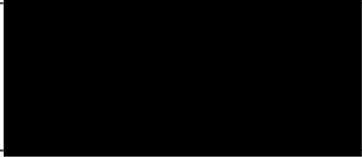


## Attachment 15 to Memorandum #7: Statement of Mason Jackson

<b>Date</b>	21 January 2026
<b>To</b>	Waitaha Hydro Expert Panel FTAA-2505-1069
<b>From</b>	Mason Jackson
<b>Project advice provided for</b>	<i>Waitaha Hydro Scheme</i>
<b>Documents referred to</b>	<i>DOC Section 51 Report</i> <i>DOC Section 53 Report</i> <i>Other comments documents</i>
<b>Experience</b>	<i>Appendix A</i>
<b>Code of Conduct</b>	<i>Appendix B</i>
<b>Signature</b>	

### 1. Introduction

- 1.1 My name is Mason Jackson. I prepared the Waitaha Hydro Substantive Application.
- 1.2 I have been asked by Westpower Limited (the “**Applicant**”) to provide responses to various planning and resource consent conditions matters contained in:
  - (a) The Department of Conservation’s (“**DOC**”) section 51 report; and
  - (b) Comments received from relevant administering agencies and other persons invited by the Panel to comment under section 53 of the Act.
- 1.3 My experience is set out in **Appendix A** and confirmation I have read and understand the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 is provided in **Appendix B**.
- 1.4 With respect to responses to comments raised in relation to resource consent conditions, I present these within a single section of my statement (Section 5). An updated, tracked changes version of Westpower’s 'Proffered conditions of resource consent' are presented in **Attachment 1** to

Westpower's Memorandum 7 to the Expert Panel ("**Memorandum #7**"). As requested by the Panel, a MS-word format copy is also provided separately<sup>1</sup>. I have also tracked various comments into **Attachment 1** to Westpower's Memorandum #7 where I think additional context regarding the rationale for edits made, or not made, would assist the Panel.

## 2. **DOC's section 51 report**

### ***Westpower's approach to assessing relevant statutory documents***

- 2.1 DOC does not agree with Westpower's planning assessment approach to the Conservation General Policy and Te Tai Poutini (West Coast) Conservation Management Strategy. In particular, DOC says that, where there is a lack of consistency with specific policies, this cannot be balanced against consistency with other policies in the same way this balancing exercise can be applied under the RMA. That is not the approach that was adopted. Rather, the relevant objectives and policies of each document as a whole were read carefully against their wording, and in relation to other relevant provisions and in relation to the context applicable to the Project.
- 2.2 Mr Kennedy has provided a detailed response to these comments in **Attachment 1** of Memorandum #7. I have read these responses, and I agree with Mr Kennedy's assessment and support the conclusions he has reached.

## 3. **Comments from the Minister for RMA Reform and Minister for Infrastructure**

- 3.1 In Appendix 1 of the Minister's comments, Hon. Chris Bishop highlights the Government's recent updates to the National Policy Statements for Renewable Electricity Generation ("**NPS-REG**") and for Electricity Networks ("**NPS-EN**"). In this respect, I simply note that I have prepared a separate memo that assesses the Project against these updated national direction instruments. The memo was prepared in response to a request from the Panel on these matters dated 22 December 2025 and is **Attachment 6** to Memorandum #7. In summary, my assessment concluded that the Project is

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<sup>1</sup> This updates the version provided to the Panel on 17 November 2025: [Westpower-Memorandum-2-Attachment-3.pdf](#).

notably even more consistent with the updated NPS-REG as compared with that Statement's previous version, and the Project is also consistent with the policy intent and direction of the NPS-EN.

#### **4. Comments from Tawhiri Matea Ltd**

- 4.1 At pages 4 and 5 of Tawhiri Matea Ltd's comments a concern is expressed that Westpower's proposal to extract riverbed gravel will impinge on their right to use this same resource pursuant to permitted activity Rule 29 of the West Coast Regional Plan. I can confirm that this is not the case. Provided the conditions of permitted activity Rule 29 are complied with, Tawhiri Matea Ltd is entitled to extract and use gravel from the Waitaha River bed, including from the same area that any resource consent might already authorise such activity.
- 4.2 At page 5, Tawhiri Matea Ltd state that Westpower's proposed river gravel extraction area partly overlaps their property at 944 Allen Road. I have checked the application area for this activity (refer to Schedule C3A of the proposed conditions provided in the Application<sup>2</sup>) and make the following responses:
- (a) In the vicinity of Tawhiri Matea Ltd land, the boundaries for the proposed river gravel extraction area are intended to be the same as those for the gravel extraction area already authorised by existing resource consent RC-2019-0037 held by Westland Schist - with whom Westpower has a separate agreement.<sup>3</sup>
  - (b) In the vicinity of Tawhiri Matea Ltd land, the boundaries of the proposed river gravel extraction area (denoted by the red line in Figure 1) do appear to slightly overlap the eastern property boundary for 944 Allen Road (denoted by the black line in Figure 1). This was not intended and is in error. This is likely due to the river gravel extraction area being drawn without the benefit of GPS or survey data. The intention was that this area would extend up to, but not beyond, the eastern property boundary of 944 Allen Road (as is the case for existing resource consent

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<sup>2</sup> [Appendix-45-proposed-conditions-resource-consent.pdf](#).

<sup>3</sup> [Appendix-6-agreements-with-Westland-Schist-and-Premier-Group.pdf](#)

RC-2019-0037 held by Westland Schist). A new Schedule C3A is provided in the proposed conditions in **Attachment 1** to Memorandum #7 that removes this slight overlap.

- (c) For clarity, I also note that Westpower would require approval from Tawhiri Matea Ltd to extract gravel from their land – which they don't have and are not seeking.



**Figure 1: Proposed river gravel extraction area boundary (red line) compared to 944 Allen Road eastern property boundary showing the minor error**

- 4.3 Also at page 5 of Tawhiri Matea Ltd's comments, they outline concerns about effects associated with gravel screening activities. I consider these potential effects are adequately addressed by Westpower's proposed conditions, and in particular:
- (a) Their commitment to comply with relevant construction noise requirements (Condition 30 of Part D of the resource consent conditions); and

- (b) Their commitment, in response to the comments raised, to avoid any objectionable dust effects beyond the site (Condition 3 of Part C2 and Condition 13 of Part C3 of the resource consent conditions).

## **5. Comments on resource consent conditions – all commenters**

### ***Minister for the Environment comments on resource consent conditions***

- 5.1 The Minister has expressed a view that the Panel should change Westpower's proposed conditions as follows:
  - (a) amending the 'Avifauna Management Plan' condition to include a specific requirement for Whio that ensures the 'avoidance' of helicopter movements during the breeding season;
  - (b) amending the proposed 'Lizard Management Plan' condition requirements to include post-release lizard monitoring; and
  - (c) amending the 'Bat Management Plan' requirements to address the impacts of artificial lighting on bats during the construction phase of the project and on an ongoing basis, as much as is possible.
- 5.2 In my view, given Westpower's whio and lizard experts have concluded that effects on these species will be acceptable and worked with Westpower in preparing the proposed consent conditions and management plans, the Minister's suggestions at (a) and (b) are not required and not supported by technical evidence. I also note that the national direction provided by the NPS-IB specifically excludes renewable energy generation developments such as the proposed Waitaha Hydro Project.
- 5.3 With respect to the Minister's suggestion at (c) regarding lighting effects on bats, I consider that the proposed resource consent conditions already adequately address these potential impacts. More specifically, they are addressed by conditions 51 and 52 of Part D of the proposed resource consent conditions, as recommended within the Terrestrial Fauna Report<sup>4</sup>, and which state:

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<sup>4</sup> [Appendix-21-terrestrial-fauna-report.pdf](#)

51. *The consent holder must minimise light sources and light spill from any lighting used during construction (excluding within the tunnels), operations and maintenance activities to the greatest extent practicable.*
52. *The consent holder must ensure any outside light sources used within the Project Site (excluding within the tunnels) has a colour temperature of no more than 2700K to minimise the emission of light with blue/ ultra-violet wavelengths.*

***DOC section 51 comments on Schedule 3 (Special Conditions) of the short and long-term Concessions***

- 5.4 The following commentary is in response to references made to Schedule 3 (Special Conditions) of the short and long-term Concessions. I provide responses to these on account of these conditions being closely linked with, and largely duplicated in, Westpower's suggested resource consent conditions.

*Treatment of compensation*

- 5.5 DOC considers that conditions requiring compensation must sit in the conditions of all relevant authorities – not solely in the Council's conditions. In this respect, I note that in DOC's subsequent section 53 comments, they provide more detail on their views regarding where certain conditions should sit. I address these in turn, later in my statement.
- 5.6 Where compensation remains a requirement of more than one approval, I have suggested an advice note be included to clarify that the requirement to provide compensation is not to be duplicated across multiple approvals and that the requirement to pay addresses the same residual adverse effects managed under multiple approvals in a concurrent fashion.

*Relevance of Westpower's agreement with Whitewater New Zealand*

- 5.7 DOC express concerns with the conditions that Westpower is proposing to operationalise the no-take days obligations set out in the Whitewater New

Zealand (“**WWNZ**”) agreement – inclusive of related compensation. More particularly,

- (a) DOC considers that, due to opt-out provisions (which require financial compensation) mitigation of effects become uncertain; and
- (b) DOC considers the conditions are not clear about when a no-take day may be cancelled and whether it can only be done with WWNZ’s agreement.

5.8 I disagree with point (a). As noted by Mr Greenaway<sup>5</sup>, compensation is proposed to be provided to WWNZ because there is no sensible financial compensation route for non-members. Mr Greenaway also confirms that the funds are intended to support kayak training and access initiatives implemented by WWNZ to benefit all kayakers. It is not reasonable, nor vires, to prescribe, within the conditions, exactly what initiatives a third-party must use compensation funds for. It must be enough to consider that, whatever WWNZ decide to use the funds for, it will benefit all kayakers, thereby constituting effective compensation of adverse residual effects. In respect of "international kayakers" (who may not benefit from kayak training or access initiatives), the West Coast Tai Poutini Conservation Board notes from the Application 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".<sup>6</sup> Any international use is therefore limited, especially given the other options within the region.

5.9 Regarding point (b), cancellation of a no-take day can occur without WWNZ’s agreement, however, Westpower must consult with WWNZ to arrange another no-take day during the same 12 month period or provide financial compensation if this is not practicable. Conversely, WWNZ may also cancel a no-take day without Westpower’s agreement. I have amended condition 46 of Part C9 of the consents to make it clear as to the circumstances of when this may occur. Ultimately, and as a priority, Westpower needs to ensure the operation of the hydro scheme is undertaken in a safe and responsible

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<sup>5</sup> Paragraph 9

<sup>6</sup> Paragraph 9.9(viii).

manner to deliver the regional benefits of the Project and the electricity needs of the community. The agreement Westpower reached with WWNZ (reflected in the conditions) recognises and provides for this, while obligating Westpower to compensate any no-take day cancellation that is not rescheduled. Inclusion of these key terms of the agreement in the proffered resource consent conditions is also a requirement of the agreement. On this basis, I have not recommended any further edits to the no-take day conditions set out in **Attachment 1** to Westpower's Memorandum #7.

*Management plan certification process*

- 5.10 DOC's concerns regarding Westpower's suggested management plan certification process are also discussed in DOC's subsequent section 53 comments, albeit in much more detail. For this reason, please refer to paragraphs 5.15 and 5.16 below which address DOC's latter commentary on this matter and which also applies to the management plan certification process set out in both the concession and resource consent conditions.

*Deemed Management Plan Certification*

- 5.11 I address deemed management plan certification comments at paragraph 5.37 below.

***DOC section 53 comments on resource consent conditions***

*Kayaking and No-take days*

- 5.12 At paragraph 15 of DOC's section 53 report, they suggest four no-take days must be arranged by Westpower as a minimum and the provisions to "opt-out" and compensate should be removed. I have addressed similar comments made in DOC's Section 51 report above at paragraphs 5.8 and 5.9 of this statement. I reiterate that the kayaking and no-take conditions proffered by Westpower reflect the mitigation and compensation mechanisms agreed with WWNZ to be included in the proffered resource consent conditions. In reaching this agreement, both parties acknowledge there may be circumstances where agreed no-take days need to be cancelled by Westpower and that those instances need to be compensated for. Conversely, given the very limited use of the Morgan Gorge for kayaking, not

all no take days may be 'taken up' and used by kayakers. I consider having a compensation approach should that occur is practical and enables the delivery of the significant benefits of the project to occur rather than shutting down the scheme when there is no kayaking use.

- 5.13 At paragraph 45, DOC consider that payments to WWNZ should not be specified in the Concession conditions as they are a private agreement and not enforceable by DOC. In this respect, Westpower has proposed these conditions to be in both the resource consent and concession conditions since they relate to matters that are relevant under both the RMA and the Conservation Act. At this stage, these conditions have not been deleted from Schedule 3 of the long-term concession conditions. However, if the Panel is minded to accept DOC's request and delete them, I would not be concerned. Of most importance is that these conditions remain within the resource consent conditions, thereby meeting their obligations and promises made to WWNZ, and that compensation payments that address one type of effect are not duplicated across multiple approvals.

*Recreation compensation*

- 5.14 At paragraphs 42 and 47 of DOC's section 53 comments, they consider recreation compensation should only be required under the Conservation Act concessions, and accordingly, should be enforced by DOC, not by any other authority. I disagree with this suggestion on the basis that these conditions relate to the maintenance and enhancement of public access to and along rivers – a matter of national importance under Section 6(d) of the RMA.

*Management Plan Certification*

- 5.15 At paragraphs 51 and 52, DOC sets out their concerns with Westpower's proposed management plan certification process within the resource consent conditions. More specifically, they do not support the following aspects of this process:
- (a) That for management plans applicable to any Project Construction Work Component occurring on, over or under land administered by the DOC, Westpower is not required to obtain DOC's written confirmation that they

are satisfied that the management plan meets the objective and requirements for that management plan; and

(b) The absence of any requirement that Westpower reimburses DOC for any actual and reasonable expenses associated with the review of the management plans; and

(c) The provisions for deemed certification of management plans.

5.16 Regarding (a), I consider that prescribing the management plan certification process as proposed by DOC amounts to an obligation on Westpower to, in essence, secure the approval of a third party (i.e. DOC) prior to being able to submit relevant management plans to a Council for certification. Accordingly, such requirements would be, in my view, ultra vires (at least in relation to the RMA conditions). Notwithstanding this view, I acknowledge the complications and conflicts that come about when concurrent approvals are being sought under separate statutes (i.e. RMA and Conservation Act) for the same activities. To reduce these conflicts, the conditions are drafted to enable the Council to perform its technical certification duty by requiring Westpower to undertake the following steps when submitting a management plan to the Councils for certification:

(a) provide feedback from the DOC Liaison Officer as to whether the Management Plan meets the purpose and requirements set out in the relevant conditions for that Management Plan; and

(b) In the event the DOC Liaison Officer's feedback confirms they do not consider the Management Plan meets its relevant purpose and requirements, Westpower must also provide the councils with:

(i) The DOC Liaison Officer's specific concerns about the Management Plan and/or the reasons why DOC consider the Management Plan does not meet its relevant purpose and requirements; and

(ii) The consent holder's reasons why they have not actioned or addressed the DOC Liaison Officer's concerns.

- 5.17 Regarding (b), I consider that it is appropriate that Westpower reimburses DOC for any actual and reasonable expenses associated with the review of the management plans, and I have suggested amendments to the conditions in this respect<sup>7</sup>.
- 5.18 Regarding DOC's concerns in respect of deemed certification at (c), I have addressed this matter in paragraphs 5.38 to 5.42 below.
- 5.19 In **Attachment 1** of Memorandum #7, I also respond (via tracked comments) to various edits and comments DOC have made on the 21.11.25 version of the proffered consent conditions (provided as Appendix A to their s53 comments) and highlight some of the key matters below.

*In general accordance with*

- (a) DOC does not support the use of the “in general accordance with” wording in this condition. In their view, provided the effects of any final design changes are de minimis, this should be sufficient and that the word “general” can be removed. I disagree. Without the word “general”, any slight alteration to the design would constitute a non-compliance since this condition refers specifically to all documents provided in support of the Application (i.e. including plans and drawings etc) – not just the effects assessments. In my experience, the “in general accordance with” wording is commonly used in consents authorising large projects such as this, and there is good guidance used by consent authorities as to when any design changes will exceed the threshold of any new or increased adverse effect requiring a consent variation to authorise. An unreasonably stringent condition in the context of this Project may undermine (and delay the implementation of) the approvals sought.

*Management plans*

- 5.20 The management plan concerns expressed in DOC's tracked comments are addressed at paragraphs 5.15 to 5.18 above.

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<sup>7</sup> Conditions 3, 5 and 11 of Part B of the consents

- 5.21 I also agree with DOC's suggestion to include an additional advice note at condition 6 (now condition 5 in **Attachment 1**).

*Inclusion of whio to condition 23(i) (fish passage for all in-stream structures to be maintained)*

- 5.22 DOC seeks that whio passage be provided for in the same way as fish. This is not supported. This condition relates to structures other than the main diversion weir. Requirements for the diversion weir are set out separately, and specifically, in the FEMP and in the resource consents conditions within Part C9. These requirements prioritise fish passage (and exclusion of salmonid passage) over whio passage. This was significant to the ecology effects assessed by both the freshwater ecologist and whio experts because it is critical for kōaro that trout and salmon cannot travel upstream of Morgan Gorge and it was accepted that whio duckling passage must only be provided if that functional requirement can be met.<sup>8</sup>

*New lizard condition*

- 5.23 DOC seeks that a lizard habitat clearance condition be included in Part C2: of the resource consent conditions (Land Use Consent: Earthworks and Vegetation Clearance (Construction Phase)). This is not supported. There will be no felling undertaken in the land-based gravel extraction area and any effects on lizards will be appropriately managed through LizMP implementation.

*Landscape architect to be included in final design review for the weir and intake structure (condition 2 of Part C9 of the consents).*

- 5.24 DOC consider that a landscape architect should be involved in the weir and intake final design process. This is not supported. The preliminary weir and intake design is complete and has already been assessed by a Landscape Architect. The purpose of this condition is to ensure any fine-tuning of the weir and intake design (as part of a final design process) will retain appropriate management of potential river morphology, sediment, kōaro and whio effects. Noting that the intake must be "in general accordance with" the

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<sup>8</sup> [Appendix 25 Freshwater Ecology.pdf](#), pg 29; [Appendix-22-Whio-report.pdf](#), pg 82 and 83.

information provided in the application, any design change that results in a more than de minimis increase in landscape effects will require a consent variation. This will be determined as part of the preparation of the Final Weir and Intake Structure Design Report and subsequent council certification process. As addressed by Mr Bentley in **Attachment 7** to Memorandum #7, the Landscape Management Plan (updated in **Attachment 8** to Memorandum #7) will apply to treatments used to minimise effects, including to the post-construction structures at the Headworks.<sup>9</sup>

*Further ecological monitoring details included in Monitoring Plan (Condition 45 of Part C9 of the consents)*

- 5.25 DOC seeks that additional details on ecological “bottom lines” be included in the monitoring plan condition. Ms McMurtrie, Westpower’s freshwater ecologist, has reviewed these proposed edits and has provided me with alternative drafting which I have transcribed into the monitoring plan table at conditions 45 of **Attachment 1** of Memorandum #7. Ms McMurtrie’s suggested edits provide additional information on monitoring locations, measurement units and frequencies that are aligned with the FEMP and the adaptive management concepts proposed for the future Morgan Gorge Flushing Management Plan. In summary, DOC’s suggested monitoring plan condition edits did not achieve this alignment and for that reason are not supported.

*Increase frequency of Kiwi Flat morphology Lidar surveys in Monitoring Plan (Condition 45 of Part C9 of the consents).*

- 5.26 DOC seeks annual LIDAR monitoring of Kiwi Flat morphology. I support the Sediment Report’s recommendation for 10-yearly monitoring. DOC’s comment here indicates there may be some confusion between accumulated sediment in the abstraction reach (i.e. downstream of Kiwi Flat) with this Lidar monitoring requirement (i.e. within Kiwi Flat).

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<sup>9</sup> Attachment 7, Statement James Bentley, 21 January 2026.

*Kayaking and no-take days comments*

- 5.27 Responses to DOC comments on kayaking and no take-days conditions are addressed above in paragraphs 5.12 and 5.13.

*Helicopter flight management plan (condition 20 of Part D of the conditions)*

- 5.28 DOC seeks that more detail be provided by Westpower on helicopter flight management. However, before a construction contractor is appointed, and the construction programme and methodologies are finalised, additional details on flight management are not possible. The key helicopter management requirements, as set out in these conditions, identify the key issues that the Flight Management Plan must address. I consider this an appropriate approach in these circumstances.

*Eco-sourcing plants (conditions 38 (LMP) and 47 (VMP) of Part D)*

- 5.29 DOC seeks that locally eco-sourced plants are used in all rehabilitation works. I do not accept this on the basis that the terrestrial ecologist (Mr Derks) has advised that eco-sourcing plants from the area will take too long to grow<sup>10</sup>. Instead, his advice is, where plantings are required as part of the rehabilitation works, to use “West Coast sourced indigenous plants”. I have therefore retained the conditions to align with the terrestrial ecology advice. Using faster growing vegetation also has benefits for minimising landscape effects with regenerating vegetation.

*Landscape management conditions*

- 5.30 Various additional landscape management conditions are included as recommended by Mr Bentley. These are set out in conditions 39 through 46 of Part D of the resource consent conditions.

*Bat Management Protocols (conditions 50 of Part D)*

- 5.31 DOC seeks changes that require the strict application of the “Bat Recovery Group tree removal protocols”. Due to the unique environment at Waitaha and expert conclusions about the areas of low quality and higher quality bat

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<sup>10</sup> Attachment 12, Statement of David Jan Derks, 21 January 2026.

habitat, the Bat Management Plan includes some minor deviations from this protocol. The context and variations are discussed in the Bat Management Plan.<sup>11</sup> In summary, the variations rely on an "approved bat worker":

- (a) identifying low and high potential bat roost trees (with knowledge about bat activity and habitat in the area);
- (b) determining whether acoustic monitoring can continue in different weather conditions than set out in the protocol; and
- (c) consulting with DOC to arrange a method to shift bats if a bat roost remains occupied after ten days.

5.32 DOC's suggested changes are not adopted because discretion remains attributed to a bat expert to make informed judgements in the West Coast surroundings. I consider that to be appropriate.

*CPI adjustment for all compensation*

5.33 Westpower does not accept DOC's request to apply CPI adjustments to all annual compensation payments required under the consents.

*Public availability of construction information*

5.34 In response to DOC comments on recreation effects, Westpower agrees to provide the public with information on general construction activities and the construction programme including the general potential for any temporary recreation track closures. A new condition 60 is added to Part D to this effect. This is also referenced as a requirement of the CEMP (refer to condition 17 (ix) of Part B). Mr Griffiths provides more information about the frequency and length of intended walking track closures in **Attachment 9** which are not for prolonged or extended periods of the construction period. I have suggested additional edits to condition 60 that capture Mr Griffiths' description of how track closures will be managed during construction.

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<sup>11</sup> [Appendix-37-bat-management-plan.pdf](#), at paragraphs 1.5, and 2.2.

***West Coast Regional Council comments on resource consent conditions***

- 5.35 West Coast Regional Council (“**WCRC**”) has expressed some remaining concern regarding resource consent conditions that require Westpower to make compensation payments to third parties. In this respect, WCRC is uncertain how these conditions can be practically or lawfully enforced, and more particularly, how WCRC is able to verify whether payments had been made, whether the quantum of any payments are compliant or whether payments had been received by the correct third parties.
- 5.36 This is a concern that was also raised in prior conditions workshops held with Westpower and Council representatives. In response to this concern, Westpower has amended the compensation conditions as follows:
- (a) For consent conditions requiring ongoing payments to be made WWNZ and as compensation for adverse residual ecological effects:
- (i) an advice note is included to clarify that all information relating to these payments must be included in the Annual Report prepared in accordance with condition 26 of Part B of the consents; and
- (ii) Condition 26 of Part B of the consents (Annual Report) requires the consent holder to include the following information on the Annual Report:
- confirmation of all compensation payments made within the annual reporting period in accordance with the relevant conditions;
  - details of when compensation payments were made;
  - confirmation of the amounts of payments made; and
  - contact details of a person acting on behalf of the entity receiving the payment who is able to confirm the payment’s receipt.

(b) For the one-off compensation payment required to compensate residual adverse recreation effects, a similar approach is used to the ongoing payments (above), albeit, because it's a one-off payment, the reporting requirements, and the details of information to be reported, is simply required within 10 days of Westpower making the payment.

***Westland District Council comments on resource consent conditions***

5.37 Westland District Council (“WDC”) discuss conditions in section 4 of their comments. I address these in turn below.

***Deemed Management Plan Certification***

5.38 WDC express caution to the Panel in respect of a management plan certification process that would enable a management plan to be deemed as certified in the event the consenting authority is unreasonably slow to respond in their certification capacity. In expressing this caution, WDC notes that the courts have generally not accepted a deemed approval approach in the context of management plan conditions, finding that it does not constitute sound environmental management. WDC also references *Meridian Energy Ltd v Wellington City Council* [2011] NZEnvC 232 as an example of where deemed certification was not accepted. As noted above, DOC have also raised this issue.

5.39 Westpower's proffered Management Plan certification conditions allow for certification if no response is:

(a) provided by the Council after 20 working days; and

(b) a response is still not received within 5 working days after any subsequent follow-up request being made by Westpower.

5.40 The conditions also provide for an alternative timeframe to be agreed between the Council and Westpower.

5.41 It is also important to note that the threshold for a “deemed” certification is not based on the certification being provided within these timeframes. The conditions simply refer to a “response” being provided by Council within these timeframes. Such a response can either be to confirm certification or to

outline the reasons why it cannot be certified including the information the Council considers is required to address these reasons.

5.42 Westpower acknowledges WDC's comments in respect of deemed management plan certification conditions and understands the concern being expressed. Notwithstanding, I highlight the following:

(a) I agree that condition wording providing for deemed certification is not normal under the RMA, however, there are examples where such wording has been upheld<sup>12</sup>;

(b) I note that both cases referenced above involved conventional RMA processes, and it is important to recognise that the Waitaha Hydro Project approvals are not being advanced through the RMA. Instead, the application is progressing under the Fast-track Approvals Act legislation which has a focus on facilitating the delivery of the projects with regional and national benefits, and conditions that are "no more onerous than necessary".<sup>13</sup> Deemed certification conditions respond to the risk of unreasonable Project delays without adequate incentive on the consenting authorities to meet a reasonable timeframe. It is recognised that the greatest effects of the Project are during construction. Having this provision ensures that the construction timetable can operate efficiently and effectively to deliver the Project in the shortest reasonable time; and

(c) For these reasons, the current "deemed" certification wording is retained.

#### *Kayaking and No-Take Days*

5.43 WDC does not consider it appropriate that they assume responsibility for enforcing these conditions on the basis that they fall outside its jurisdiction and they are related to a separate side agreement with a third party (WWNZ). As a result, WDC considers they are not able to monitor or enforce these conditions.

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<sup>12</sup> *Bears Home Project Management Limited v Auckland Council* [2023] NZEnvC 156

<sup>13</sup> FTAA, s 3 and 83.

- 5.44 It was agreed at the last conditions workshop with both councils on 8 December 2025 that the kayaking and no-take days conditions would more appropriately sit within the WCRC set of conditions on the basis that they are addressing an effect associated with river flow diversions – an activity that sits within WCRC’s jurisdiction. The conditions presented in **Attachment 1** of Memorandum #7 adopt this agreed change.

*Flow Data Available to the Public*

- 5.45 WDC considers conditions relating to requirements to provide flow data to the public are appropriately addressed by the West Coast Regional Council.
- 5.46 I concur with this position and as was agreed at the last conditions workshop on 8 December 2025, these conditions would more appropriately sit within the WCRC consent. The conditions presented in **Attachment 1** of Memorandum #7 adopt this change.

*Public Access and Safety*

- 5.47 WDC has concerns with conditions relating to public access and safety effects. While they acknowledge the importance of addressing these matters, they consider these conditions may sit outside their jurisdiction and outside the scope of matters they’re able to monitor or enforce.
- 5.48 I make the following observations in response:
- (a) As with conditions relating to kayaking, no-take days and publicly available flow data, it was agreed at the last conditions workshop with both councils on 8 December 2025 that the public access and safety conditions would also more appropriately sit with WCRC to enforce. This is on the basis they are, primarily, addressing effects associated with changes in river flow resulting from the Scheme’s operational water take, diversion and discharges. The conditions presented in **Attachment 1** of Memorandum #7 adopt this agreed change.
  - (b) I have amended the heading to these conditions from “Public Access and Safety” to “Public Safety” since they do not directly address any public access matters.

- (c) I agree with WDC that public safety, and in particular, public river safety matters are important effects associated with the Scheme that should be appropriately managed. That is, they are an effect on the environment (including people) and, therefore, can be managed through conditions of a resource consent in accordance with s108(2)(e).
- (d) Westpower has adopted the recommendations within the Public River Safety Report appended to the Application which the proffered resource consent conditions align.<sup>14</sup>
- (e) I also note that other hydro scheme consents have public safety conditions<sup>15</sup>.

*Recreation Compensation (condition 62 of Part D)*

- 5.49 WDC also has concerns with the proposed draft condition on recreation compensation. In this respect, they again consider the condition may sit outside their jurisdiction and outside the scope of matters they're able to monitor or enforce.
- 5.50 Firstly, I note that this condition is not the result of a separate agreement with a third party. Rather, it has been volunteered by Westpower in response to a recommendation made by Mr Greenaway to address identified residual adverse recreation effects. Secondly, I consider it appropriate that the monitoring and enforcement of this condition be undertaken by WDC on the basis that, this condition relates to the maintenance and enhancement of public access to and along rivers – a matter of national importance under Section 6(d) of the RMA.
- 5.51 Additionally, through other condition amendments made to this condition, similar to those discussed above in respect of the responses to WCRC's comments, it is considered that WDC will be provided with all the necessary information by Westpower in order to monitor and enforce this condition.

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<sup>14</sup> [Appendix-32-public-river-safety-report.pdf](#)

<sup>15</sup> Waikato Hydro Scheme Consents – General condition 7.12 & conditions 2-4 of LU consent 105234

## 6. Other changes made to resource consent conditions

6.1 As already noted, **Attachment 1** of Westpower's Memorandum #7 provides updates to the suite of resource consent conditions for all approvals. This version incorporates, as red tracked change text, the following changes made to the previous version, dated 17.11.25, that was provided to the Panel as Attachment 3 of Westpower's Memorandum #2:<sup>16</sup>

- (a) Changes in response to DOC's feedback on the 7 November 2025 version of these conditions;
- (b) Changes in response to the Councils and DOC's feedback provided during a conditions workshop held on 8 December 2025;
- (c) Changes to align with the TTPP-Decisions Version;
- (d) Changes to align with responses to the Panel's RFI's received on 15 December 2025 (RFI #2) and 22 December 2025 (RFI #3);
- (e) Changes in response to DOC's section 51 report – on the basis that Schedule 3 of the concession conditions is closely linked with the resource consent conditions;
- (f) Changes in response to comments received from invited participants in accordance with section 53; and
- (g) Other minor changes associated with typos and clarifications picked up following further Westpower review.

6.2 As already noted, the background and rationale for key condition changes are set out in the tracked change comments provided throughout the conditions in **Attachment 1** of Westpower's Memorandum #7.

**Mason Jackson**

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<sup>16</sup> [Westpower-Memorandum-2-Attachment-3.pdf](#).

## **APPENDIX A: Experience**

I am an Associate with Mitchell Daysh Limited, an environmental consulting practice with offices in seven locations around New Zealand. I have been employed by Mitchell Daysh since October 2019 and work out of their Hamilton office.

Previously, I worked for Mercury NZ Limited (formerly Mighty River Power Limited) for approximately 15 years. I held various roles over that time and was employed as the company's Consents and Compliance Manager when I left to join Mitchell Daysh Limited. Prior to my time at Mercury NZ, I worked for the Waikato Regional Council in their regulatory directorate, processing consent applications and monitoring energy sector sites across the region. Prior to this I was a Regional Environmental Manager at Fonterra.

I hold a Bachelor of Science (Earth Science), Master of Science (Hons) and Post Graduate Diploma in Environmental Management, all from the University of Waikato.

I am currently a board member for the New Zealand Geothermal Association and a member of the Resource Management Law Association.

My previous experience includes just over 30 years of environmental management experience in New Zealand, focused in the dairy manufacturing, energy and regulatory sectors. During my employment with Mercury NZ I was responsible for the implementation and monitoring of large and complex resource consents for the company's various Waikato hydroelectric power scheme sites, geothermal power station sites and wind farms. I have also been involved in, and led, multi-disciplinary teams on a number of large renewable energy consenting projects including the Ngā Awa Purua and Ngā Tamariki geothermal power stations and the Puketoi Wind Farm.

## **Appendix B: Code of Conduct**

### **Statement confirming compliance with the Environment Court's Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2023**

As an expert witness, I have read, and I am familiar with the Environment Court's Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2023.

I have prepared my, or provided input into, an assessment of effects for the Waitaha Hydro Scheme in compliance with the Code of Conduct and will continue to comply with it in this Fast-track Approvals Act process. In particular:

- my overriding duty is to assist the decision-maker impartially on matters within my expertise;
- unless I state otherwise, my assessment is within my area of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express; and
- I have not, and will not behave as, an advocate for the Applicants.