track or river to see the much of the transmission alignment and any views of transmission poles and lines in this area would be very limited. In relation to undergrounding transmission, given the visual effects of the access road Mr Bentley does not consider that the line materially increases the magnitude of visual effects.

## Recreation Report

2.5 Ms Sidley authored the Department's recreation technical report. Mr Greenaway responds to that report (**Attachment 10**) noting that he considers

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<sup>6</sup> Attachment 2A to Memorandum #5: [Memorandum-5-Attachment-2A-to-statement-of-James-Bentley-RFI-response-10-December.pdf](#).

they are "more [in] agreement than the DOC report author implies – although I disagree with some of the individual DOC findings." Mr Greenaway does not change his assessment, bar one clarification to his Table 2. Mr Greenaway:

- (a) Sets out why he disagrees with Ms Sidley's "finding of a 'significant' adverse effect in this case – which is the only concluded significant effect from the operation of the scheme in the DOC report."<sup>7</sup>
- (b) Maintains his position that construction effects will be high (aligned with Ms Sidley) but emphasises that "this effect is at the local level and relating to recreation values only"<sup>8</sup> with his opinion remaining that "that the net effect at a regional level with mitigation is low." At the regional level Mr Greenaway states that Ms Sidley's "report does not clarify an assessment of effect at the regional level but notes that the "Waitaha Valley is recognised as a regionally significant backcountry setting," (para 24), and I agree."<sup>9</sup>

2.6 In relation to Ms Sidley's proposed 'calculation of loss of recreational value' Mr Greenaway:

- (a) States that he is not familiar with the 'time valuation method' but that he is familiar with the 'Travel Cost Method' about which he states, "I avoid it since it relies on too many assumptions, and I would not be prepared to defend it in the Environment Court."
- (b) Notes the Department's reliance on an opportunity cost of 100% of the NZ hourly wage at FY2024 when there are many issues with that as he points out.
- (c) Overall, considers Ms Sidley's approach to be quite novel and to carry a "high level of uncertainty" such that he does "not support its application here."

2.7 Mr Copeland (**Attachment 11**) also responds to the Department's 'calculation of loss of recreational value'. He considers it to be 'arbitrary', that it is not "a reasonable methodology that assists the Panel" and that it "should be disregarded". However, he comments that even if such calculations were attempted:

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<sup>7</sup> Attachment 10 at [6] to [8].

<sup>8</sup> Attachment 10 at [9].

<sup>9</sup> Attachment 10 at [11].

- (a) That any loss in value to visitors should relate to the 'net reduced satisfaction'; and
- (b) At a minimum, Treasury's 8% discount rate should be applied which would "[reduce] the estimated compensation to be paid from \$315,000 to \$186,000 in present value terms."

- 2.8 Finally, the experience of Ms Sidley must be considered where her conclusions differ to those of Mr Greenaway. Ms Sidley's 25 years of experience is provided at a very high level focusing on community engagement, environmental education, and especially more recently, regional/strategic planning.<sup>10</sup> Her experience does not mention having undertaken any recreational assessments and there is no indication whether she has ever completed a 'calculation of loss of recreational value' before.<sup>11</sup>
- 2.9 Following receipt of the Department's recreational report, and the Department's wider comments, Westpower has provided greater clarity on track closure and access issues as set out in Mr Griffith's **Attachment 9** (and in Part B, Condition 17 (CEMP) and Part D, Condition 60) relating to:
- (a) Length of time of individual access closures; and
  - (b) Public provision of information in relation to the construction programme and potential for track closures.

## **SECTION 51 LEGAL MEMORANDUM**

### **Relevance of temporary landscape effects to the panel's assessment**

- 2.10 The Department's legal memorandum considers that Westpower "omitted" from its discussion in the AEE and in our Memorandum #1 reference to significant (high) temporary landscape, natural character and visual character effects. The AEE included in full Mr Bentley's Table 2<sup>12</sup> (Table 32 in the AEE). Counsel also relied on Mr Bentley's Table 2. Now, following discussions with Mr Head that occurred well after the AEE and Memorandum #1 were prepared, Mr Bentley has amended that table to make his position clearer (**Attachment 7**). Irrespective, as noted above, the text of Mr Bentley's technical report appended to the AEE, and Mr Head's assessment,

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<sup>10</sup> [Waitaha-Hydro-section-51-covering-report.pdf](#), Appendix B at page 20.

<sup>11</sup> For completeness it is unclear if she has ever been to the site (Westpower has no record of her ever having done so in any visits it has arranged), although she does say that there has been input from, unidentified, District staff "familiar with the site".

<sup>12</sup> [Appendix-27-landscape-report.pdf](#).

align in that the construction effects for natural character, landscape and visual amenity are "high" (localised and temporary).

2.11 The Department relies on the High Court's decision in *Trilane Industries Ltd v Queenstown Lakes District Council*, which held that, for the purposes of a resource consent notification decision under the RMA, the consent authority must assess any temporary adverse effects on their own, rather than altogether as part of any proposed mitigation to address those adverse effects in the longer term.<sup>13</sup> The underlying principle the Department relies on from *Trilane* is not 'equally applicable' in this case:

- (a) under the RMA, the effects assessment is different at the notification stage and the substantive stage – a holistic assessment of effects is permitted at the substantive stage;<sup>14</sup>
- (b) the Panel is now at the substantive stage, not the equivalent of the notification stage under the RMA (which for this project, was the invitation to comment under s 53 of the FTAA);
- (c) for the concessions, the Panel must have regard to both the effects and any measures that can reasonably and practicably be undertaken to avoid, remedy or mitigate any adverse effects;<sup>15</sup>
- (d) while there are a few residual effects relating to landscape and recreation matters which cannot be avoided, they are mitigated as far as practicable which satisfies section 17U(2) of the Conservation Act; and
- (e) as acknowledged by the Department,<sup>16</sup> the panel's discretion to decline under section 17U(2) of the Conservation Act is subject to the stricter limitations for decline in the FTAA and the end of the day, after all consideration, the greatest weight must be given to the purpose of the FTAA.<sup>17</sup>

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<sup>13</sup> *Trilane Industries Ltd v Queenstown Lakes District Council* [2020] NZHC 1647, (2020) 21 ELRNZ 956.

<sup>14</sup> *Trilane*, itself makes this distinction clear at [58].

<sup>15</sup> Conservation Act 1987, s 17U(1)(b) and (c).

<sup>16</sup> Appendix C: concession report, at [6.3.4] the Department addresses that if the panel were to form a view that the application met the criteria to decline in s 17U(2), "such a conclusion must be weighed against all criteria specified in FTAA Schedule 6 clause 7(1)(a), with greatest weight given to the purpose of the FTAA".

<sup>17</sup> [Waihi North Decision Report](#), Part I at [35].

## Compensation

2.12 The Department's position on the appropriate location for compensation conditions remains unclear (as it has been throughout the engagement process), noting:

(a) The legal memorandum states that (emphasis added):

Proposed compensation conditions should be attached to **all of the key approvals** where relevant in this case (resource consents, concessions and Wildlife Act 1953 approvals).<sup>18</sup>

...

... the relevant parts of the "compensation package" **must be attached to each relevant statutory approval** by way of conditions imposed by the Panel.<sup>19</sup>

...

... the operative conditions for compensation **should be in all three approvals**

...<sup>20</sup>

(b) The Department's s 51 Covering Report states that "compensation conditions should be embedded within each approval in an operative sense, rather than being tied solely to the resource consent".<sup>21</sup>

(c) The Department's comments in the short-term and long-term concessions state the ecological compensation conditions:

... should not be included as concession conditions as they are proposed to be included either in Consents or under the Wildlife Act Authority, and should be enforced under those authorisations only.

(d) For the short-term concession, the Department states that "recreation compensation should only be required under the Conservation Act Concessions".

(e) The Department's s 53 comments state that (emphasis added):

DOC considers that the compensation requirements for effects on bats, whio, forest birds and lizards should instead be **included in the Wildlife Approval conditions**.<sup>22</sup>

...

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<sup>18</sup> Appendix F at 3.

<sup>19</sup> Appendix F at [48].

<sup>20</sup> Appendix F at [51].

<sup>21</sup> Section 51 report at [5.1.1].

<sup>22</sup> Section 53 comment at [41].

As above, DOC considers that the compensation requirements for effects on local biodiversity should instead be included in **either the Concession conditions or the Wildlife Approval conditions**.<sup>23</sup>

...

... recreation compensation on conservation land should only be required under the Conservation Act Concessions...<sup>24</sup>

...

For the ecological compensation ((a) to (e) above), DOC agrees that requirements for these should be included in the resource consent conditions but considers that **the requirements should also sit within the DOC Concession and Wildlife Act approvals** given administration and enforceability will ultimately sit with DOC under those regimes.<sup>25</sup>

2.13 In response to feedback from the Department, Westpower's 27 November updated version of the concession conditions duplicated the conditions. Westpower has made further changes to the locations of the conditions based on its best interpretation of the Department's section 51 reports and section 53 comments. In summary:

- (a) The resource consent conditions and wildlife approval conditions include (without requiring Westpower to pay twice) compensation for:
  - (i) potential small residual effects on bats (annual payment of \$15,000 for ten years to an ecosystem programme in the region);
  - (ii) potential construction related effects on who (annual payment of \$35,000 for ten years to an ecosystem programme in the region);
  - (iii) potential operational effects on local biodiversity (annual payment of \$35,000 for up to 25 years to an ecosystem programme in the region);
  - (iv) potential residual less than minor effects from vegetation clearance on birds of conservation importance (payment of \$10,000 for any year during construction where indigenous vegetation clearance is undertaken south of Macgregor Creek);and

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<sup>23</sup> Section 53 comment at [44].

<sup>24</sup> Section 53 comment at [47]. See also [42] and the Department's comment in Appendix A to the section 53 comment.

<sup>25</sup> Section 53 comment at [48].

- (v) potential construction related effects on lizards (\$5,000 if vegetation clearance occurs during April to September).
- (b) The resource consent conditions and concession conditions include (without requiring Westpower to pay twice) compensation for adverse recreational effects.

### **Agreement with WWNZ**

- 2.14 The Department submits that it is not possible to entirely address an adverse effect (paddle sports / whitewater recreation) through agreement with one group. The Department relies on the Court of Appeal decision in *Royal Forest and Bird Protection Society of New Zealand Inc v Kapiti Coast District Council*, which was a judicial review of a resource consent non-notification decision under the RMA where the Department, as the landowner, had given written approval.<sup>26</sup> As explained above in respect of the *Trilane* decision, the notification and substantive decisions under the RMA require different consideration, and the statutory framework under the FTAA is also different. The *Royal Forest and Bird Protection Society* decision was dealing with a very different issue, with the Court confirming that the written approval from the Department did not mean that the council could not consider effects on a wetland.
- 2.15 Setting that aside, Mr Greenaway<sup>27</sup> and Westpower have never claimed that whitewater effects have been "entirely addressed"<sup>28</sup> (as in there are no residual effects) on kayaking (and Mr Greenaway addresses kayaking effects further in **Attachment 10**). There is no requirement under the FTAA, nor the RMA, for there to be no effects.<sup>29</sup> As Mr Greenaway notes there is no restriction in the conditions on only WWNZ members benefiting from no take days. WWNZ is widely regarded as the preeminent organisation representing kayaking interests in New Zealand and there is no reason to conclude that its involvement will limit opportunities of paddlers (nor that others will not benefit from work undertaken by WWNZ with the funds proposed to be provided). WWNZ has had a long history leading the representation of kayaking interests in relation to the Project; being a key party in opposition throughout the historic concession process (for some 10 years with no issue as to its representation being raised) and is an affiliated

<sup>26</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v Kapiti Coast District Council* [2009] NZCA 73.

<sup>27</sup> [Waitaha Hydro Westpower - recreation assessment](#).

<sup>28</sup> Department s 51 Reports Legal Memorandum, at [15].

<sup>29</sup> *Re Meridian Energy Ltd* [2013] NZEnvC 59 at [299]; *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council* (No 2) [2013] NZHC 1346, [2013] NZRMA 293 at [52].

member of FMC. The Department's opposition to the role proposed for WWNZ, and its assumption (with no evidence provided) that WWNZ will act to the exclusion of non-members such that they will receive no benefit, reflects the correspondence and articles from FMC (all unsolicited material).

**Consistency with the Conservation General Policy 2005 (CGP)<sup>30</sup> and Te Tai Poutini (West Coast) Conservation Management Strategy 2010-2020 (CMS)<sup>31</sup>**

2.16 Westpower's approach to assessing consistency with the CGP and CMS is set out in the AEE.<sup>32</sup> The Department disagrees with a "global" approach to interpretation and claims that Westpower has used that approach to "balance away" policies that it considers are not met.<sup>33</sup>

2.17 The Panel should prefer Westpower's approach, which is actually an approach that reads the objectives and policies of each document as a whole, rather than a policy-by-policy assessment in an isolated and decontextualised manner as advocated for by the Department. In this way Westpower has paid attention to the relevant objectives and policies on their own terms and as they relate to one another in the overall document. In addition:

- (a) The Department has not provided any case law in support of its position. As explained in the AEE, Westpower has been unable to find any specific judicial guidance on assessing consistency of the CGP or the CMS. On that basis, Westpower has looked to RMA case law as an example (and the Department has also relied on RMA case law in its legal memorandum as addressed above).
- (b) The Department distinguishes RMA case law on the basis that conservation planning documents do not 'pull in different directions' like RMA planning documents. That is an oversimplification and there are objectives and policies in those documents that do seek to achieve potentially inconsistent outcomes (hut/track infrastructure and biodiversity being examples). Further, it is not relevant to the question

<sup>30</sup> [Conservation General Policy 2005: NZCA Policies and publications.](#)

<sup>31</sup> [West Coast Conservation Management Strategy 2010-2020.](#)

<sup>32</sup> [Waitaha-Hydro-project-substantive-application-documents.pdf](#) at 362–363. See also *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26, [2024] 1 NZLR 241 at [79] – [80]. To understand whether a proposal is consistent with relevant planning objectives and policies for the purposes of s 104D(1)(b) of the RMA requires, the majority held, a 'fair appraisal' of these documents as a whole, rather than considering consistency on a policy-by-policy basis in an isolated and decontextualised manner. This does not mean that all the objectives and policies can be blended together; "rather, attention must be paid to relevant objectives and policies both on their own terms and as they relate to one another in the overall policy statement or plan."

<sup>33</sup> Appendix F at [21]–[26].

of how the documents should be read. Westpower submits that the CPG and the CMS should be read by the Panel as a whole, in line with:

- (i) RMA case law,<sup>34</sup>
- (ii) CPG Policy 1(c) which states "Each policy will be considered in conjunction with all other policies in this General Policy"; and
- (iii) the CMS Interpretation Policy 2 which states "Each operative part of this CMS will be considered in conjunction with all other relevant sections of this CMS",

and considering the context (including the enormous percentage (84%<sup>35</sup>) of the region that is public conservation land managed by the CMS as shown in Map 1 of the CMS) and circumstances of the Project (including climate change mitigation).

- (c) **Attachment 13** provides a detailed response from Mr Kennedy to the relevant CPG and CMS provisions. This response to the Department's s 51 Report (and s 53 comments from the Department and the NZCA). Mr Kennedy retains the same position as reflected in his appendix to the AEE that the Project is consistent with the relevant objectives and policies of the CGP and CMS.<sup>36</sup> In summary, Mr Kennedy comments:

- (i) In relation to the CPG:<sup>37</sup>

The DOC conclusions (and that applied by the NZCA in its comments):

- are inconsistent with Policy 1 (Interpretation);
- are inconsistent with several Policies related to conservation of natural resources and effects of activities on conservation values;
- in adopting a nil residual adverse effects approach, are not consistent with expectations specified in these policies;
- do not consider or assess relevant policies; and
- misapply some policy wording.

- (ii) In relation to the CMS:<sup>38</sup>

... the DOC assessment and its conclusions:

- fail to reflect that the activity does not occur within a national park and is not within an area subject to a conservation management plan;

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<sup>34</sup> Including *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26, [2024] 1 NZLR 241.

<sup>35</sup> [West Coast Te Tai o Poutini Conservation Management Strategy review: Have your say.](#)

<sup>36</sup> [Appendix 52 management strategy and conservation general policy statutory assessment.](#)

<sup>37</sup> Attachment 13 at [5.1].

<sup>38</sup> Attachment 13 at [6.1].

- are inconsistent with Policy 1 (Interpretation);
- in adopting its nil residual adverse effects approach are not consistent with expectations specified in these policies;
- do not consider or assess relevant policies; and
- misapply some policy wording and inconsistently apply assessments made elsewhere in the DOC report.

(iii) Mr Kennedy concludes:<sup>39</sup>

It is my overall assessment that whilst there are effects, at a range of degrees, arising from the proposed activity, when all the relevant provisions are considered as intended by the CGP and CMS (both on their own terms and as they relate to each other across the overall document), the Project can, subject to conditions, be considered consistent with the CGP and CMS as a whole.

- (d) The CGP and CMS are both dated documents – the CGP is dated 2005 and the CMS is dated 2010-2020. In the forward to the CGP the then Minister states that it will "guide conservation management for the next decade or more." Over 20 years later its provisions fail to reflect relevant issues, complexities and legislation (especially the FTAA) of 2026, including critically climate change (which the CPG does not even mention), within which the Project is being promoted.
- (e) The CMS is over 15 years old but does state "Climate change is one of the most significant contemporary threats to natural, historical and cultural heritage, with potential effects on biodiversity and ecosystem functioning in particular." The Department, however, does not include relevant context and circumstances of the Project such as climate change mitigation, when assessing the CPG and CMS provisions.
- (f) The CGP and CMS both pre-date the Supreme Court's decision in *Ngāi Tai Ki Tāmaki Tribal Trust v Minister of Conservation*.<sup>40</sup> The significance of that decision is that it found the key Treaty statement in the CGP to be unlawful. The CGP had stated that where provisions in conservation legislation and the Treaty principles conflicted, the legislation prevailed. The Supreme Court declared that statement unlawful in that it claimed that Treaty principles were trumped by the conservation legislation. The Court stated that what is required is that all other conservation statutory provisions are applied consistently with

<sup>39</sup> Attachment 13 at [3.4].

<sup>40</sup> *Ngāi Tai Ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122, [2019] 1 NZLR 368.

the requirement under s 4 of the Conservation Act to give effect to the Treaty principles.<sup>41</sup>

- (g) While the offending provision has been removed from the CGP, the rest of the CGP (and the subservient documents such as the CMS) have not been amended to reflect the effect of Supreme Court decisions throughout those statutory documents (in which case there is likely a cascade of insufficient or unlawful provisions). That means that limited weight can be given to the documents, particularly as they do not reflect the powerful effect of the Treaty principles. If those documents had been amended appropriately to reflect the Supreme Court decision, the opportunities for Poutini Ngāi Tahu (such as in the partnership with Westpower) would be far more prominent.<sup>42</sup>

#### 2.18 Irrespective:

- (a) The CMS is **not** co-authored by a Treaty settlement entity and the panel's consideration of the project's consistency with it is **not** a mandatory requirement.<sup>43</sup>
- (b) Section 83 of the FTAA makes it clear that the Panel cannot conclude that an adverse impact meets the threshold (that the adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits) solely on the basis that it is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider.
- (c) Clause 7 of Schedule 6 to the FTAA makes it clear that for the concessions, while the Panel must take into account that under the Conservation Act inconsistency with the CMS would require a decline (Westpower's position is there is no such inconsistency), the Panel must not treat those provisions as to requiring it to decline the approval.
- (d) Ultimately, have considered all relevant matters, it is the purpose of the FTAA that must be given the greatest weight.<sup>44</sup>

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<sup>41</sup> At [76].

<sup>42</sup> See for example at [52] to [54].

<sup>43</sup> Confirmed by Poutini Ngāi Tahu in their s 53 comments and noted by the Department in [Waitaha-Hydro-section-51-covering-report.pdf](#) at [4.19].

<sup>44</sup> FTAA s81(2)(b), noting the relevant weight clauses in subsection (3).

- (e) Therefore, under the FTAA, the CGP and the CMS do not have any 'controlling effect'<sup>45</sup> over the Panel.

2.19 The Department states that non-compliance with the statutory planning documents is a factor the Panel may consider under cl 7(1)(b)(i) of Schedule 6 to the FTAA.<sup>46</sup> As previously noted to the Panel, that discretion is subsidiary to the panel's requirement to take into account the matters in cl 7(1)(a) and give more weight to the purpose of the FTAA. Further, the Expert Panel for the Waihi North Project:

- (a) was clear that the FTAA decision-making criteria are "in some respects, distinctly different from those that would otherwise have been applicable";<sup>47</sup> and
- (b) while it held that effects were acceptable and did not weigh against granting approvals, the Panel stated that "... [t]his would also be at least substantively so even if, and contrary to our view, implementation of the WNP is not completely consistent with the objectives and policies of all the relevant planning instruments."<sup>48</sup>

### **Concession fee**

2.20 The Department considers that s 78 of the FTAA allows the Minister to set a condition imposing a concession activity fee, rather than the Panel.<sup>49</sup> Westpower's position – that it is the Panel's role under the FTAA to set the concession fee – was stated at the project overview conference.

2.21 Westpower and the Department continue in constructive discussions in relation to what an appropriate concession fee may be (see below), and as noted by the Department, if agreement is reached, the s 78 condition may not be necessary. However, Westpower wished to reiterate its position on the appropriateness of the s 78 condition on the concession fee.

### *Ultra vires as a s 78 condition*

2.22 Under a standard concession process, a condition of the grant of a concession is that the concessionaire pays any specified rent, fee or royalty,

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<sup>45</sup> [Waihi North Decision Report](#), Part I at [10] and Part M, at [10].

<sup>46</sup> Appendix F at [28].

<sup>47</sup> [Waihi North Decision Report](#) Part M at [9].

<sup>48</sup> [Waihi North Decision Report](#) Part M at [13].

<sup>49</sup> Appendix F at [29]–[35].

which may be fixed at market value having regard to various factors and must be periodically reviewed.<sup>50</sup> In contrast, the FTAA expressly:

- (a) provides for the panel to set the concession fee rather than the Minister;<sup>51</sup>
- (b) disapplies s 17Y(1) of the Conservation Act;<sup>52</sup> and
- (c) provides discretion for a concession fee to be imposed.<sup>53</sup>

2.23 During the Committee of the Whole House stage for the FTAA, the Government introduced an Amendment Paper. Instead of incorporating s 17Y of the Conservation Act in full, a new sub-clause was added to apply instead of s 17Y(1).<sup>54</sup> The explanatory note records that the change allows "a panel to impose a condition that a person to whom a concession is granted must pay rents, fees, or royalties to the Minister of Conservation." There is no further explanation available in the documents for the Amendment Paper. However, the use of "may" in cl 8(3) – instead of "shall be" in s 17Y(1) – supports a Parliamentary intention that the status quo was not intended to remain.

2.24 The FTAA also permits the Minister of Conservation to specify standard conditions which, if indicated by the Director-General of Conservation in her s 51 report or otherwise as relevant, must be imposed by the panel.<sup>55</sup>

2.25 The Minister of Conservation can only specify conditions that they consider are appropriate to manage risks to, and potential liabilities of, the Crown arising from the granting of a concession.<sup>56</sup> On 17 September 2025 the Minister of Conservation set standard conditions. Standard condition 10.1 states that:

The fee for the Concession (Concession Fee), made up of any combination of rents, fees, and royalties, is to be set by the Minister after obtaining advice of a registered valuer appointed by the Minister. The registered valuer will determine the market value of the Concession Activity carried out on the Land having regard to the matters in section 17Y of the Conservation Act 1987.

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<sup>50</sup> Conservation Act 1987, ss 17X(c) and 17Y.

<sup>51</sup> Fast-track Approvals Act 2024, sch 6 cl 8(1). See also sch 6 cl 20 (concession fee reviews) which refers to a review of a concession fee set by the panel under cl 8 – it does not refer to the panel imposing a concession fee under cl 9.

<sup>52</sup> FTAA, sch 6 cl 8(2).

<sup>53</sup> FTAA, sch 6 cl 8(3).

<sup>54</sup> Amendment Paper 2024 (238) Fast-track Approvals Bill 2024 (31-2), sch 6 cl 6.

<sup>55</sup> FTAA, ss 51(2)(a) and 78, and sch 6 cls 4(2) and 9.

<sup>56</sup> FTAA, s 78(2).

- 2.26 Section 78 of the FTAA was added during the Committee of the Whole House stage.<sup>57</sup> The explanatory note records that the change provides for "Ministers to specify standard conditions to manage Crown risks and liabilities arising from concessions, land exchanges, and access arrangements." There is no further explanation available the documents for the Amendment Paper.
- 2.27 The setting of a concession fee is not within the scope of what the s 78 conditions may cover (managing 'risks to, and potential liabilities of, the Crown'). A concession activity fee is intended to be a payment for the privilege of operating commercial activities on public conservation land. There may also be administrative, environmental or visitor fees.
- 2.28 The meaning of an enactment must be ascertained from its text and in the light of its purpose and its context, including if relevant, the social, commercial or other objective of the enactment.<sup>58</sup> The purpose of the FTAA is to be given the greatest weight when setting conditions, and that purpose is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits:
- (a) There was a clear intention to give the panel the decision as to whether to impose a concession fee. The FTAA expressly disappplies s 17Y and the Minister's role in that respect.
  - (b) It is not appropriate for a s 78 condition (which focuses on 'risks and liabilities' as opposed to fees) to be used to reinstate the Minister's role in setting the concession fee – that is directly contrary to the statutory scheme.
  - (c) Clause 20 of Schedule 6 of the FTAA also supports that position, in that it refers to the panel having set the fee, not the Minister.
  - (d) Parliament intended to give the panel discretion in respect of the concession fee, to ensure a project with significant regional or national benefits would not become unviable due to a concession fee that was too high.

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<sup>57</sup> Amendment Paper 2024 (238) Fast-track Approvals Bill 2024 (31-2), cl 24UH.

<sup>58</sup> Legislation Act 2019, s 10. See generally *Accident Compensation Corporation v TN* [2023] NZCA 664, [2024] 2 NZLR 108 at [60]; *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 at [22].

- (e) Westpower's primary position, explained above, is that the s 78 condition regarding the concession fee is unlawful.

### *Mandatory to impose*

2.29 In the section 51 report, the Department has proposed two s 78 conditions: bond and activity fee.<sup>59</sup> The Department indicates that it may not require the conditions to be imposed.<sup>60</sup> If the Panel decides that the s 78 condition is ultra vires in respect of the activity fee, it is open to it to not impose the condition.

2.30 Westpower will update the Panel, with a final position, on the outcome of the fee discussions with the Department by 15 February 2026.

### **Compensation conditions**

2.31 The Department disagrees that it is only the applicant who can determine, what if any, compensation should be imposed for the approvals sought.

2.32 Subject to Westpower's position above in respect of the activity fee for the concession, Westpower agrees with the Department that it is for the panel to set the conditions for the concessions (subject to other s 78 conditions) and wildlife approvals.

2.33 In relation to RMA conditions, Westpower agrees with the Department's conclusion that while an applicant can volunteer compensation, the Panel can suggest additional measures which, if not accepted by the applicant, may lead to a decline of consent.<sup>61</sup> The key issue is that solely the applicant can proffer compensation, and compensation cannot be imposed by the Panel without the applicant's agreement (which does not appear to be challenged), reflecting the clear RMA requirements<sup>62</sup> and the decision of the Expert Panel for the Tekapo Power Scheme.<sup>63</sup>

### **Certification of management plans**

2.34 The Department considers that it should have a certification role for management plans and amendments impacting on the conservation estate (as set out in the track changes to the proposed conditions). Westpower maintains its position and current drafting in the approvals:

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<sup>59</sup> Appendix C at [14.3.1]–[14.3.5].

<sup>60</sup> Appendix C at [14.3.5]–[14.3.6].

<sup>61</sup> Department s 51 Legal memorandum at [44].

<sup>62</sup> Including section 104(1)(ab).

<sup>63</sup> [Decision TPS](#) at [133].

- (a) Prior to commencing work on land administered by the Department, or – as relevant – the commencement of generation, Westpower will supply a draft copy of the management plans not approved by the Panel to the Department Liaison Officer and invite them to provide feedback. When providing those management plans to the relevant council(s) for certification, Westpower will:
  - (i) include feedback from the Department Liaison Officer as to whether the management plan meets the purpose and requirements set out in the relevant conditions; and
  - (ii) if there are concerns as to whether the purpose and requirements are met, set out those specific concerns for the relevant council(s) and provide Westpower's reasons for why it has not actioned or addressed the concerns.
- (b) Prior to amending any management plan, Westpower will supply a draft copy of any proposed amendment to the Department Liaison Officer and invite them to provide feedback. When providing the amendment to the relevant council(s) Westpower will follow the process in (a)(i) and (ii) above.

2.35 It is open to the Panel to accept the drafting of Westpower's conditions.<sup>64</sup>

2.36 The Department refers to *Transit New Zealand v Southland District Council*<sup>65</sup> for its position that a condition precedent requiring the Department to certify management plans for the resource consents is not ultra vires.<sup>66</sup> But, Westpower does not dispute the legality of a condition precedent. Rather Westpower does not support the Department having a technical certification role alongside the Councils who have the necessary experience and access to technical experts to undertake it. Including the Department simply creates inefficiency, cost and potential delay. The Department Liaison Officer will be closely involved in all construction processes and there will be ample opportunity for the Department's perspectives to be included. The Councils have the necessary experience and access to technical experts to complete

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<sup>64</sup> As the panel will be aware, different approaches have been taken in respect of Waihi North and Drury Quarry Expansion – Sutton Block. Neither approach is binding on the panel.

<sup>65</sup> *Transit New Zealand v Southland District Council* EnvC Christchurch C42/2006, 18 April 2006.

<sup>66</sup> Appendix F at [53]–[54]. The Department's quote to [56], is to [56] of the High Court decision in *Westfield (New Zealand) Ltd v Hamilton City Council* (2004) 10 ELRNZ 254 (HC), not [56] of the *Transit* decision. (2004) 10 ELRNZ 254 (HC)

that role, and with respect that is not within the general experience of the Department.

- 2.37 Westpower accepts that the Waihi North Panel found that "it was not precluded in law" in providing the Department with a certification role "within the relevant conservation approvals" (which it decided to do so in a confined manner) but that that "does not apply to management plans that are to be certified under the resource consents. For those management plans the Department has been enabled to review and comment on those plans ...".<sup>67</sup>
- 2.38 The Department has also questioned the approach of deemed certification in the conditions noting, like Westland District Council in its s 53 comments, that the practice is uncommon in the RMA. Westpower recognises that the practice is uncommon in the RMA<sup>68</sup> and that there are cases, including the referenced Ōtaki to North of Levin Expressway decision (which counsel for Westpower was involved in) and the earlier Westwind decision that reject it.
- 2.39 The key position here is that the FTAA is a fundamentally different regime to the RMA with a different purpose (that is not sustainable management but rather focused on facilitating the delivery of infrastructure). Under the FTAA the efficiency of delivery to enable the significant benefits to be delivered is important. Westpower recognise that any assessment of appropriate conditions is also circumstance dependent. In this case, the greatest effects of the Project occur during construction; having processes in place to ensure greater efficiency of construction should therefore be encouraged. Westpower's position is that adopting deemed certification in this instance will reduce the timescale for potential adverse environmental effects and assist in the earlier and more efficient delivery of the significant benefits of the Project.

## **CONCESSION APPROVALS**

- 2.40 Many of the Department's comments on the concessions are addressed above in response to the legal memorandum. Additional responses are provided below.

### **Concession term: 'exceptional circumstances'**

- 2.41 Section 17Z(1) of the Conservation Act states:

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<sup>67</sup> [Waihi North Decision Report](#) Part M at [81].

<sup>68</sup> **Attachment 15.**

A lease or a licence may be granted for a term (which term shall include all renewals of the lease or licence) not exceeding 30 years or, where the Minister is satisfied that there are exceptional circumstances, for a term not exceeding 60 years.

- 2.42 Section 17Z of the Conservation Act applies to the Panel's decision on the term of the concessions.<sup>69</sup>
- 2.43 Westpower is seeking a 15-year term for the construction lease/licence and a 49-year term for the longer-term operational lease/licence and easement. Those are separate and discrete concession applications. In respect of that 49-year term, there must be 'exceptional circumstances' for the Panel to grant a concession for a term in excess of 30 years.
- 2.44 Westpower has previously addressed the 'exceptional circumstances' test in the AEE, and in Attachment 7 to Memorandum 2.<sup>70</sup>
- 2.45 The Department addresses the concession term at section 6.8 of the s 51 covering report.<sup>71</sup>
- 2.46 The Department accepts the relevant legal tests:
- 6.8.5 Westpower states 'exceptional circumstances' are not defined in the Conservation Act and that there are no judgments addressing the meaning of 'exceptional circumstances' in the context of section 17Z of the Conservation Act. Westpower notes that the term is used in other legislation, and that the Supreme Court and High Court have considered the term in other contexts and determined "to be exceptional, a circumstance need not be unique, or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered." DOC accepts these points.
  - 6.8.6 Westpower's view is that the focus in considering whether the 'exceptional circumstances' test is met is whether their application is 'out of the ordinary course, or unusual, or special or uncommon – an exception rather than the rule'. Westpower considers that it is 'clear' that their application is of a scale that is uncommon or out of the ordinary and therefore meets the test for 'exceptional circumstances'.

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<sup>69</sup> Clause 13, Schedule 6 of the FTAA.

<sup>70</sup> [Westpower-Memorandum-2-Attachment-7.pdf](#).

<sup>71</sup> [Waitaha-Hydro-section-51-covering-report.pdf](#).

2.47 The test for the panel to apply in relation to exceptional circumstances is therefore:<sup>72</sup>

- (a) not whether the circumstances of the application are 'unique, unprecedented, or very rare'; but
- (b) whether they are circumstances that are 'not regularly, or routinely, or normally encountered' or, put another way, are 'out of the ordinary course, or unusual, or special or uncommon'.

2.48 As stated in Attachment 7 to Memorandum 2,<sup>73</sup> Westpower's position is that the circumstances of the Waitaha project are clearly 'not regularly, or routinely, or normally encountered' and are 'out of the ordinary course, or unusual, or special or uncommon'. The scale of the project, its long economic life, and the investment are explained in Attachment 7 to Memorandum 2 and are rarely (if ever) encountered in concession applications (most of which are for far smaller scale activities that routinely would be expected to be reassessed in the short-medium term).

2.49 The Department states:

DOC's position is that the decision-making power under section 17Z involves the exercise of a discretion based on the decision-maker's assessment of the factual situation and use of their expertise and judgement. In this case, it is the role of the panel to make a decision on the duration of any concessions granted.

2.50 Westpower agrees with that statement and considers that there is clear and compelling basis for the panel to conclude exceptional circumstances are established for this application (as explained in Attachment 7 to Memorandum 2).

2.51 The critical statement from the Department is as follows:<sup>74</sup>

6.8.10 DOC accepts that the proposed Scheme will involve significant investment from Westpower **and is of a scale and scope that is not common for concession applications.**

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<sup>72</sup> See the specific wording from the Court decisions at [Westpower-Memorandum-2-Attachment-7.pdf](#) at 11.

<sup>73</sup> [Westpower-Memorandum-2-Attachment-7.pdf](#).

<sup>74</sup> Emphasis added.

2.52 The Department has accepted that the circumstances of the application are 'not common' and the logical consequence is that the exceptional circumstances threshold is satisfied.<sup>75</sup>

2.53 The Department continues:

6.8.10 ... However, it is not the meeting of the 'exceptional circumstances' test alone that would justify the granting of a 49-year term – the term itself must be appropriate when considering all the circumstances of the application.

2.54 While appearing to accept that the exceptional circumstances threshold is satisfied, the Department then states that Westpower has not demonstrated or provided evidence of why a 49-year term is justified in this case. The Department asserts that Westpower has not provided financial evidence to support the 49-year term and that, for example:

6.8.12 ... Significant capital expenditure alone does not justify an extended term, as the \$200 million cost could potentially be recovered within a shorter period. Westpower must establish that a shorter term would render the Project financially unviable; however, no financial data or supporting evidence has been provided to substantiate the need for a 49-year term.

2.55 It is difficult to reconcile the different positions adopted by the Department. On the one hand, the Department appears to accept that the 'exceptional circumstances' threshold has been met (see the statement in 6.8.10 quoted above). On the other the Department appears to be saying that Westpower is required to provide detailed financial analysis to the panel to establish that any shorter term than 49 years would 'render the Project financially unviable'.

2.56 Westpower does not accept the Department's position and responds as follows:

- (a) the legislation does not include any requirement for that type of detailed financial analysis and a 'minimum viable term' approach;
- (b) the legislation does provide an 'exceptional circumstances' test and that threshold has been satisfied;

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<sup>75</sup> See also the Department's comment in 6.8.12.

- (c) it is not realistic for an applicant to provide that type of financial projection or for the panel to be expected to review it or impose a 'minimum viable term';
- (d) it is extremely difficult for infrastructure developers to predict the minimum time period over which there will be a return on investment – there are too many variables over time. The panel would be placed in the same untenable predicament;
- (e) there is no requirement for applicants under the RMA to justify why particular consent terms are applied for - the accepted practice for large infrastructure projects is to apply for the longest terms possible (in that case 35 years). The same approach should apply under the Conservation Act;
- (f) the proposed 49-year term best supports the achievement of the purpose of the FTAA which is a unique statutory regime – this is not a straight Conservation Act application; and
- (g) it is open panel to conclude the 'exceptional circumstances' do exist and to grant a concession term of 49 years (noting that the legislation expressly contemplates the granting of a concession term of up to 60 years) without requiring the type of further information proposed by the Department.

### **The short and long-term concession approach**

2.57 As noted, Westpower is seeking a 15-year term for the construction concession and a 49-year term for the longer-term operational concession.

2.58 The Department addresses this issue from paragraph 6.8.15 of the s 51 covering report.<sup>76</sup>

2.59 The Department notes that it suggested the separation of the concession into a short and long-term concessions.<sup>77</sup> This reflects that the concessions are quite different and the Department recorded that this approach will 'simplify the proposed content of each concession document'.

2.60 The Department then states:

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<sup>76</sup> [Waitaha-Hydro-section-51-covering-report.pdf](#).

<sup>77</sup> At 6.8.16.

6.8.17 It is DOC's view that the total term granted between the short- and long-term concessions must be considered as a single overall term in the context of section 17Z of the Conservation Act. This is because the concessions in practice form a single, continual interest over the land concerned, particularly for those parts of the land that require authorisation of exclusive possession (a lease) during both construction and operational stages. This is reinforced by the concessions being sought together, under the FTAA process, as a single set of authorisations.

2.61 Westpower disagrees with that position:

- (a) the two concessions are separate and discrete;
- (b) the activities authorised by the two concessions are entirely different:
  - (i) the short-term concession authorises a construction project and would be governed by a set of conditions specifically designed to manage a construction project; and
  - (ii) the long-term concession authorises the operation of the completed hydro scheme – and again that concession would be governed by a set of conditions specifically designed to manage the operation of the scheme – that is entirely different to the construction process;
- (c) this is not a 'a single, continual interest over the land concerned' as suggested by the Department – these are two discrete activities, the first of which (construction) involving entirely different activities to the second (operation);
- (d) the fact that the two interests are applied for at the same time under the FTAA does not mean they are the one activity requiring the one concession and concession term. That is contrary to the position of the Department that the two activities (and concessions) should be separated);
- (e) clearly it would be illogical for the operational concession to commence at the time that construction commences (as operations cannot commence then and Westpower would not be able to comply with the operational conditions); and
- (f) overall, there is nothing in the legislation to prevent two different concessions being applied for in these circumstances (and the

Department agreed to that approach) and there is no basis for combining them for the purpose of there being one concession term.

2.62 The proposed concession terms do not trigger the right of first refusal (**RFR**) under the Ngāi Tahu Claims Settlement Act 1998. The RFR would be triggered by a 50 term (or longer) concession lease.<sup>78</sup>

2.63 That has been confirmed by Poutini Ngāi Tahu in their s 53 comments.<sup>79</sup>

3.3 Poutini Ngāi Tahu can confirm that the granting of the proposed concessions to Westpower Limited does not trigger the first right of refusal (RFR) under the Ngāi Tahu Claims Settlement Act 1998, which would be triggered by the granting of a concession of 50 years or more. There are two concessions proposed for the project (short term for construction (15 years) and longer term for operation (49 years)). Those are separate concessions, and they do not trigger the RFR.

### **Consistency with the purpose for which stewardship land is held**

2.64 The Department states that "it may be considered that the Scheme would not be consistent with the purpose for which the stewardship land is held."<sup>80</sup> Westpower maintains its position as set out in section 7.2.1.4 of the AEE – the Scheme is in keeping with the purposes for which the land is held. In support to this position, the Minister for Conservation recently chose to not reclassify the 'Waitaha Forest' Conservation Area as sought by the Western South Island National Panel. The Mana Whenua Panel had recommended that it continues to be held as Stewardship Land, and not be reclassified at this time, given the potential opportunities for hydrogeneration in this area and its importance for community resilience on the West Coast.<sup>81</sup>

### **Legal and financial liabilities**

2.65 The Department considers that the legal and financial liabilities associated with the concession activities are adequately covered by the Department's standard terms and conditions which have been incorporated in Schedule 2 of the conditions.<sup>82</sup>

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<sup>78</sup> [Ngāi Tahu Claims Settlement Act 1998 No 97 \(as at 01 July 2022\), Public Act 48 Interpretation – New Zealand Legislation](#): the definition of 'dispose of relevant land' refers to a lease of 50 years or longer.

<sup>79</sup> Poutini Ngāi Tahu, s 53 comments, 14 January 2026.

<sup>80</sup> Appendix C at [8.8].

<sup>81</sup> [SLR - WSI - HOK 52 - Waitaha Forest - Recommendation.pdf](#)

<sup>82</sup> Appendix C, at [12.2].

## Conditions

- 2.66 The Department has commented that: "Many of DOC's issues with the original proposed conditions have been resolved through the engagement process. Other issues remain unresolved".<sup>83</sup> Westpower appreciates the further comments and the ongoing collaborative approach and proposes further changes to reflect a number of (but not all of) the Department's comments (see **Attachments 2, 3 and 4**).
- 2.67 To assist the panel and the Department in understanding the management plans that are relevant to each concession (in the Schedule 3 conditions):
- (a) The Bat Management Plan (**BMP**), Construction Environmental Management Plan (**CEMP**), Noise Management Plan (**CNMP**), Construction Traffic Management Plan (**CTMP**), Dust Management Plan (**DMP**), Erosion and Sediment Control Plan (**ESCP**), Flight Management Plan (**FMP**) and Lizard Management Plan (**LizMP**) only relate to the construction of the scheme. As such, they are only referred to in the short-term concession.
  - (b) The Avifauna Management Plan (**AMP**), Landscape Management Plan (**LMP**), Vegetation Management Plan (**VMP**) and Freshwater Ecology Management Plan (**FEMP**) relate to both the construction and the operation of the scheme. As such, they are referred to in both the short-term and long-term concessions.
  - (c) The Stormwater Management Plan (**SMP**), Site Operations and Maintenance Plan (**SOMP**) and Morgan Gorge Flushing Management Plan (**FlushMP**) only relate to the operation of the scheme. However, the short-term concession includes references to the SOMP and SMP in so far as the process for certification which occurs prior to the commencement of generation.
- 2.68 The Panel will be aware that Westpower seeks that it approves (in its role as the decision-maker) the LMP, AMP, BMP, VMP, LizMP and FEMP (Part B, Condition 4, Table 2).
- 2.69 Like deemed certification addressed above, Westpower recognises that this approach is not orthodox under the RMA,<sup>84</sup> as recognised by the Waihi North

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<sup>83</sup> Section 51 covering report at [5.2.3]. See Appendix C at [3.12] and [14.2.3] for a summary of the remaining key areas of contention.

<sup>84</sup> *Director-General of Conservation v Taranaki Regional Council* [2021] NZEnvC 27, (2021) 22 ELRNZ 557 at [55].

Expert Panel which termed the "orthodox approach" as being that all management plans be submitted to the council for certification.<sup>85</sup> This was on the basis that councils can draw on relevant expertise when certifying. But in this case, the relevant management plans have already been reviewed by, and commented on as necessary, by the Councils (and the Department). No party has challenged the Panel making the decision on the management plans (and as the decision maker it has the right to do so). As for deemed certification, approving the plans now is a more efficient approach that will enable quicker delivery of the Project and the enablement of its benefits. While in Waihi North it was considered that council certification was not an "undue cost" it is an extra cost and delay that is entirely unnecessary in what is a 'fast-track' process.

## **WILDLIFE APPROVALS**

2.70 The Department is broadly supportive of the wildlife approvals sought, concluding that:<sup>86</sup>

Overall, DOC's assessment concludes that, subject to recommended conditions, the proposed activities are broadly consistent with the purpose of the Wildlife Act. The relevant species management plans include appropriate methodologies for salvage and relocation, identify suitable release sites, and propose appropriate habitat enhancement measures.

2.71 Westpower's response to the Department's specific requests for additional measures or clarifications in respect of lizards, avifauna, bats and the conditions is provided below.

2.72 The Department also considered consistency with the CGP and CMS.<sup>87</sup> These wider statutory planning documents are not required to be considered by the panel under clauses 5 and 6 of Schedule 7 of the FTAA and should not be taken explicitly into account.

### **Lizards**

2.73 As requested by the Department,<sup>88</sup> Westpower has updated the LizMP (**Attachment 14**) to:

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<sup>85</sup> [Waihi North Decision Report](#), Part E1 at [9] and [11].

<sup>86</sup> [Appendix-D-Waitaha-Hydro-s512c-wildlife-approvals-report.pdf](#) at [2.2].

<sup>87</sup> Appendix D at section 10.2.

<sup>88</sup> Appendix D at [6.2.2], [6.2.4] and [6.2.5].

- (a) specify Westpower's lizard expert Dr Graham Ussher or other under his direct supervision as the named herpetologist (the wildlife approval has been updated accordingly);<sup>89</sup>
- (b) include information on transport options to the nearest wildlife veterinarian, including distance; and
- (c) provide specific triggers for ceasing salvage (a new column in Table 3).

2.74 The Department sought additional mitigation for threatened or at-risk species, particularly the West Coast green gecko.<sup>90</sup> Westpower's position is that conditions requiring additional mitigation, beyond that already proposed, would be more onerous than necessary. The Department also sought predator control for release site management. Westpower does not propose that, and it was not recommended in the Lizard Report.<sup>91</sup>

### Avifauna

2.75 The Department acknowledges that the avifauna surveys undertaken were thorough and well reported; but goes on to request that, given the limitations of earlier survey methods and the similarity of kiwi calls to Weka, recent acoustic recording be reviewed to confirm species identification.<sup>92</sup> Assuming the Department's reference to 'recent acoustic recordings' refers to the August 2024 acoustic recordings relied on in the Terrestrial Fauna Report, these were assessed by an expert with considerable field experience, including acoustic recordings in the area in 2006.<sup>93</sup> However, Westpower will have the acoustic recording be reviewed to confirm species identification prior to any vegetation clearance on Department land and report the findings to the Department (Part D, Condition 48A).

2.76 The Department seeks conditions to address electrocution risk from structures such as transformers on poles.<sup>94</sup> As set out in the project overview report,<sup>95</sup> and confirmed by Mr Griffiths in **Attachment 9**, there are no transformers on the power poles. The Terrestrial Fauna Report also

<sup>89</sup> Appendix D at [2.9.1]. Dr Ussher's credentials are set out in Appendix B of Appendix 24 to the application [Appendix-24-lizard-report\\_redacted.pdf](#)

<sup>90</sup> Appendix D at [6.2.6]–[6.2.9].

<sup>91</sup> [Appendix-24-lizard-report\\_redacted.pdf](#)

<sup>92</sup> Appendix D at [7.2.4].

<sup>93</sup> Mr Buckingham's qualifications and experience are set out in Appendix B of [Appendix-21-terrestrial-fauna-report.pdf](#)

<sup>94</sup> Appendix D at [7.2.3].

<sup>95</sup> [Appendix 3 project overview report part1](#) There is a transformer at the switchyard.

observed that power poles can provide some benefit to birds in providing perching and nesting sites.<sup>96</sup>

2.77 The Department mistakenly comments that the AMP applies to all indigenous bird species potentially present in the area.<sup>97</sup> The AMP states that (emphasis added):

The term 'avifauna' or 'bird' used in the AMP (unless specifically worded otherwise) specifically refers to all 'Threatened' and 'At Risk' bird species, as well as the non-threatened species of western weka, kererū, rifleman and brown creeper. That is, all **indigenous bird species of conservation importance** that potentially could be affected by the Scheme **on a population level** during construction, and during operational maintenance and emergencies.

2.78 The Department acknowledges that, outside of the breeding seasons, birds are more capable of avoiding harm than other wildlife. It would be unduly onerous, and contrary to the purpose of the FTAA, to require the nest checks in the AMP to apply to non-threatened avifauna.<sup>98</sup> Westpower does not propose any changes to the updated AMP it filed on 17 November 2025.<sup>99</sup>

2.79 The Department has recommended that Westpower be required to clarify what methods are proposed as nesting deterrents and to provide evidence of their effectiveness.<sup>100</sup> In respect of the Te Ahu a Turanga: Manawatū Tararua Highway project, the Environment Court was comfortable to leave nesting deterrents to be determined by a suitably qualified and experienced ecologist.<sup>101</sup> Westpower has adopted that same, entirely reasonable, approach.

2.80 In respect of the AMP, the Department has recommended that construction should pause in the event of whio mortality or injury, until the review is completed and appropriate mitigation measures are implemented.<sup>102</sup> The detailed process in section 4.3 of the 17 November 2025 version of the AMP states (emphasis added):<sup>103</sup>

Works may recommence no later than 48 hours after an injured or dead bird has been found, **unless it is a whio in which case a review into the death must be complete, and in all cases following updated advice from the Project Ecologist;**

<sup>96</sup> [Appendix-21-terrestrial-fauna-report.pdf](#) at 131.

<sup>97</sup> Appendix D at [7.1.3].

<sup>98</sup> As sought by the Department in Appendix D at [7.2.7].

<sup>99</sup> [Westpower-Memorandum-2-Attachment-4A.pdf](#)

<sup>100</sup> Appendix D at [7.2.5].

<sup>101</sup> *Waka Kotahi NZ Transport Agency v Manawatū-Whanganui Regional Council* [2020] NZEnvC 192 at condition EC4(d), (e) and (g).

<sup>102</sup> Appendix D at [7.2.6].

<sup>103</sup> [Westpower-Memorandum-2-Attachment-4A.pdf](#)

It would be unduly onerous to impose any further condition.

## **Bats**

2.81 As described in the BMP, the minor variations or clarifications that Westpower has proposed to the Department's "protocols for minimising the risk of felling occupied bat roosts" (**DOC protocol**) reflect the context and circumstances of the Project area. The DOC protocol has no formal statutory basis. It is also nationally applicable so lacks any context relevant to different areas and the circumstances of each project. Westpower considers that a condition requiring formal approval from the Department for the minor variations it has proposed is not required and is more onerous than necessary.

## **Conditions**

2.82 Westpower's proposed changes are shown in track in **Attachment 1**. As requested by the Department, Westpower has:

- (a) removed "all reasonable effort has been made to meet the conditions in the approval" from clause 1(e) of Schedule 1;
- (b) added Dr Ussher to clause 3 of Schedule 1, as mentioned above;
- (c) made a variety of minor wording changes;
- (d) moved the ecological compensation conditions from the short-term concession to Schedule 3 of the wildlife approval; and
- (e) added a cancellation condition to Schedule 3.

2.83 Westpower has rejected the Department's other suggested changes, including because:

- (a) there is no clear justification for requiring re-certification of the LizMP, AMP and BMP within ten years and such a condition is unduly onerous;
- (b) as mentioned above, additional conditions regarding West Coast green geckos are unduly onerous;
- (c) Westpower has already proposed a compensation condition in the event that indigenous vegetation clearance is undertaken between 1 April and 30 September, and a condition requiring additional pre-clearance salvage effort is unduly onerous; and

- (d) as mentioned above, the DOC protocol is unworkable in the particular climate and ecology of the project without the minor modifications and clarifications Westpower has suggested.

## **COMPLEX FRESHWATER FISHERIES**

2.84 The Department is supportive of the complex freshwater fisheries approvals.<sup>104</sup> Westpower has largely accepted the Department's recommended changes to the conditions, as shown in track (with comments) in **Attachment 5B**.

## **3. SECTION 53 COMMENTS**

### **RELEVANT IWI AUTHORITIES AND TREATY SETTLEMENT ENTITIES**

- 3.1 Comments were received from Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (**Poutini Ngāi Tahu**). As project partners Poutini Ngāi Tahu have already engaged with the Panel and provided a letter of support appended to the substantive application.<sup>105</sup> Westpower greatly appreciates the further comments which reiterate the clear and ongoing position in support of the approvals that Poutini Ngāi Tahu has already provided the Panel.
- 3.2 In relation to some specific additional comments by Poutini Ngāi Tahu:
  - (a) Poutini Ngāi Tahu have confirmed that the current CMS was not co-authored with Poutini Ngāi Tahu is addressed in relation to the CMS above.
  - (b) Westpower agrees as to the small proportion of the backcountry remote area taken up by the project and recognises that landscape and recreational matters have been addressed to the satisfaction of Poutini Ngāi Tahu.
  - (c) Westpower agrees that any discussion as to improved access to the Waitaha Valley should occur outside of this FTAA process, aligned with Westpower's position that:

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<sup>104</sup> At [2.1], [2.2] and [5.1].

<sup>105</sup> [Appendix 8 letter from Poutini Ngāi Tahu](#).

- (i) The Department's preferred option of a new track on the TLB of the Waitaha River is not within scope of the application and cannot be imposed by the Panel;
  - (ii) Different parties, especially private landowners who cannot be forced to provide access over their land through this process and Poutini Ngāi Tahu, have an interest in access should the valley be opened to easier access and greater use; and
  - (iii) As concluded by Mr Greenaway,<sup>106</sup> the adverse effects of the Project on access have been appropriately addressed.
- (d) Should the approvals be granted Westpower is willing to be involved in any such discussions.

## RELEVANT LOCAL AUTHORITIES

### Westland District Council

3.3 The comments by WDC raised several matters relevant to the conditions. Westpower appreciates the efforts made by WDC staff during the numerous rounds of review of reports and conditions and is pleased that, subject to very few matters addressed below, the conditions are predominantly agreed. The outstanding matters are addressed by Mr Jackson in **Attachment 15**. As explained by Mr Jackson these outstanding matters were discussed directly with the Councils during a workshop on 8 December 2025. In summary, and without limiting the detail provided by Mr Jackson, Westpower's position is:

- (a) In relation to Part B:
  - (i) Management Plan Certification. The issue of deemed certification is addressed above in relation to the Department's section 51 comments.
  - (ii) Kayaking and no-take days (addressed further below and in relation to the Department's section 51 comments). It is agreed that these conditions, subject to the comments received, be in the regional consent conditions and that is provided for in **Attachment 1**.

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<sup>106</sup> [Waitaha Hydro Westpower - recreation assessment](#) and **Attachment 10**.

- (iii) Flow data available to the public. It is agreed that this condition be in the regional consent conditions and that is provided for in **Attachment 1**.
  - (iv) Public access and safety. It is agreed that these conditions be in the regional consent conditions and that is provided for in **Attachment 1**.
- (b) In relation to Part D:
- (i) Recreation compensation. The provision of compensation conditions is commonplace. The requirement is not on a third party but on Westpower to make the payment. This is certain, readily enforceable and a commonly applied approach. Further, the new Annual Report requirement including contact details of the recipient paid has been added to Part B Condition 26e) and f) by Mr Jackson. While considered unnecessary by Westpower, it comprehensively addresses any potential issue about proving that the money was actually paid to the correct recipient.

### **West Coast Regional Council**

3.4 As for WDC above, Westpower appreciates the efforts of WCRC staff throughout the process and is pleased that the conditions are substantively agreed. The outstanding matters are also addressed by Mr Jackson in **Attachment 15**. In summary Westpower's position is:

- (a) Joint certification with the Department is addressed in relation to the Department's s 51 Report above.
- (b) Kayaking and no-take days. These conditions have also been questioned by the Department and are covered in the Section 51 response above. While Westpower recognises that the conditions could be worded to exclude payments of sums such changes are not proposed (noting Westpower has added greater clarity to Part C9, Condition 46 as to when no take days can be cancelled) as:
  - (i) Westpower does not see any difference in principle with such an approach to payments to third parties for compensation conditions (see above);

- (ii) The requirement is on Westpower to make the payment not the third party (WWNZ);
  - (iii) Westpower has included an advice note to the conditions to require reporting of the payments and all associated information within the annual report; and
  - (iv) Westpower agreed with WWNZ that it will continue to seek and proffer the conditions as proposed.
- (c) Payments to third parties. WCRC raises a general concern as to how payment conditions can be enforced. Compensation is specifically enabled under the RMA as an option (if proffered by the applicant) and doing so is common practice.

## **MINISTERIAL COMMENTS**

3.5 The Panel received comments from seven Ministers with portfolios relevant to the benefits and effects of the Application. These Ministers all expressed support for the Project with some general and technical comments which are addressed below.

### **Minister for Māori Crown Relations and Māori Development**

3.6 Hon. Tama Potaka<sup>107</sup> expresses support for the Application because:

- (a) Papatipu Rūnanga are Project partners and hold a financial interest in the development;
- (b) the Project will support the national grid; and
- (c) the use of renewable energy is consistent with the Government's climate goals.

3.7 He also encourages several other matters which have all been addressed by Poutini Ngāi Tahu in its comments to the Panel or, in relation to pounamu, will be addressed directly through the partnership and the proposed conditions of consent (Part B, Condition 21), which require Westpower to follow the Pounamu Accidental Discovery Protocol during streamworks and gravel extraction activities set out in Schedule 10 of the Operative West Coast Regional Land and Water Plan.

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<sup>107</sup> Letter to the Expert Panel, dated 17 December 2025.

## **Minister for Energy and Minister of Climate Change**

3.8 The Hon. Simon Watts<sup>108</sup> comments that the Project has:

- (a) significant regional benefits in that it will: "make a significant contribution to electricity support for the West Coast" providing approximately half the coast's average annual electricity needs;
- (b) recognises its contribution to climate change targets, security of energy supply downward pressure on electricity prices; and
- (c) significant regional and national benefits in terms of climate adaption.

3.9 The Minister's comments support the benefits of the project as outlined in the AEE and the technical assessments of Mr Westergaard,<sup>109</sup> and illustrate how a carefully selected 23MW Scheme can create a significant regional benefit for West Coast communities

## **Minister for Rural Communities**

3.10 The Hon. Mark Patterson comments:<sup>110</sup>

- (a) express strong support for the Project and the national and regional benefits of:
  - (i) generating renewable electricity for 12,000 households;
  - (ii) creating approximately 70 jobs during the construction phase;
  - (iii) lowering wholesale power prices and reducing carbon emissions; and
  - (iv) building resilience into an isolated region reliant on imported electricity.
- (b) confirm the Project is consistent with the Government's commitment to double the overall volume of electricity from renewable sources by 2050 and transition to a low emissions future.

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<sup>108</sup> Letter by email to the Panel Chair, Vikki Morrison-Shaw, undated but the cover email is dated 19 December 2025 with a follow up email as minister for Climate change of the same date.

<sup>109</sup> [Appendix-16-electricity-resilience-report.pdf](#)

<sup>110</sup> Letter to June Cahill, Application Lead, dated 17 December 2025.

- 3.11 The Minister confirms the regional benefit of electricity resilience to the West Coast and more broadly, reducing emissions to support the Government's climate change commitments.
- 3.12 These comments align with the benefits of the Project as explained in the AEE and the technical reports of Mr Copeland<sup>111</sup> and Mr Westergaard.<sup>112</sup> In relation to resilience, Mr Westergaard has quantified the economic impact of a recent outage on the West Coast in **Attachment 16**.<sup>113</sup> Mr Griffiths in **Attachment 9** provides more information about how similar outages could be avoided with the 23MW Waitaha Hydro Scheme in operation.

### **Minister for RMA Reform and Infrastructure**

- 3.13 The Hon. Chris Bishop:<sup>114</sup>
- (a) expresses broad support for projects which will deliver positive outcomes for New Zealand, including the Waitaha Hydro project;
  - (b) comments that infrastructure is important for growth and prosperity and renewable electricity generation is priority infrastructure;
  - (c) considers that the Project has direct and indirect benefits including displacing greenhouse gas emissions and bolstering energy security;
  - (d) considers that ongoing monitoring and adaptive management will be required to ensure the Project's compliance with the National Policy Statement for Freshwater Management 2020 and National Environmental Standards for Freshwater 2020;
  - (e) notes that the 23MW generation capacity represents a relatively small amount of additional renewable electricity generation providing enough energy for 12,000 households; and
  - (f) considers that the Project is consistent with the Government's proposed National Policy Statements on Renewable Energy Generation and Electricity Networks, specifying their objective to promote more renewable electricity generation and its transmission to sources of demand.

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<sup>111</sup> [Appendix 15 economic benefits report.](#)

<sup>112</sup> [Appendix-16-electricity-resilience-report.pdf.](#)

<sup>113</sup> Attachment 16: Statement of Erik Westergaard, 21 January 2026; [Appendix-16-electricity-resilience-report.pdf.](#)

<sup>114</sup> Letter to Panel Chair Vikki Morrison-Shaw, dated 17 December 2025.

3.14 The Minister's comments support the benefits listed included in the AEE and the technical reports of Mr Copeland<sup>115</sup> and Mr Westergaard.<sup>116</sup>

3.15 In relation to the comment as to the relatively small nature of the generation:

- (a) the high efficiency (the 67% "capacity factor" of the scheme is addressed by Mr Griffiths in **Attachment 9** and in Mr Westergaard's report<sup>117</sup>);
- (b) Providing energy for 12,000 homes on the West Coast, and energy security for the entire West Coast, is demonstrably regionally significant;
- (c) The Minister for Energy and Minister for Rural Communities both recognise the significant benefits of the project as set out above (and the importance of the scheme to doubling renewable generation by 2050);
- (d) The recently amended NPS-REG (addressed further below and in **Attachment 6**), Policy B requires the Panel to "recognise and provide for" the importance of "enabling cumulative increases of REG capacity at any scale ...".
- (e) The significant regional benefits of increased regional energy security and reliability addressed in the AEE and the technical report of Mr Westergaard,<sup>118</sup> expanded on in **Attachment 16** and by Mr Griffiths in **Attachment 9**.

3.16 In relation to the comments on adaptive management Westpower's expert team have considered the activities in freshwater in significant detail, adopting a worst-case approach to managing known effects. The proposed RMA conditions adopt adaptive management to hydrology (through the weir and intake structures), sedimentation and aquatic ecology (Part C9, Conditions 34-45).

3.17 Westpower agrees with the Minister's confirmation the Project is consistent with the recently updated National Policy Statements for Renewable Energy Generation and Electricity Networks (see **Attachment 6**, the response to RFI #3).

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<sup>115</sup> [Appendix 15 economic benefits report.](#)

<sup>116</sup> [Appendix-16-electricity-resilience-report.pdf.](#)

<sup>117</sup> [Appendix-16-electricity-resilience-report.pdf.](#) at paras 142 and 143.

<sup>118</sup> [Appendix-16-electricity-resilience-report.pdf.](#)

## Minister for Regional Development (and Resources)

3.18 The Hon. Shane Jones<sup>119</sup> comments in respect of regional development, that:

- (a) the Project will contribute important economic benefits to the West Coast region during construction;
- (b) during operation, the region would also experience increased energy resilience, and it will support communities disrupted from the national network;
- (c) there may be an impact on visitation to the area, although the economic impact is likely to be low and visitation numbers are not significant in the remote location; and
- (d) the Project will have modest generation compared to the Clyde Dam for example.

3.19 Westpower endorses the regional benefits the Minister identifies above, and as referred to above, Mr Westergaard and Mr Griffiths provides more detail about the regional electricity resilience benefits of the Project in **Attachments 9 and 16.**

3.20 In respect of regional tourism effects (including visitor numbers) during operation of the Scheme, Mr Greenaway concludes in his technical report:<sup>120</sup>

At the regional level, the unmitigated adverse effect of the Scheme on West Coast recreation and tourism will be low due to the small scale of the Scheme, the high number of alternatives available for all activities affected by the Scheme and the relatively low level of use of the Kiwi Flat area.

3.21 Mr Copeland confirms in **Attachment 11** that "the economic impact from disruption to tourism and recreational activities will be very low and significantly outweighed by the economic benefits of the Scheme."

3.22 Comments on the size of the scheme are addressed in relation to the Hon. Chris Bishop's comments above. In relation to the reference to the Clyde Dam; it is New Zealand's second largest hydroelectricity dam (at 432MW as stated by the Minister) on New Zealand's largest river (by flow/volume). It is the largest concrete gravity dam in New Zealand (with a million cubic metres of concrete in the dam with another 200,000 cubic metres in the powerhouse) and created Lake Dunstan that covers some 26km<sup>2</sup>. Almost every renewable

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<sup>119</sup> Letter to June Cahill, Fast-track Team, dated 18 December 2025.

<sup>120</sup> At 3.12.

energy project will be "modest" when compared to the Clyde Dam. In this case the project is focused on embedding a regional-scale development into communities and delivering the benefits of ensuring regional security of supply and resilience.

### **Minister for the South Island and Hunting and Fishing**

3.23 The Hon. James Meager<sup>121</sup> overall strongly supports the Project. He confirms the Application's alignment with the priorities of his South Island portfolio, its contribution to energy infrastructure aligns with national and regional priorities for renewable generation and energy security (especially as the West Coast is presently a net importer of electricity).

3.24 In relation to hunting and fishing he comments that:

- (a) the potential implications on regional interests and recreation activities including that construction and operation may temporarily restrict access to areas traditionally used for hunting and tramping and that conditions should ensure reasonable public access during and after construction, where practicable;
- (b) there is potential to enhance existing access for upgrading track and public facilities and that should be encouraged;
- (c) while the lower Waitaha River (regionally significant for angling) will be unaffected, changes to river flow and habitat upstream could impact wildlife and freshwater ecosystems. Measures could be implemented to minimise disruption to species important for hunting and fishing, and to monitor ecological impacts on freshwater species; and
- (d) considers these matters be addressed in the assessment and any proposed approval conditions.

3.25 Westpower's proposed conditions of consent are consistent with the outcomes encouraged by the Minister. Access restrictions are also addressed through the concession arrangements and are considered in detail above in relation to the Department's s 51 (above) and s 53 comments (and in **Attachment 9** and in Part D, Condition 60).

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<sup>121</sup> Letter to the Panel Chair, Vikki Morrison-Shaw, dated 12 December 2025.

3.26 In respect of the potential to enhance the existing access for upgrading track and public facilities, Westpower adopts the opinion of its recreation expert, Mr Greenaway, who comments in his report:<sup>122</sup>

There is the potential to increase visitor activity in the Upper Valley by improving the quality of the tramping track between Macgregor Creek and Kiwi Flat. However, as above, this has both pros and cons, as providing easier access may increase visitors and further change the current recreational experience. Therefore, this is a decision best made by users and managers of the conservation area. The preferred option is to offer financial support to, for example, a group like Permolat, to support recreation services that may be in the Waitaha Valley or elsewhere in the Region.

3.27 The issue of access has been further addressed above in response to the Department's Section 51 Report.

3.28 In relation to hunting Mr Greenaway in his technical report states:<sup>123</sup>

- (a) Alternative hunting areas are plentiful. Hunters indicated that other catchments, such as the Wanganui, offer better hunting, as there are more animals present and access is easier. The Waitaha is "good for a change";
- (b) Hunters are drawn from around New Zealand, but in small numbers. Animals (the major draw-card) are in more plentiful supply in other places close by. The main focus of the little commercial hunting activity which occurs (guided hunting and helicopter drop-offs – 30 to 50 annually) is hunting thar and chamois in the upper valley;
- (c) The effect on hunting and tramping will be 'high' for the Kiwi Flat area and the access track from Douglas Creek to Kiwi Flat (due to the location of the powerhouse and residual flow regime). The effect considers no loss of access or the ability to experience the Waitaha Valley and assumes that access remains on the true right of the River. The effect will range from 'moderate' to 'nil' for the remainder of the valley, and will depend on: the influence of the Headworks structures at Morgan Gorge on the visitor experience; personal attitudes to the Scheme; and whether visitors experience the Kiwi Flat area during their visit to the valley; and

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<sup>122</sup> At 3.31, [Waitaha Hydro Westpower - recreation assessment](#)

<sup>123</sup> [Waitaha Hydro Westpower - recreation assessment](#) at [D.55, E.33, F.49 and [3.27].

- (d) At the regional level, the scale of effect is likely to be low, considering the large scale of the backcountry-remote recreation setting on the West Coast.

3.29 In relation to fishing Mr Greenaway's technical report states that there will be "nil" effect as the activity is predominantly below and at the State highway bridge crossing.<sup>124</sup> In relation to fishery effects within the extraction reach Ms McMurtie comments in her Freshwater Ecology technical report:<sup>125</sup>

In terms of the value to the salmonid fishery, the river mainstem in the Douglas Creek reach is of little value to the brown trout fishery, with most recreationally fished sections downstream of SH6 or in downstream tributaries such as Ellis Creek. We were unable to find any fish survey records for salmon in the catchment, but Douglas Creek is still regarded as a salmon spawning waterway by Fish and Game.

3.30 As set out in the AEE Westpower engaged with Fish and Game NZ and Mr Griffiths in **Attachment 9** provides further detail on that, including the positive engagement Westpower had with West Coast Fish and Game.<sup>126</sup> NZ Fish and Game Council and Game Animal Council NZ were also invited to comment and did not.

3.31 Rapid flow change effects on fish are addressed in Ms McMurtie's technical report<sup>127</sup> (and the Flow Modelling Report<sup>128</sup>). As mentioned above an adaptive management regime is proposed in relation to any potential for fish stranding (noting that the area considered for change occurs well above the State highway bridge). With the mitigation in place, Ms McMurtie (in her in Table 2) assesses the effect of rapid flow change as "minor to less than minor" in the abstraction reach and "minor" in the downstream reach.

## Minister for the Environment

3.32 The Hon. Penny Simmons provided comments<sup>129</sup> in relation to:

- (a) Section 6 of the RMA and the NPS-IB being "of particular relevance to the request for comment";
- (b) And that:

<sup>124</sup> [Waitaha Hydro Westpower - recreation assessment](#), Table 1.

<sup>125</sup> [Microsoft Word - EOS Ecology 2025 AEE-Freshwater Ecology-FinalSent2025-08-07.docx](#), at 2.13(f).

<sup>126</sup> Attachment 9, Statement of Mr Griffiths, 21 January 2026.

<sup>127</sup> [Microsoft Word - EOS Ecology 2025 AEE-Freshwater Ecology-FinalSent2025-08-07.docx](#).

<sup>128</sup> [Appendix-31-downstream-flow-modelling-report.pdf](#).

<sup>129</sup> Letter dated 13 January 2026.

- (i) the Avifauna Management Plan includes avoidance of helicopter movements during the breeding season;
- (ii) the Lizard Management Plan provides for post release monitoring;
- (iii) the Bat Management Plan be amended to address the impacts of artificial lighting on bats as much as possible; and
- (iv) these would address the government's no net loss biodiversity goal.

3.33 In relation to these matters:

- (a) While section 6 of the RMA is an important consideration it is one that must be applied considering the FTAA (as already addressed to the Panel);
- (b) The NPS-IB is **not** applicable to this Project. That is made very clear in section 1.3 of the NPS-IB which states:

Nothing in the National Policy Statement applies to the development, operation, maintenance or upgrade of renewable electricity generation assets and activities. ...

3.34 This exclusion has been present since the document was first released in 2023 and has been consistently applied as making the NPS-IB irrelevant to renewable electricity projects since that time. Given the "particular relevance" placed on this error, it fundamentally undermines the weight that should be given to the comments.

3.35 In relation to the requested amendments to the management plans:

- (a) The Minister has not provided any expert evidence in support of the requested changes. The management plans preferred by Westpower were prepared in consultation with experts and have been reviewed and now commented on by the councils and the Department.
- (b) In relation to whio, the AMP approach prepared in consultation with the technical experts, is to minimise helicopter flights during the breeding season (Part D, Condition 48), recognising that avoidance will not be practicable. Further, Part D Condition 25 requires Westpower to take all practicable steps to ensure flight paths for all helicopter trips during construction and operations remain landward of the true right bank of

the Waitaha River and minimise flying up-valley of Construction Staging Area 1.

- (c) In relation to the Lizard Management Plan, again no such changes have been requested by any expert and was not recommended in the Lizard Report.<sup>130</sup> Imposing such a condition is not only without evidential support it also fails to comply with s 83 of the FTAA.
- (d) In relation to the Bat Management Plan, lighting is addressed in the conditions (Part D, Conditions 51 and 52) and the project description<sup>131</sup>. The conditions reflect the recommendations of the Terrestrial Fauna Report<sup>132</sup> (which address a range of lighting matters). Imposing such a condition is not only without evidential support it fails to comply with s 83 of the FTAA.

3.36 Westpower has been unable to find any government "no net loss biodiversity goal" relevant to the Panel's decision (recognising it is a goal within the Natural Environment Bill but that is not relevant to this decision).

## INVITED LANDOWNERS

3.37 The Panel invited approximately 40 landowners to comment.

3.38 Comments were received from four landowners being:

- (a) **McLean Company Limited** which noted its support for the project and the additional benefits to project would provide for it. Westpower appreciates this support.
- (b) **Neil Donnell** who provided "full support" for the project. Westpower appreciates this support.
- (c) **Granite Development Limited** who:
  - (i) "... believe that in essence the proposed hydro scheme, once up and running will be of benefit, and with little visual impact ... ." Westpower agrees with this position.
  - (ii) Are situated on the true left bank of the Waitaha River and did not consider the engagement to be sufficient. Westpower's approach

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<sup>130</sup> [Appendix-24-lizard-report\\_redacted.pdf](#), at page 19: The Lizard Management Plan specifically discounts the requirement for post-release monitoring due to the low number of lizards expected and the relatively high cost of such an exercise.

<sup>131</sup> [fasttrack.govt.nz/data/assets/pdf\\_file/0011/11063/Appendix-3-project-overview-report-part1.pdf](https://fasttrack.govt.nz/data/assets/pdf_file/0011/11063/Appendix-3-project-overview-report-part1.pdf).

<sup>132</sup> [Appendix-21-terrestrial-fauna-report.pdf](#), Table 5.

to engagement reflected that no transmission lines are on the TLB (nor are there any other works, apart from the in-river gravel extraction, occurring that far down stream), its expert report assessments and that community days were held.

- (iii) Noise effects, including those associated with helicopter movements, are addressed in the Noise Report<sup>133</sup> and conditions of consent address noise levels (Part D, Conditions 28 to 37) and helicopter movements (Part D, Conditions 20 - 27) with effects on residents assessed by the expert as reasonable after the proposed mitigation.
  - (iv) Behaviour of pests, Mr Derks has confirmed in **Attachment 12** that he does not consider there to be any effects of the Project on the behaviour and location of deer and pigs.
- (d) **Tawhiri-Matea Ltd** who:
- (i) Criticised engagement, especially for landowners (again on the true left bank) who do not live in the district. Westpower's response is as above.
  - (ii) Raised concerns as to it being prevented by the Project from undertaking permitted activities which is responded to by Mr Jackson in **Attachment 15** (suffice to say that will be no restriction on such activities) and questioned the location of the gravel extraction area (again addressed by Mr Jackson in **Attachment 15** (suffice to say there was a minor area of the running of the red line and that has been corrected in the conditions).
  - (iii) In relation to construction timeframes and public provision of information a further requirement within the CEMP has been added (Part B, Condition 17a)ix)) requiring that it include methods for ensuring the public are informed of general construction activities and programme.
  - (iv) Behaviour of pests, this is addressed in **Attachment 12** as explained in respect of Granite Developments Limited above.

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<sup>133</sup> [Appendix-29-noise-report.pdf](#)

## THE DIRECTOR-GENERAL OF CONSERVATION

3.39 The key issues raised by the Department relate to:

- (a) Recreation, which are addressed in relation to the Department's s 51 Report above. Westpower makes no changes to its position on recreation.
- (b) Landscape, which are addressed in relation to the Department's s 51 Report above. Westpower has accepted some additional conditions proposed by Mr Bentley but otherwise makes no change to its position on landscape.
- (c) Conservation Management Strategy (and the CPG), which are addressed in relation to the Department's s 51 Report above. Westpower makes no changes to its position on these documents.
- (d) Access, which are addressed in relation to the Department's s 51 Report above. Westpower's fundamental position is that there is no scope for the Panel requiring an access track on the true left bank. Mr Greenaway has addressed access in his technical report and **Attachment 10**.
- (e) Conditions. As set out above, Westpower has accepted recommendations in relation to a range of conditions and has amended conditions in response to comments from other parties. Specific and detailed comments on conditions are addressed by Mr Jackson in **Attachment 15**. Certification by the Department and deemed certification are addressed in relation to the s 51 Report above.

3.40 Westpower's position remains fundamentally different to the Department's position which is that as proposed the Project results in a "fundamental loss of natural character, solitude, remoteness that underpin the Waitaha Valley characteristics of a back-country remote zone." This is due to the Department's:

- (a) Reliance on different evidence and a different interpretation of that evidence. Westpower's position is that its reports should be preferred and, when carefully considered, the differences are not considerable and clearly addressed by Mr Bentley in **Attachment 7** and Mr Greenaway in **Attachment 10**.

- (b) Reliance on a different legal and interpretation position, with the Department's approach as to the criticality of the CPG and the CMS (in effect a veto), and its (and that of the NZCA) interpretation of those documents in relation to the Project, rejected by Westpower under the FTAA (for the reasons in detail in relation to the s 51 Report above and Mr Kennedy's **Attachment 13**); and
- (c) Further condition changes now proposed by Westpower, as explained above and, in detail, by Mr Jackson in **Attachment 15**.

#### **NEW ZEALAND CONSERVATION AUTHORITY**

- 3.41 The comments received from NZCA appear to reflect closely the positions adopted by the Department in the s 51 Report and are addressed in relation to the Department's matters above, and especially the CPG and CMS (see **Attachment 13**) on which the NZCA appears to completely rely despite the legislative framework (and Westpower's assessment).
- 3.42 The NZCA refers to "advice" it received from Federated Mountain Clubs. It is not apparent whether this material is the position of NZCA but rather that NZCA has become a channel for FMC after the Panel decided not to include it in the parties invited to comment. This matter is addressed further below. It is unfortunate that the NZCA failed to respond to some six requests by Westpower to engage but was willing to include 'advice' received from FMC. That aside, Mr Greenaway has responded to the matters listed in **Attachment 10**.

#### **WEST COAST TAI POUTINI CONSERVATION BOARD (BOARD)**

- 3.43 Westpower appreciates the constructive approach adopted by the Board during engagement, and it is therefore not surprising that the Board adopts a very different position to the NZCA. The Board:
- (a) "Is satisfied that adequate consultation has taken place between NGOs, interested parties, local and regional authorities and landowners."
  - (b) Recognises that the area remains as stewardship land after the recent review (addressed above in the response to the s 51 Report).

- (c) Considers that compensation needs to be within "the operational activity" and not the resource consent conditions (addressed above in the response to the s 51 Report).
- (d) Considers that the track and hut compensation is inadequate and endorses Ms Sidley's compensation assessment (addressed above in the response to the s 51 Report and as noted there, Westpower does not consider this to be appropriate, nor necessary).
- (e) Notes that there have been fewer than 10 specific helicopter deliveries of white-water kayakers in the last 10 years and that alternative sites are available with better access.
- (f) Seeks various changes, including reporting for the death of any bats (and the same for avifauna) which are already included within those documents.<sup>134</sup>
- (g) Considers that the VMP, AMP, BMP, LizMP and FEMP are "appropriate as currently presented."

#### **UNSOLICITED MATERIAL**

3.44 Westpower notes the Panel's Minute 6.<sup>135</sup> Westpower has responded to the FMC "advice" referred to in NZCA's submission (see Mr Greenaway's **Attachment 10**). In relation to that Westpower respects that the Panel has made its decision that the "advice" is lawfully before the Panel. Westpower's position is that, while before the Panel, giving any weight to the "advice" from FMC would fundamentally undermine the intent and purpose of the FTAA by allowing any person to have comments considered 'through the back door' via another party who is invited to comment. That could lead to a widespread practice of commenting parties attaching a wide range of comments from other parties and 'adopting' them. Given Minute 6, Westpower does not address unsolicited information further, other than to note Mr Greenaway's report and **Attachment 10**.

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<sup>134</sup> See AMP section 4.3 and the BMP Appendix 2, page 14.

<sup>135</sup> [FTAA\\_2506-1069-Minute-6-Waitaha-Hydro-16-Jan-26-Redacted.pdf](#).

#### **4. RESPONSE TO RFI#3**

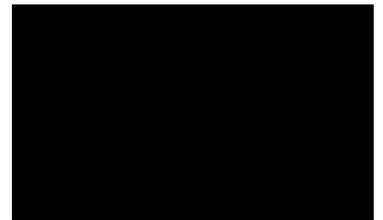
4.1 Westpower's detailed evaluation against the relevant NPS's is attached to this memorandum as **Attachment 6**. Westpower's position is that the two relevant NPS's are for Renewable Energy Generation and Electricity Networks.<sup>136</sup> The Minister for RMA Reform comments that the Project is consistent with both these Statements.

#### **5. FURTHER INFORMATION**

5.1 Westpower is happy to provide further detail on all the above matters to the Panel if that would assist.

5.2 Westpower acknowledges the Panel's Request for Further Information dated 20 January 2026 (**RFI #4**) and will respond to it promptly.

**Dated:** 21 January 2026



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Paul Beverley / David Allen / Rachael Balasingam

**Counsel for Westpower Limited**

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<sup>136</sup> This was also included in Memorandum #6, at [74].