

Concession Number: [to add]

Lease and licence concession (long-term) – 13 February version as requested by the Panel's RFI#5

This version of Westpower's proposed lease and licence concession (long-term) conditions incorporates the following as requested by the Panel's RFI#5:

- (a) Text with no tracking and no highlighting where there is agreement with the Department;
- (b) Tracked text with **yellow highlighting** for Westpower's preferred wording where not agreed by the Department;
- (c) Tracked text with **grey highlighting** for the Department's preferred wording where not agreed with Westpower; and
- (d) Text with no tracking and **blue highlighting**, for changes in the 21 January version, or made since then, that the Department has not commented on.

Concession Number: [to add]

13 February 2026: Draft Long Term (Operation) Lease/Licence

Concession Document (Lease and Licence)

Concession Number: [to add]

<p>THIS CONCESSION is made this day of</p> <p>PARTIES:</p> <p>Minister of Conservation (the Minister)</p> <p>Westpower Limited or Waitaha Hydro Limited (the Concessionaire)</p> <p>Name (the Guarantor) delete if not required</p> <p>BACKGROUND</p> <p>A. The Department of Conservation (Department) Te Papa Atawhai is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.</p> <p>B. The Department is under the control of the Minister.</p> <p>C. The carrying out of these functions may result in the Minister granting concessions to carry out activities on public conservation land.</p> <p>D. The Minister administers public conservation lands described in Schedule 1 as the Land.</p> <p>E. Westpower has proposed to construct, operate and maintain the Waitaha Hydro Scheme (Scheme).</p> <p>F. Westpower has applied for concessions under the Fast-track Approvals Act 2024 in relation to the Scheme.</p> <p>G. A concession granted under the Fast-track Approvals Act 2024 has the same force and effect for its duration, and according to its terms and conditions, as it if were granted under the Conservation Act 1987, except that section 17A of the Conservation Act 1987 does not apply.</p> <p>H. This concession under the Fast-track Approvals Act 2024 in relation to the Scheme gives effect to the decision to grant, including the conditions, by an Expert Panel on [add date].</p> <p>I. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Concession.</p> <p>J. The parties wish to record the terms and conditions of this Concession.</p> <p>OPERATIVE PARTS</p> <p>K. The Minister grants, and Westpower accepts, a LEASE over the Lease Land, and a LICENCE over the Licence Land, to carry out the Concession Activity, subject to the terms and conditions contained in this Concession, including its Schedules.</p>
--

Concession Number: [to add]

<p>_____ SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate] acting under delegated authority</p> <p>in the presence of:</p> <p>_____ Witness Signature</p> <p>Witness Name: Witness Occupation: Witness Address:</p> <p>OR</p> <p>If decision maker is signing by way of electronic signature, use this option</p> <p>[INSERT DIGITAL SIGNATURE]</p> <p>_____ SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate] acting under delegated authority</p> <p>in the presence of:</p> <p>[INSERT DIGITAL SIGNATURE]</p> <p>_____ Witness Signature</p>	<p>_____ SIGNED for [insert name of Company] Limited by: Director Name</p> <p>AND</p> <p>_____ SIGNED for [insert name of Company] Limited by: Director Name</p>
---	--

SCHEDULE 1

1.	<p>Land (clause 1)</p>	<p>Lease Land As outlined on Maps 1 – 5 and the table in Schedule 4 being: Physical Description/Common Name: Conservation Area – Waitaha Forest Land Status: Stewardship Land Legal Description: Part of the land described as Part Reserve 1672 (as shown on SO Plan 11209 and including Section 1 Survey Office Plan 12094, as generally identified on [insert reference to plan]).</p> <p>Licence Land As outlined on Maps 1 – 5 and the table in Schedule 4 being: Physical Description/Common Name: Conservation Area – Waitaha Forest Land Status: Stewardship Land Legal Description: Part of the land described as Part Reserve 1672 (as shown on SO Plan 11209 and including Section 1 Survey Office Plan 12094, as generally identified on [insert reference to plan]).</p>
2.	<p>Concession Activity (clause 2)</p>	<p>Operation of the Waitaha Hydro Scheme, including:</p> <ul style="list-style-type: none"> • all activities set out in Schedule 4 (including the use of the water within the Waitaha River); • all activities authorised or proposed to be undertaken by the Concessionaire in relation to the operation and maintenance of the Waitaha Hydro Scheme as set out in the Application; <p>Operation of the Waitaha Hydro Scheme, including:</p> <ul style="list-style-type: none"> • all activities set out in Schedule 4 (including the use of the water within the Waitaha River);
3.	<p>Term (clause 4)</p>	<p>49 years commencing on the date of Commencement of Generation.</p> <p>The lapse period for this concession is 20 years from the date of the execution of this concession document by both parties.</p> <p>49 years commencing on the date of granting.</p>
4.	<p>Renewal(s)</p>	<p>Nil</p>
5.	<p>Final Expiry Date (clause 4)</p>	<p>49 years from the date of Commencement of Generation.</p> <p>49 years from the date of commencement.</p>
6.	<p>Concession Fee</p>	<p>[TBC]</p>

Commented [WP1]: Reasons for disagreement:
 •Westpower consider it is important to ensure that all activities described in the application are authorised.
 •DOC considers that all activities should be described and captured via the bullet points above.

Commented [WP2]: Inadvertent reference to “Application Documentation” in the 21 January version removed.

Commented [WP3]: Reasons for disagreement:
 •Westpower consider the term can be from Commencement of Generation (see Memorandum#11). DOC considers the term should be from the date of granting.
 •Westpower consider that lapse should be included in Schedule 1 for clarity. DOC considers it should be addressed in Schedule 2 or 3.

Commented [WP4]: Reason for disagreement: see comment above for different positions on when the term should commence.

Concession Number: [to add]

	(clause 5)	
7.	Environmental Monitoring Contribution	Not required
8.	Community Services Contribution	Not required
9.	Total payments to be made per annum (clause 5)	[TBC]
10.	Total payment instalment(s) (clause 5)	[TBC]
11.	Concession Fee Payment Date(s) (clause 5)	[TBC]
12.	Penalty Interest Rate (clause 5)	Double the current Official Cash Rate (OCR). See Reserve Bank of New Zealand website
13.	Concession Fee Review Date(s) (clause 6)	Three (3) yearly on the anniversary (and for the duration) of this Concession.
14.	Insurance (To be obtained by Concessionaire) (clause 12)	Public Liability Insurance for general indemnity for an amount no less than \$5,000,000 . Subject to review on each Concession Fee Review.
15.	Health and Safety (clause 13)	Audited Safety Plan: Not required
16.	Concessionaire Identification	Not Required
17.	Addresses for Notices (clause 25)	The Minister's address is: Physical address: Department of Conservation 265 Princes Street Dunedin 9016 [Permissions team email address] Postal address:

Concession Number: [to add]

		<p>Department of Conservation Att: National Transaction Centre PO Box 5244 Dunedin 9054 Phone: (03) 477 0677 Email: transactioncentre@doc.govt.nz</p> <p>The Concessionaire's address is: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>
18.	Guarantee	Not required
19.	Special Conditions (clause 35)	See Schedule 3
20.	Processing Fee (clause 5)	[TBC as this process is under the Fast-track Approvals Act 2024].
21.	Bond (clause 30)	TBC

Note: the clause references are to the clauses in Schedule 2.

SCHEDULE 2 – STANDARD TERMS AND CONDITIONS OF LEASE AND LICENCE**1. Interpretation****1.1** In this Document, unless the context otherwise requires:

Acronym/Term	Definition
AMP	Avifauna Management Plan
Application	The document titled “Westpower Limited Waitaha Hydro Project: An Application made under the Fast-track Approvals Act (2024)” dated 8 August 2025, including all technical assessments and supporting reports, and as amended through the Fast-track Approvals Act 2024 or any subsequent statutory process.
Completion of Construction	The time when the Waitaha Hydro Project has been built and commissioned and is available to generate electricity for customer supply.
Commencement of Generation	The date when the Project first transmits electricity onto the local network for customer supply.
Consents	Any resource consents granted under the Fast-track Approvals Act 2024 that would otherwise be granted under the RMA.
Concessionaire	Westpower Limited or Waitaha Hydro Limited and any person acting with the permission (including implied permission) of Westpower Limited or Waitaha Hydro Limited as if the concession had been granted to that person as well as to Westpower or Waitaha Hydro Limited.
Concessions	Any Concessions granted under the Fast-track Approvals Act 2024 that would otherwise be granted under the Conservation Act.
Concession Activity	As described in Schedule 1, Item 2.
Concession Area	Area of the Project located on land administered by the Department of Conservation.
Consent Authorities	Westland District Council, in respect of land use consents administered by Westland District Council; or West Coast Regional Council, in respect of resource consents administered by West Coast Regional Council.
DOC	Department of Conservation
ESCP	Erosion and Sediment Control Plan
Expert Panel	The panel appointed to make the concession decision under the Fast-track Approvals Act 2024.
FEMP	Freshwater Ecology Management Plan
FlushMP	Morgan Gorge Flushing Management Plan
FTAA	Fast-track Approvals Act 2024
Headworks	The physical structures within the Scheme situated above Morgan Gorge comprising a low-profile weir and intake structure together with an access tunnel portal and access road.
Land	Together the Lease Land and Licence Land
Lease Land	The Land described as Lease Land in Item 1 of Schedule 1
Licence Land	The Land described as Licence Land in Item 1 of Schedule 1.
LMP	Landscape Management Plan
Power Station	The physical structures within the Scheme situated immediately adjacent to,

Commented [WP5]: Inadvertently deleted in the 21 January 2026 version.

Concession Number: [to add]

	and in the vicinity of, the Waitaha River and the lower end of the Tunnels generally comprising the: <ul style="list-style-type: none"> • Power Station; • Tailbay; • Tailrace; • Switchyard; and • and all ancillary structures.
Power Station Site	The area comprising the Power Station
Power Station Access Road	The vehicle access road between the southern end of the Waitaha Road Reserve and the Power Station Site.
Project	Includes all physical resources and activities associated with constructing, operating and maintaining the Scheme and all ancillary structures and activities.
Relevant Management Plan	For the operation and maintenance of the scheme, includes the AMP, LMP, VMP, FEMP, SMP, SOMP and FlushMP
Scheme	The Waitaha Hydro Scheme.
SMP	Stormwater Management Plan
SOMP	Site Operations and Maintenance Plan
Streamworks	All physical works undertaken within, and involving the disturbance of, any stream or riverbed excluding riverbed gravel extraction.
Tunnels	All physical structures associated with the water tunnel and the access tunnel included in the Scheme.
Transmission Line	The physical structures comprising the electricity transmission infrastructure between the Power Station Site and the existing Westpower Transmission Network on State Highway 6.
VMP	Vegetation Management Plan
Waitaha Hydro Scheme	The run-of-river hydro-electricity generation scheme along the Waitaha River, generally including headworks at the top of Morgan Gorge (comprising low weir and intake structure), tunnels and turbines, and a tailrace discharging into the Waitaha mainstream in the vicinity of the confluence of Alpha Creek, as well as an access road and transmission line, and any related or ancillary structures, which is to be constructed or has been constructed by the Concessionaire under the construction concession, and in accordance with the Application.
WCRC	West Coast Regional Council
WDC	Westland District Council
WWNZ	Whitewater NZ Incorporated

1.2 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land), as if the breach had been committed by the Concessionaire.

1.3 Where this Concession requires the Minister to exercise a discretion or give any approval or provides for any other actions by the Minister, then the Minister must act reasonably and within a reasonable

Concession Number: [to add]

time. When a consent is required under this Concession such consent must not be unreasonably withheld.

- 1.4 Where this Concession provides for approvals, directions, reports and consents to be given by one party to the other, those approvals, directions, reports and consents must be given by notice in writing and clause 30 is to apply.
- 1.5 The covenants and powers contained in Part 2 of Schedule 3 of the Property Law Act 2007 are not to be implied in this Concession and are expressly negated.

2. What is being authorised?

- 2.1 The Concessionaire is only allowed to use the Land for the Concession Activity.
- 2.2 The Concessionaire must exercise reasonable skill, care and diligence in carrying out the Concession Activity, in accordance with standards of skill, care and diligence normally practised by suitably qualified and experienced people in carrying out such activities.
- 2.3 The Concessionaire must provide the Minister with evidence of the competency and qualifications of its employees and contractors if the Minister so requests.
- 2.4 The Concessionaire must not commence the Concession Activity until the Concessionaire has signed the Concession Document and returned one copy of this Document to the Minister, as if it were a notice to be given under this Concession.

3. What about quiet enjoyment?

- 3.1 The Concessionaire, while paying the Concession Fee and performing and observing the terms and conditions of this Concession, is entitled peaceably to hold and enjoy the Land and any structures and facilities of the Minister without hindrance or interruption by Minister or by any person or persons claiming under the Minister until the expiration or earlier termination of this Concession.
- 3.2 Provided reasonable notice has been given to the Concessionaire, the Minister, their employees and contractors may enter the Lease Land and Licence Land to inspect the Land and facilities, to carry out repairs and to monitor compliance with this Concession.

4. How long is the Concession for - the Term?

- 4.1 This Concession commences on the date set out in Item 3 of Schedule 1 and ends on the Final Expiry Date specified in Item 5 of Schedule 1.

4.2 If there is a right of renewal then the Minister at the Concessionaire's cost must renew the Term for a further period as set out in Item 4 of Schedule 1 provided the Concessionaire:

- (a) gives the Minister at least three month's written notice before the end of the Term, which notice is to be irrevocable, of the Concessionaire's intention to renew this Concession; and
- (b) at the time notice is given in accordance with this clause the Concessionaire is not in breach of this Concession.

~~4.2~~4.3 The renewal is to be on the same terms and conditions expressed or implied in this Concession except that the Term of this Concession plus all further renewal terms is to expire on or before the Final Expiry Date.

Commented [WP6]: Reason for disagreement: Westpower considers the additional clauses suggested by DOC to be unnecessary as there is no right of renewal.

5. What are the fees and when are they to be paid?

5.1 The Concessionaire must pay the Processing Fee (Item 20 of Schedule 1) to the Minister in the manner directed by the Minister. Except where the Minister's written consent has been given, the Concessionaire cannot commence the Concession Activity until the Processing Fee has been paid.

5.2 The Concessionaire must pay to the Minister in the manner directed by the Minister the Concession Fee and any other payment comprised in the Total Payment specified in Item 9 of Schedule 1 in the instalments and on the Concession Fee Payment Date specified in Items 10, and 11 of Schedule 1.

5.3 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 12 of Schedule 1.

6. When can the fee be reviewed?

6.1 The Minister is to review the Concession Fee on the Concession Fee Review Dates in the following manner:

(a) The Minister must commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving notice to the Concessionaire.

(b) Subject to clause 6.1(e) the notice must specify the Concession Fee which the Minister considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.

(c) If, within 28 days of receipt of the Minister's notice, the Concessionaire gives notice to the Minister that the Concessionaire disputes the proposed new Concession Fee, the new Concession Fee is to be determined in accordance with clause 6.2(a) or (b).

(d) If the Concessionaire does not give notice to the Minister under clause 6.1(c) the Concessionaire is to be deemed to have accepted the Concession Fee specified in the Minister's notice.

(e) Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Minister's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Minister or by the Concessionaire, whichever is applicable.

6.2 Immediately the Concessionaire gives notice to the Minister under clause 6.1(c) the parties are to endeavour to agree on a new Concession Fee. If the parties are unable to reach agreement within 28 days the new Concession Fee is to be determined either:

(a) By one party giving notice to the other requiring the new Concession Fee to be determined by the Disputes clause (clause 23) or, if the parties agree,

(b) by registered valuers acting as experts and not as arbitrators as follows:

(i) Each party must appoint a valuer and give notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.

Commented [WP7]: Reasons for disagreement:
•Westpower considers the s 78 conditions regarding the concession fee are unlawful for the reasons set out in Memorandum #7.
•DOC has included the s 78 condition wording, but considers that if alternative wording can be agreed, the s 78 condition wording may not be required.

Concession Number: [to add]

- (ii) If the party receiving a notice does not appoint a valuer within the 14 day period the valuer appointed by the other party is to determine the new Concession Fee and that valuer's determination is to be binding on both parties.
 - (iii) Before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
 - (iv) The valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987. If they fail to agree the Concession Fee is to be determined by the umpire.
 - (v) In determining the Concession Fee the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide access to the Land.
 - (vi) Each party is to be given the opportunity to make written or oral representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
 - (vii) The valuers or the umpire must have regard to any such representations but are not bound by them.
- (c) The valuers or umpire must give written notice to the parties once they have determined the new Concession Fee. The notice is to be binding on the parties and is to provide how the costs of the determination are to be borne.
- (d) If a Concession Fee Review Date is postponed because of a moratorium imposed by law the Concession Fee Review is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and
- (i) the Concession Fee Review is to establish the market value for the Concession Activity as at that date instead of the date fixed under clause 6.1 having regard to the matters specified in section 17Y(2) of the Conservation Act 1987; and
 - (ii) each subsequent Concession Fee Review is to take place in accordance with the procedure fixed in clause 6.1.

7. Are there any other charges?

- 7.1 The Concessionaire must pay all levies, rates, and other charges, including utility charges payable in respect of the Land or for the services provided to the Land that relate to the Concessionaire's use of the Land or the carrying on of the Concession Activity.
- 7.2 The Minister is not liable for any cost incurred in reestablishing the supply of any utilities to the Land in the event it becomes unavailable for any reason.
- 7.3 Where the Minister pays any such levies, rates, or other charges, the Concessionaire must on receipt of an invoice from the Minister pay such sum to the Minister within 14 days of receiving the invoice. If payment is not made within the 14 days, then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at a penalty interest rate of 15%.

Concession Number: [to add]

8. Concession Fee

8.1 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.

8.2 The Concessionaire must pay the Concession Fee to the Minister, in the manner directed by the Minister, on or before the Concession Fee Payment Date, which is annually on the anniversary of the Term, with the first payment due at the start of the Term.

8.3 If the Concessionaire fails to pay within 14 days of the Concession Fee Payment Date, then the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at a penalty interest rate of 15%.

8.4 The Concession Fee excludes any payments required by the Minister in accordance with section 17ZH of the Conservation Act 1987, which are to be paid from time to time in accordance with the Minister's instructions.

9. Concession Fee review

9.1 The Minister will commence a review of the Concession Fee at intervals in accordance with section 17Y of the Conservation Act.

9.2 The new Concession Fee, made up of any combination of rents, fees, and royalties, will be determined by the Minister after obtaining advice of a registered valuer appointed by the Minister. The registered valuer must 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.

10. Other charges

10.1 The Concessionaire must pay all levies, rates, and other charges, including utility charges payable in respect of the Land or for the services provided to the Land that relate to the Concessionaire's use of the Land or the carrying on of the Concession Activity.

10.2 The Minister is not liable for any cost incurred in reestablishing the supply of any utilities to the Land in the event it becomes unavailable for any reason.

10.3 Where the Minister pays any such levies, rates, or other charges, the Concessionaire must on receipt of an invoice from the Minister pay such sum to the Minister within 14 days of receiving the invoice. If payment is not made within the 14 days, then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at a penalty interest rate of 15%.

11. Costs

11.1 The Concessionaire must pay the Minister's legal costs and expenses of and incidental to preparing and signing this Concession or any extension or variation of it, other than those costs already recovered by the Minister under the Fast-track Approvals Act 2024.

Commented [WP8]: We assume that this clause should be located here. DOC has included this wording in Schedule 3, and made minor changes in Schedule 2. That may have been a mistake as DOC included this wording here in Schedule 2 for the short-term concession and the easement.

Concession Number: [to add]

11.2 The Concessionaire must pay to the Minister all costs associated with applications for approvals under this Concession determined at the standard rates then applying in the Department of Conservation for cost recovery.

11.3 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Minister) arising out of and associated with steps taken by the Minister to enforce or attempt to enforce the Minister's rights and powers under this Concession including the right to recover outstanding money owed to the Minister.

5-12. When can the Concession be assigned?

~~5-4~~12.1 The Concessionaire must not transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the assignee) other than the Concessionaire) without the prior written consent of the Minister.

~~5-2~~12.2 The Minister may in the Minister's discretion grant or decline any application for consent under clause 12.1.

~~5-3~~12.3 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Minister, in the Minister's discretion, decides otherwise.

~~5-4~~12.4 If the Minister gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.

~~5-5~~12.5 The Concessionaire must pay the costs reasonably incurred by the Minister incidental to any application for consent, whether or not such consent is granted.

~~5-6~~12.6 If the Concessionaire is not a publicly listed company then any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Minister.

~~5-7~~12.7 To avoid doubt, Waitaha Hydro Limited is named as a Concessionaire under this Concession and this clause Error! Reference source not found. does not apply to the role of Waitaha Hydro Limited as Concessionaire under this Concession.

6-13. What are the obligations to protect the environment?

~~6-4~~13.1 The Concessionaire must not cut down or damage any vegetation; or damage any natural feature or historic resource on the Land (unless authorised by this Concession); or light any fire on the Land without the prior consent of the Minister.

13.2 The Concessionaire must at its cost keep the Land in a clean and tidy condition and free of weeds and all organisms specified as pests in a relevant pest management strategy.

13.3 The Concessionaire must not store hazardous materials on the Land nor store other materials on the Land where they may obstruct the public or create a nuisance.

Commented [WP9]: Reasons for disagreement:

- Westpower considers its drafting in clause 12.7 is required to reflect that Waitaha Hydro Limited is named as a concessionaire.
- DOC considers there should be no condition allowing assignment because s 17ZE of the Conservation Act 1987 requires the consent of the Minister to be given before any transfer or assignment of a concession.
- Westpower considers that approach to be problematic as there is an additional, lengthy and complex statutory process that needs to be worked through to seek and obtain Ministerial consent to Waitaha Hydro Limited being able to operate under the concession (see in particular s17Z(3) of the Conservation Act), whereas that could just be provided for now.

Commented [WP10]: Reasons for disagreement:

- Westpower considers the matters added by DOC are already provided for in Schedule 3 of the concession (and associated management plans).
- DOC considers the clauses are necessary as there are no conditions in Schedule 3 to cover this desired outcome. Conditions related to Management Plans are relevant to how outcomes are achieved rather than the outcome.

Concession Number: [to add]

~~6.2~~ 13.4 If directed by the Minister, the Concessionaire must take all steps necessary to control, or, at the Minister's option, contribute to the cost of controlling any pest, insect or rodent infestation occurring in or emanating from the Land or any structure or facility on the Land, and if directed by the Minister, engage a pest exterminator approved by the Minister.

~~6.9~~ 13.5 The Concessionaire must make adequate provision for suitable sanitary facilities for the Land if directed by the Minister and for the disposal of all refuse material and is to comply with the reasonable directions of the Minister in regard to these matters.

~~6.4~~ 13.6 The Concessionaire must not bury:

- (a) any toilet waste within 50 metres of a water source on the Land; or
- (b) any animal or fish or any part thereof within 50 metres of any water body, water source or public road or track.

14. What about Environmental Monitoring?

14.1 The Concessionaire must, during the Term, if the Minister so directs, design in consultation with the Minister and undertake a programme to monitor and report on the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity.

14.2 If the Minister does not issue a direction under clause 14.1 the Concessionaire must, during the Term, pay to the Minister the annual Environmental Monitoring Contribution specified in Item 7 of Schedule 1 to enable the Minister to design and undertake a programme to monitor the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity.

7-15. What about structures, Building Act, and restoration?

New structures and land alterations

~~7.4~~ 15.1 The Concessionaire must not erect, alter, or bring onto the Land any structure, or alter the land in any way that is not specifically authorised by this Concession, without the prior approval of the Minister, and may be given subject to any reasonable terms and conditions, as the Minister considers appropriate in the Minister's sole discretion under this clause.

15.2 To avoid doubt, the Concessionaire may carry out maintenance work, alterations, improvements and replacements, to any structures already on the Land, as constructed under the short-term (construction) lease/licence concession, without the Minister's consent.

15.3 Unless already permitted under clauses 15.1, 15.2, the Concessionaire must, on request of the Minister, submit written engineering or building plans and details to the Minister for approval before:

- (a) Erecting a new structure on the Land.
- (b) Altering the Land in any way.

15.4 The Concessionaire must, on request of the Minister, submit written engineering or building plans and details to the Minister for approval before:

- (a) Erecting a new structure on the Land.
- (b) Altering the Land in any way.

Commented [WP11]: Reasons for disagreement:

- Westpower considers the clause is unnecessary as the special conditions in Schedule 3, including ecological management plans, address all environmental monitoring aspects.
- DOC considers it is necessary to ensure that there is any action taken if the activity gives rise to unexpected events, issues, or effects, having an obligation on Westpower to undertake monitoring requested by the Minister is sensible. Equally, having an ability to cost recover it is sensible if not directed by the Minister to do it themselves.

Commented [WP12]: Reasons for disagreement:

- Westpower considers clause 15.2 is required to avoid doubt.
- DOC considers that only the activity specified in the Concession is approved by the Concession so that the concession is a stand-alone document. The nature of the Concession clearly authorises the concession activity, so Westpower's wording is superfluous.

Removal of structures or other improvements

~~7-2~~ 15.5 On expiry or termination of this Concession either as to all or part of the Land, the Concessionaire may with the Minister's written consent, or must if the Minister gives at least 12 months written notice, remove any specified structures and other improvements on the Land. **To avoid doubt, the Concessionaire is not required to remove the:**

- (a) tunnels;
- (b) weir;
- (c) any power station structures below ground or any other structures below ground;
- (d) the drift deck at Macgregor Creek;
- (e) the river training at Alpha Creek; and
- (f) Granite Creek bridge piers.

~~7-9~~ 15.6 Removal under this clause must occur within a reasonable time, as specified by the Minister.

15.7 The Concessionaire is to make good any damage done as part of the removal and must leave the Land and any other public conservation land affected by the removal in the same condition as it was at the beginning of the Term.

15.8 ~~The Concessionaire is not entitled to compensation from the Minister for any structures or other improvements placed or carried out by the Concessionaire, and left on the Land at the end of the Term.~~

~~7-4~~ 15.9 ~~The Concessionaire is not entitled to compensation from the Minister for any structures or other improvements placed or carried out by the Concessionaire, on the Land at the end of the Term.~~

Commented [WP13]: Reason for disagreement: Westpower considers its wording to be clearer.

Building Act compliance

~~7-5~~ 15.10 Where a building warrant of fitness under the Building Act 2004 is required, the Concessionaire must display a copy of the relevant certificate showing the location of the compliance schedule in each building on the Land, in a place to which users of the building have ready access.

~~7-6~~ 15.11 The Concessionaire must keep and maintain all building systems and any structures on the Land in accordance with the requirements of any compliance schedule.

~~7-7~~ 15.12 The Concessionaire must retain and make available to any territorial authority and any other person with a right to inspect any structures on the Land under the Building Act 2004 a copy of the compliance schedule, together with the written reports relating to compliance with the compliance schedule over the previous two-year period.

Rehabilitation and closure plan

~~7-8~~ 15.13 The Concessionaire must prepare, implement, and comply with a Rehabilitation and Closure Plan approved by the Minister.

~~7-9~~ 15.14 The Rehabilitation and Closure Plan must:

- (a) Be prepared by suitably qualified persons and in consultation with the Minister.
- (b) Integrate with any other plans required under this Concession.
- (c) Describe how the Concessionaire will manage rehabilitation on the Land during the Term.

Concession Number: [to add]

(d) Be approved by the Minister prior to the commencement of the Concession.

~~7-10~~ 15.15 As a minimum, the Rehabilitation and Closure Plan must address the following:

- (a) Areas of the Land requiring rehabilitation (being all disturbed areas, accessways and overburden/vegetation storage areas).
- (b) Rehabilitation objectives, timeframes, and methods.
- (c) Contouring, maximum slope angles, and stability of all final engineered landforms.
- (d) Biosecurity responses (e.g. pest plant and animal control).
- (e) Protection of slope stability, water, and soils from the effects of erosion.
- (f) Water quality limits for discharges from the Land following removal of active water treatment.
- (g) Removal of buildings, structures, tracks, and equipment from the Land.

~~7-11~~ 15.16 The Minister may request a review of the Rehabilitation and Closure Plan and may require the Concessionaire to amend the plan at any time. The Concessionaire will implement and comply with any amendments to the plan approved by the Minister. The Minister may, at the cost of the Concessionaire, seek advice from an appropriate expert as part of any such approval.

Property of the Minister

~~7-12~~ 15.17 The Concessionaire must take reasonable and proper care not to damage any property of the Minister and must promptly repair any such damage.

~~8-16~~ **What about advertising?**

~~16.1~~ The Concessionaire must not erect or display any advertising on the Land without the prior approval of the Minister. At the expiry or termination of this Concession the Concessionaire must remove all signs and advertising material and make good any damage caused by the removal.

~~16.2~~ The Concessionaire must not erect or display any signs or advertising on the Land without the prior approval of the Minister. At the expiry or termination of this Concession the Concessionaire must remove all signs and advertising material and make good any damage caused by the removal.

~~8-1~~ 16.3 If directed by the Minister, the Concessionaire must ensure that all its advertising and promotional material specifies that it is carrying out the Concession Activity under a Concession granted by the Minister on land administered by the Department.

~~8-2~~ 16.4 If directed by the Minister, the Concessionaire must include information in its advertising and promotional material which assists its clients to understand the features and values of the natural and historic resources of the Land and the surrounding area.

~~8-3~~ 16.5 The Concessionaire is encouraged to obtain information from and have regard to the views of tangata whenua.

~~9-17~~ **What are the liabilities and who insures?**

Liabilities

~~9-1~~ 17.1 The Concessionaire agrees to use the Land at the Concessionaire's own risk and releases to the full extent permitted by law the Minister and the Minister's employees and agents from all claims and

Commented [WP14]: Reasons for disagreement:

- Westpower considers its wording is more appropriate as there will be health and safety and other signs required.
- DOC consider the signs Westpower want to install would be authorised by the Concession and have the required prior consent.

Note that unlike the short-term concession, DOC has not requested the addition of "Except as authorised by this Concession".

Concession Number: [to add]

demands of any kind and from all liability that may arise in respect of any accident, damage, or injury occurring to any person or property on or about the Land.

~~17.2~~ The Concessionaire indemnifies the Minister against all claims, actions, losses, and expenses of any nature that the Minister may suffer or incur or for which the Minister may become liable arising from any breach by the Concessionaire of this Concession. Where the Concessionaire is found to be liable in accordance with this clause, the total extent of the Concessionaire's liability in respect of each event of damage, is limited to \$1,000,000.

Commented [WP15]: Reasons for disagreement:
•Westpower considers it should only be liable for breaches (not the 'performance') of the concession.
•DOC considers Westpower's changes change the meaning of the clause.

~~17.3~~ The Concessionaire indemnifies the Minister against all claims, actions, losses, and expenses of any nature that the Minister may suffer or incur or for which the Minister may become liable arising from the Concessionaire's performance of the Concession Activity.

~~9.2~~ ~~17.4~~ This indemnity continues after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination. The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land).

~~17.5~~ The Minister is not liable and does not accept any responsibility for damage to or interference with the Land, the Concession Activity, or to any structures, equipment, or facilities on the Easement Land or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where such damage or interference is caused by any wilful or negligent act or omission of the Minister, the Minister's employees, agents, or contractors.

Commented [WP16]: Reason for disagreement:
•Westpower consider negligence should be included.
•DOC's view is that the Crown does not accept liability in negligence.

~~17.6~~ The Minister is not liable and does not accept any responsibility for damage to or interference with the Land, the Concession Activity, or to any structures, equipment, or facilities on the Easement Land or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where such damage or interference is caused by any wilful act or omission of the Minister, the Minister's employees, agents, or contractors.

~~17.7~~ Where the Minister is found to be liable in accordance with this clause, the total extent of the Minister's liability in respect of each event of damage, is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment, and facilities.

Commented [WP17]: Reasons for disagreement:
•Westpower considers liability should be capped per event.
•DOC considers that although it makes sense to cap liability, the cap proposed by Westpower appears overly high and DOC would prefer a lower liability amount.

~~17.8~~ Where the Minister is found to be liable in accordance with this clause, the total extent of the Minister's liability, is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment, and facilities.

~~9.9~~ ~~17.9~~ Despite anything else in this clause, neither the Minister nor the Concessionaire are liable for any indirect or consequential damage or loss howsoever caused.

Insurance

~~9.4~~ ~~17.10~~ Without prejudice to or in any way limiting its liability under this Concession, the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance with a substantial and reputable insurer in the types and amounts determined in accordance with this clause.

~~9.5~~ ~~17.11~~ The Minister will set the initial types and amounts of insurance required following an independent assessment using a methodology set by the Minister.

~~9.6~~17.12 After every three year period of the Term the Minister may, on giving 10 working days' notice to the Concessionaire, alter the types and amounts of insurance required, following an independent assessment using a methodology set by the Minister. On receiving such notice, the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.

~~9.7~~17.13 The Concessionaire must provide to the Minister within 5 working days of the Minister so requesting:

- (a) Details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term.
- (b) A copy of the current certificate of such policies.

~~10.18~~**18. What about Health and Safety?**

Health and safety plan

~~10.1~~18.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety at Work Act 2015 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession.

~~10.2~~18.2 The Concessionaire must create a comprehensive and suitable health and safety management plan (**Safety Plan**) to address all aspects of the Concession Activity and must provide a copy of it to the Minister prior to commencing the Concession Activity.

~~10.3~~18.3 Prior to any Concession Activity taking place, the Concessionaire must:

- (a) Have its Safety Plan audited by a suitably qualified person approved by the Minister and forward to the Minister a certificate from the auditor certifying that the plan is suitable for the Concession Activity.
- (b) Obtain from the auditor details as to when the Safety Plan is to be re-audited. The Concessionaire must comply with any such requirement to re-audit and forward a copy of the re-audit certificate to the Minister within 5 working days of the certificate being issued.

~~10.4~~18.4 If the Concessionaire amends or replaces the audited Safety Plan then, before the amendment or replacement Safety Plan takes effect, the Concessionaire must comply with the audit requirements of this clause.

~~10.5~~18.5 The Minister may request the Concessionaire to provide the Minister with a copy of the current Safety Plan at any time, in which case the Concessionaire must provide the copy within 10 working days of receiving the request.

~~10.6~~18.6 The Minister's receipt of a Safety Plan does not in any way limit the obligations of the Concessionaire related to health and safety or otherwise and is not to be construed as implying any responsibility or liability on the part of the Minister.

~~10.7~~18.7 The Concessionaire must comply with the Safety Plan and with any safety directions of the Minister.

Health and safety obligations

~~10.8~~ 18.8 The Concessionaire must:

- (a) Notify the Minister of any natural events or activities on the Land or the surrounding area that may endanger the public or the environment.
- (b) Take all reasonably practicable steps to protect the safety of all persons present on the Land affected by the Concession Activity.
- (c) Where necessary, erect signposts warning the public of any dangers they may encounter because of the Concessionaire's operations.
- (d) Take all reasonably practicable steps to eliminate any dangers to the public arising from the Concession Activity and clearly and permanently mark any that remain and of which the Concessionaire is aware.
- (e) Report to the Minister all accidents involving a notifiable event reportable to WorkSafe in accordance with the Safety Plan and applicable legislation, within 24 hours of their occurrence, and must forward an investigation report to the Minister within 3 days of the event occurring.
- (f) Provide to the Minister a complete copy of the internal investigation report resulting from notifiable health or safety events within 60 days of the event's occurrence.
- (g) Provide to the Minister, at the Minister's request, any weekly or monthly reports generated by the Concessionaire and derived from the Concessionaire's accident reporting database.
- (h) Ensure that all contracts between the Concessionaire and any contractors contain, at a minimum, the same health and safety requirements as this Concession.
- (i) Not bring onto the Land or any land administered by the Department of Conservation any dangerous or hazardous material or equipment that is not required for purposes of the Concession Activity; and if such material or equipment is required and approved as part of the Concession Activity, the Concessionaire must take all practicable steps to ensure that the material or equipment is treated with due and proper care.

~~10.9~~ 18.9 While the Licence area is to remain accessible to the public, the Concessionaire may temporarily restrict access to certain areas if that is necessary for health and safety reasons. In that event the Concessionaire will notify the DOC's area office in advance of that temporary restriction.

~~10.10~~ 18.10 The Minister must consider the Concessionaire's reasonable requests in relation to health and safety on the Land.

~~11.19~~ **What are the compliance obligations of the Concessionaire?**

~~11.1~~ 19.1 The Concessionaire must comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part IIA of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Land, together with any amendment or review of any policy,

Commented [WP18]: Reasons for disagreement:
• Westpower considers the conditions included by DOC are irrelevant, there should not be any Minister facilities on the land. Further, DOC's proposed wording (clauses 19.3-19.6) is far too uncertain (particularly given how out of date those documents are).
• DOC considers the conditions should remain - both sets of conditions provide helpful clarification of liabilities.

Concession Number: [to add]

strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and

- (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, Wildlife Act 1953 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
- (c) with all notices and requisitions of any competent authority affecting or relating to the Land or affecting or relating to the conduct of the Concession Activity; and
- (d) with all Department signs and notices placed on or affecting the Land; and
- (e) with all reasonable notices and directions of the Minister concerning the Concession Activity on the Land.

~~11.2~~19.2 The Concessionaire must comply with this Concession.

~~19.3~~ 19.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause **Error! Reference source not found.** is deemed to be a breach of this Concession.

~~19.4~~ 19.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.

~~19.5~~ 19.5 If the Legislation requires the Minister to spend money on the Minister's own structures, facilities or land alterations on the Land, the Minister may charge, in addition to the Concession Fee, an annual sum equal to 15% per annum of the amount spent by the Minister.

~~11.3~~19.6 If the Legislation requires the Minister to spend money on structures, facilities or land alterations on the Land which the Minister considers unreasonable, the Minister may determine this Lease and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause **Error! Reference source not found.**

~~12.20~~ 12.20. What are the Minister's rights to remedy defaults?

~~12.1~~20.1 The Minister may at any time elect to remedy any default by the Concessionaire under this Concession.

~~12.2~~20.2 Before electing to remedy any default in accordance with this clause, the Minister must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.

~~12.3~~20.3 The Concessionaire must pay to the Minister immediately on demand all reasonable costs and expenses incurred by the Minister, including legal costs and expenses as between solicitor and client, in remedying such default. The Concessionaire is to pay interest on such costs and expenses if payment is not made within 14 days of the Minister's demand, from the date of the demand until the date of payment, at a penalty interest rate of 15%.

~~13.21~~ 13.21. Compensation for unauthorised disturbance

~~13.1~~21.1 The Minister may require the Concessionaire to pay additional compensation for any

breaches of this Concession that cause the Minister loss or damage, in respect of proximate land administered by the Department of Conservation. Such additional compensation will reflect the cost incurred by the Minister in respect of such loss or damage and must be paid by the Concessionaire immediately on demand.

14-22. When can the Concession be suspended?

22.1 If in the Minister's reasonable opinion:

(a) there is an immediate, temporary and significant risk to public safety arising from natural events such as earthquake, land slip, volcanic activity, or flood; and

(b) the temporary suspension of all or part of the Concession Activity is necessary to address that risk.

then the Minister may temporarily suspend such parts of the Concession Activity, for no longer than is strictly necessary to remove or mitigate the risk to public safety provided the Minister has first:

(a) provided the Concessionaire with not less than 10 Working Days' notice; and

(b) taken all other practical steps and explored all other practical options to mitigate such risk (including suspending public access to any area, including to other concession holders).

22.2 During any period of temporary suspension, the Concession Fee payable by the Concessionaire is to abate in fair proportion to the reduction of the Concession Activity for the Concessionaire.

22.3 The Minister is not liable to the Concessionaire for any loss sustained by the Concessionaire because of the reasonable and lawful suspension of the Concession under this clause, including loss of profits.

22.4 The Concessionaire may refer any temporary suspension to the dispute resolution process set out in clause Error! Reference source not found..

22.5 If, in the Minister's opinion, there is a temporary risk to public safety arising from natural events such as earthquake, land slip, volcanic activity, flood, or in any other way, then the Minister may suspend this Concession.

22.6 Where the Concessionaire has breached any terms of this Concession, the Minister may suspend the Concession for such period as the Minister determines.

22.7 The Minister may suspend this Concession while the Minister investigates any of the circumstances contemplated in this clause. Investigation referred to in this clause includes the laying of charges and awaiting the decision of the Court.

22.8 During any period of temporary suspension, the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use of the Land by the Concessionaire.

22.9 The Minister is not liable to the Concessionaire for any loss sustained by the Concessionaire because of the suspension of the Concession under this clause, including loss of profits.

15-23. When can the Concession be terminated?

23.1 The Minister may, as a last resort, terminate this Concession (in whole or in part) by notice in writing to the Concessionaire (a Termination Notice), stating the date of termination of the Concession (Termination Date), in any of the following circumstances:

Commented [WP19]: Reasons for disagreement:
•Westpower considers that DOC's wording creates too much uncertainty in terms of the ability for the Minister to suspend the operation of an infrastructure project of this scale and cost. This is a significant infrastructure project and DOC's ability to suspend it needs to be appropriately constrained.
•DOC considers its wording is more appropriate.

Commented [WP20]: Reasons for disagreement:
•Westpower considers that terminating a concession for a ~\$200m infrastructure project should be a very last resort. Further, DOC's additional wording at (c)(iii) creates too much uncertainty for the exercise of the power.
•DOC considers the addition of 'as a last resort' to be too restrictive. DOC also considers it should be made clear at (c)(iii) that a breach will be remedied within a reasonable period of time.

DOC's additional wording at (c)(iii) was not made in track in Appendix C4 to the s 51 report.

Concession Number: [to add]

(a) **Non-payment:** if the Concession Fee or any other money payable to the Minister under this Concession is not paid within 60 Working Days of the Concessionaire receiving from the Minister a notice in writing specifying the amount due, the due date for payment and noting the Minister's right to serve a Termination Notice if non-payment is not remedied.

Where clause 23.1(a) applies, the Termination Date shall be no earlier than 30 Working Days after the date of the expiry of the 60 Working Day period referred to above.

(b) **Insolvency:** if there is an event of insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Concessionaire (an **Insolvency Event**), and the Concessionaire has not assigned or novated its interest under this Concession to a solvent third party within a reasonable period of the Insolvency Event occurring (such period being no less than twelve months).

Where clause 23.1(b) applies, the Termination Date shall be no earlier than 60 Working Days after the date of the Termination Notice.

(c) **Material breach:** If:

(i) the Minister issues a notice in writing to the Concessionaire setting out, in reasonable detail, an alleged material default or breach by the Concessionaire in the performance or observance of any of a material provision of this Concession which has led to a significant impact on the Land (**Default Notice**); and

(ii) the Concessionaire has not remedied such alleged default or breach within six months of the date of the Default Notice

provided that the Minister may not give a Termination Notice where:

(iii) remedying such default will take longer than six months, and the Concessionaire has begun (and is thereafter diligently carrying out) the necessary steps to remedy the breach or default; and/or

(iv) the Concessionaire disputes the alleged default or breach (including a dispute in relation to the timeframe required to remedy such breach or default), unless and until the parties have completed the dispute resolution process in clause **Error! Reference source not found.** of this Concession, and it has been agreed and/or determined that the Concessionaire is in breach. In this event, the date of such agreement and/or determination shall be deemed to be the date of the Default Notice under this clause.

Where this clause 23.1(c) applies, the Termination Date shall be no earlier than 60 Working Days after the date of the Termination Notice.

23.2 The Minister may terminate this Concession (in whole or in part) by notice in writing to the Concessionaire (a **Termination Notice**), stating the date of termination of the Concession (**Termination Date**), in any of the following circumstances:

(a) **Non-payment:** if the Concession Fee or any other money payable to the Minister under this Concession is not paid within 60 Working Days of the Concessionaire receiving from the Minister a notice in writing specifying the amount due, the due date for payment and noting the Minister's right to serve a Termination Notice if non-payment is not remedied.

Concession Number: [to add]

Where clause 23.123.1(a) applies, the Termination Date shall be no earlier than 30 Working Days after the date of the expiry of the 60 Working Day period referred to above:

(b) **insolvency:** if there is an event of insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Concessionaire (an **Insolvency Event**), and the Concessionaire has not assigned or novated its interest under this Concession to a solvent third party within a reasonable period of the Insolvency Event occurring (such period being no less than twelve months).

Where clause 23.123.1(b) applies, the Termination Date shall be no earlier than 60 Working Days after the date of the Termination Notice.

(c) **Material breach:** If:

(i) the Minister issues a notice in writing to the Concessionaire setting out, in reasonable detail, an alleged material default or breach by the Concessionaire in the performance or observance of any of a material provision of this Concession which has led to a significant impact on the Land (**Default Notice**); and

(ii) the Concessionaire has not remedied such alleged default or breach within six months of the date of the Default Notice

provided that the Minister may not give a Termination Notice where:

(iii) remedying such default will take longer than six months, and the Concessionaire has begun (and is thereafter diligently carrying out) the necessary steps to remedy the breach or default and it has been made clear the matter will be remedied within a reasonable period of time from the alleged default or breach; and/or

(iv) the Concessionaire disputes the alleged default or breach (including a dispute in relation to the timeframe required to remedy such breach or default), unless and until the parties have completed the dispute resolution process in clause **Error! Reference source not found.** of this Concession, and it has been agreed and/or determined that the Concessionaire is in breach. In this event, the date of such agreement and/or determination shall be deemed to be the date of the Default Notice under this clause.

Where this clause 23.123.1(c) applies, the Termination Date shall be no earlier than 60 Working Days after the date of the Termination Notice.

~~15.1~~23.3 The Minister may exercise the Minister's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to act by the Minister or any indulgence granted by the Minister for any matter or default.

~~15.2~~23.4 Termination of the Concession does not prejudice or affect the accrued rights or claims and liabilities of the parties.

~~15.3~~23.5 The Concessionaire may refer any proposed termination under this clause to the dispute resolution process set out in clause 28.

16-24. What happens on termination or expiry of the Concession?

~~16-1~~24.1 If the Minister permits the Concessionaire to remain in occupation of the Land after the expiry or earlier termination of the Term, (which permission may be oral or in writing), the occupation is to be on the basis:

- (a) of a monthly tenancy only, terminable by 1 month's notice by either party; and
- (b) at the Concession Fee then payable; and
- (c) otherwise on the same terms and conditions, as they would apply to a monthly tenancy, as expressed or implied in this Concession.

~~16-2~~24.2 On expiry or termination of this Concession, either as to all or part of the Land, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Land.

~~16-3~~24.3 The Concessionaire may, with the Minister's written consent, remove any specified structures and other improvements on the Land. Removal under this clause must occur within a reasonable time specified by the Minister and the Concessionaire is to make good any damage and leave the Land and other public conservation land affected by the removal in a clean and tidy condition.

17-25. Monitoring

~~17-1~~25.1 The Minister, its employees, and contractors may enter the Land to inspect the Land and facilities on or within the Land and to monitor compliance with this Concession. Monitoring may include the taking of samples and photographs. The Minister may only access the Lease Land

- (a) to do any work that is necessary for the exercise of the Minister's functions and powers in relation to the Land;
- (b) after providing the Concessionaire with at least 5 working days' prior written notice, and while being accompanied by a representative of the Concessionaire;
- (c) as far as practicable, in a manner likely to cause the least possible interference with the Concessionaire's operations;
- (d) in accordance with the Concessionaire's reasonable requirements and directions (including pursuant to the Health and Safety at Work Act 2015, and any Concessionaire operational requirements);
- (e) in accordance with the Concessionaire's health and safety policies and procedures as advised to ~~the~~ Minister from time to time; and
- (f) in compliance with all relevant laws and regulations.

18-26. When is the Minister's consent required?

~~18-1~~26.1 Where the Minister's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Minister may have given approval or consent for a like purpose on a prior occasion. Any

such consent or approval may be made on such conditions as the Minister considers appropriate **and is subject to clause 1.3.**

19:27. What about other concessions?

~~19:127.1~~ Nothing expressed or implied in this Concession is to be construed as preventing the Minister from granting other concessions, whether similar or not, to other persons provided that the Minister must not grant another concession:

- (a) over the Lease Land; or
- (b) over the Licence Land that would derogate in any way from the Concessionaire's ability to carry out the Concession Activity on the Licence Land.

20:28. How will disputes be resolved?

~~20:128.1~~ If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.

~~20:228.2~~ If the dispute cannot be resolved by agreement within 30 working days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation, where relevant, or to arbitration, which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.

~~20:328.3~~ If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

~~20:428.4~~ The arbitrator must include in the arbitration award reasons for the determination.

~~20:528.5~~ Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

21:29. What about prosecution for offences?

~~21:129.1~~ Where any breach of this Concession by the Concessionaire also constitutes an offence under the Resource Management Act 1991, the Conservation Act 1987, or any of the Acts listed in the First Schedule to that Act:

- (a) no waiver or failure to act by the Minister under this Concession is to preclude the Minister from prosecuting the Concessionaire; and
- (b) no failure by the Minister to prosecute the Concessionaire is to preclude the Minister from exercising the Minister's remedies under this Concession; and
- (c) any action of the Minister in prosecuting the Concessionaire is not to preclude the Minister from exercising the Minister's remedies under this Concession.

~~22-~~**30. How are notices sent and when are they received?**

~~22-~~**30.1** Any notice to be given under this Concession is to be in writing and made by personal delivery, by pre paid post or email to the receiving party at the address or email address specified in Item 17 of Schedule 1. Any such notice is to be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of post, on the 3rd working day after posting;
- (c) in the case of email,
 - (i) if sent between the hours of 9am and 5pm on a working day, at the time of transmission; or
 - (ii) if subclause (i) does not apply, at 9am on the working day most immediately after the time of sending.

Provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

~~22-~~**30.2** If any party's details specified in Item 17 of Schedule 1 change then the party whose details change must within 5 working days of such change provide the other party with the changed details.

~~23-~~**31. What is the scope of the Concession?**

~~23-~~**31.1** Except as provided by legislation, this Concession and any written variation agreed by the parties contain the entire understanding between the parties with reference to the subject matter of this Concession and there is no other agreement, representation or warranty whether it is expressed or implied which in any way extends, defines or otherwise relates to the provisions of this Concession. The parties may refer to the decision of the Expert Panel to assist in the interpretation of this Concession Document.

~~24-~~**32. Can provisions be severed?**

~~24-~~**32.1** Any illegality, or invalidity or unenforceability of any provision in this Concession is not to affect the legality, validity or enforceability of any other provisions.

~~25-~~**33. What about the payment of costs?**

~~25-~~**33.1** The Concessionaire must pay the Minister's legal costs and expenses of and incidental to preparing and signing this Concession or any extension or variation of it, other than those costs already recovered by the Minister under the Fast-track Approvals Act 2024.

~~25-~~**33.2** The Concessionaire must pay to the Minister all costs associated with applications for approvals under this Concession determined at the standard rates then applying in the Department of Conservation for cost recovery.

~~25-~~**33.3** The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Minister) arising out of and associated with steps taken by the Minister to enforce or attempt to enforce the Minister's rights and powers under this Concession including the right to recover outstanding money owed to the

Commented [WP21]: Note to panel: this clause is duplicative (highlighted text excluded) if s 78 condition wording regarding the concession fee is accepted.

Concession Number: [to add]

Minister. The Concessionaire may similarly recover all costs and fees in relation to the enforcement of the Concessionaire's rights under this Concession.

~~26-34~~ What is the relationship of the parties?

34.1 Nothing expressed or implied in this Concession is to be construed as:

- (a) constituting the parties as partners or joint venturers;
- (b) conferring on the Concessionaire any right of exclusive occupation or use of the Licence Land;
or
- (c) granting any exclusive estate or interest in the Licence Land to the Concessionaire.

34.2 Nothing expressed or implied in this Concession is to be construed as:

- (a) constituting the parties as partners or joint venturers;
- (b) conferring on the Concessionaire any right of exclusive occupation or use of the Licence Land;
or
- (c) granting any exclusive estate or interest in the Licence Land to the Concessionaire; or
- (d) affecting the rights of the Minister and the public to have access across the Licence Land.

27-35 Bond

35.1 Before commencing the Concession Activity, the Concessionaire must, as security for the performance of the Concessionaire's obligations under the Concession, provide a bond, in the form of (at the Concessionaire's option):

- (a) a cash bond [for the amount set out in Schedule 1]; or
- (b) a performance bond under which a trading bank, insurance company or bond guarantor undertakes unconditionally to pay the Minister a sum [up to the amount specified in Schedule 1].

35.2 Notwithstanding any variation (including as to term), expiry, surrender or termination of the Concession, the bond is to remain in full force and effect until returned or released in accordance with clause 35.4.

35.3 If the Concessionaire breaches or fails to carry out any condition of the Concession which causes the Minister loss or damage, and fails to begin (and thereafter diligently carry out) the necessary steps to remedy such breach within a reasonable time of receiving a notice of the breach (being no less than 8 weeks, the Minister may (as is relevant):

- (a) deduct from the cash bond an amount to satisfy the outstanding obligation and to make good any loss or damage sustained by the Minister as a result of the default (the relevant amount); or
- (b) call upon the performance bond for the relevant amount.

and must apply the relevant amount in satisfaction of the outstanding obligation of the Concessionaire and toward making good any loss or damage sustained by the Minister as a result of the default (as is relevant). The Minister must provide the Concessionaire with details of the Minister's expenditure incurred in remedying the default (including, where relevant, copies of invoices and receipts for the amounts expended).

Commented [WP22]: Reasons for disagreement:
•Westpower consider DOC's addition of (d) is unworkable as the rights of the public may be affected.
•DOC considers it is necessary to keep (d).

Commented [WP23]: Reasons for disagreement:
•Westpower considers its wording is more appropriate.
•DOC considers that if alternative wording can be agreed, the s 78 condition may not be required.

Concession Number: [to add]

35.4 The Minister must promptly on the expiry of this Concession (or any period of holding over):

(a) return the cash bond; or

(b) notify the provider of the performance bond to release the performance bond,

(as is relevant). If the Minister has converted the performance bond to cash, the Minister must, promptly following the later of 35.4(a) or (b) to occur, return to the Concessionaire the balance of any cash proceeds to which the Minister is not entitled.

35.5 If it is subsequently determined that the Minister has improperly accessed the cash bond or called on the performance bond, in circumstances other than those referred to in clause 35.3, the Minister must pay or repay to the Concessionaire the amount of such excess or the full amount drawn in contravention of clause 35.3 together with interest on such amount from the date of the improper access or call on the bond until the date of repayment at the Penalty Interest Rate specified in Item 12 of Schedule 1.

35.6 Before commencing the Concession Activity, the Concessionaire must provide either in cash; or as a surety from a trading bank, insurance company or bond guarantor, a bond set in accordance with this clause.

35.7 If a surety is the Concessionaire's preferred option, the surety must execute in favour of, and on terms acceptable to, the Minister, a bond for performance by the Concessionaire to the obligations under the Concession.

35.8 The Minister will set the bond or surety amount following an independent risk assessment using a methodology set by the Minister.

35.9 The bond or surety amount may be reviewed at the discretion of the Minister at any time. Such review is to follow an independent risk assessment using a methodology set by the Minister.

35.10 The cost of any independent risk assessment or review must be paid by the Concessionaire within 10 working days of being given a notice by the Minister.

35.11 Notwithstanding the variation (including as to term), expiry, surrender, or termination of the Concession, the bond is to remain in full force and effect until such time as all the Concessionaire's obligations under the Concession have been complied with to the satisfaction of the Minister.

35.12 If the Concessionaire breaches or fails to carry out any condition of the Concession, or in carrying out the Concession Activity there arise adverse effects not authorised or reasonably foreseen in the Concession, the Minister may call on the bond under this Concession or any portion of it to ensure compliance with the conditions or to remedy or mitigate those adverse effects.

36. What about Co-Siting?

36.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Land by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.

36.2 The Concessionaire must not allow Co-Siting on the Land without the prior written consent of the Minister.

36.3 The Minister's consent must not be unreasonably withheld but is at the Minister's sole discretion and subject to such reasonable terms and conditions as the Minister thinks fit including a requirement that

Commented [WP24]: Reasons for disagreement:
•Westpower considers that co-siting is not appropriate in a concession of this scale, but can be requested on a case-by-case basis.
•DOC considers the conditions are required to accommodate any potential eventualities during the life of the concession, noting that no co-siting activities are expected or inferred through this condition.

Concession Number: [to add]

the Co-Sitee be liable for direct payment to the Minister of a concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Land.

36.4 In addition, the Minister must withhold consent if:

(a) the Co-Siting would result in a substantial change to the Concession Activity on the Land; or

(b) the Minister considers the change to be detrimental to the environment of the Land.

36.5 Subject to clause 36.4 the Concessionaire must, if required by the Minister, allow Co-Siting on the Land.

36.6 Where the Concessionaire maintains that Co-Siting by a third party on the Land would:

(a) detrimentally interfere physically or technically with the use by the Concessionaire of the Land;
or

(b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or

(c) obstruct or impair the Concessionaire's ability effectively to operate from the Land; or

(d) interfere with or prevent future forecast works of the Concessionaire.

the Minister, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Minister confirming or rejecting the presence of the matters specified in this clause

36.6. The Minister must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 36.6.

36.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause **Error! Reference source not found.** of Schedule 2.

36.8 Where the Concessionaire is required under clause 36.5 to allow Co-Siting on the Land, the Concessionaire is, subject to clause 36.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Land and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Land. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Minister having regard to, but not limited to, the following matters:

(a) any written comments or submissions of the Concessionaire and third party;

(b) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;

(c) any other matters the Minister considers relevant.

36.9 If the Concessionaire does not accept the Minister's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause **Error! Reference source not found.** of Schedule 2.

36.10 For the avoidance of doubt, a Co-Sitee permitted on the Land must enter into a separate concession with the Minister in terms of which the Co-Sitee may be required to pay to the Minister a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Land. This separate

Concession Number: [to add]

concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Land.

36.11 The Minister must not authorise the third party to commence work on the Land until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.

~~28-~~37. What about registering the Concession?

~~28-~~37.1 The Minister is not required to do any act or thing to enable this Concession to be registered and the Concessionaire must not register a caveat in respect of the Concessionaire's interest under this Concession.

~~28-~~37.2 Nevertheless, if the Concessionaire wishes to register this Concession under the Land Transfer Act 1952, the Minister must take all such steps as are necessary to enable a certificate of title to issue in respect of the land against which this Concession may be registered subject to the Concessionaire being responsible for and bearing all costs of and incidental to any survey necessary to enable such issue of title and all costs incurred by the Minister in enabling such an issue of title and in having this Lease re-executed by the parties in a form suitable for registration.

~~29-~~38. Heritage

~~29-~~38.1 The Concessionaire must take reasonable care to comply with the Heritage New Zealand Pouhere Taonga Act 2014.

~~30-~~39. Supply of services

~~30-~~39.1 Nothing contained or implied in this Concession requires the Minister or the Concessionaire to supply services on or under the Land or entitles the Concessionaire to interfere with the services of any other user of the Land.

40. Variations

40.1 The Minister, after first consulting with the Concessionaire, may on each Concession Fee Review Date, delete, add, or vary any condition of this Concession to make the condition more effective in addressing potential liability of the Minister resulting from the Concession Activity. Nothing in this clause affects the Minister's rights to vary the Concession under section 17ZC of the Conservation Act 1987.

~~31-~~41. Which clauses survive termination?

~~31-~~41.1 Clauses 17 and 30 survive the termination of this Concession.

~~32-~~42. Are there any Special Conditions?

~~32-~~42.1 Special conditions are specified in Schedule 3.

~~33-~~43. The Law

~~33-~~43.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.

Commented [WP25]: Reasons for disagreement:

- Westpower does not agree that the Minister can make unilateral variations to the concession conditions and this condition introduces too much uncertainty.
- DOC consider it is a standard condition included to give effect to s 17ZC(3)(a) of the Conservation Act 1987.
- Westpower considers that this clause does not reflect and goes well beyond the power in s 17ZC(3)(a) of the Conservation Act 1987.

SCHEDULE 3: SPECIAL CONDITIONS FOR LONG-TERM CONCESSIONS

2. All operation and maintenance activities must be undertaken in general accordance with the Application and within the Concession Area maps provided in Schedule 4 of this Concession.
3. Where there is any inconsistency between the Application and:
 - (a) these conditions, these conditions will prevail; and
 - (b) the requirements of any Management Plan referred to in these conditions, the Management Plan will prevail.

Management Plans

4. The Concessionaire must undertake all operational and maintenance activities authorised by this Concession in accordance with the Relevant Management Plans, and any certified amendments to a Relevant Management Plan.
5. The Concessionaire must undertake all operational and maintenance activities authorised by this Concession in accordance with the Relevant Management Plans, and any approved amendments to a Relevant Management Plan.
6. The Concessionaire may seek amendment to any Relevant Management Plan at any time. The Concessionaire must supply a draft copy of any proposed amendment to the DOC local office and invite them to provide feedback. The Concessionaire must provide feedback from the DOC local office as to whether the Management Plan meets the purpose and requirements set out in the relevant conditions for that Management Plan. In the event the DOC local office's feedback confirms they do not consider the Management Plan meets its relevant purpose and requirements, the Concessionaire must also provide the Consent Authority with:
 - (a) The DOC local office's specific concerns about the Management Plan and/or the reasons why they consider the Management Plan does not meet its relevant purpose and requirements; and
 - (b) The Concessionaire's reasons why they have not actioned or addressed the DOC local office's concerns.
 - (c) The Concessionaire must meet all of DOC's actual and reasonable costs associated with reviewing and providing feedback on relevant management plans.
7. The Concessionaire may seek amendment to any Relevant Management Plan at any time. The Concessionaire must supply a draft copy of any proposed amendment to the DOC local office which must be approved by DOC. The Concessionaire must provide feedback from the DOC local office as to whether the Management Plan meets the purpose and requirements set out in the relevant conditions for that Management Plan. In the event the DOC local office's feedback confirms they do not consider the Management Plan meets its relevant purpose and requirements, the Concessionaire must also provide the Consent Authority with:
 - (a) The DOC local office's specific concerns about the Management Plan and/or the reasons why they consider the Management Plan does not meet its relevant purpose and requirements; and
 - (b) The Concessionaire's reasons why they have not actioned or addressed the DOC local office's concerns.
 - (c) The Concessionaire must meet all of DOC's actual and reasonable costs associated with

Commented [WP26]: Reasons for disagreement:
•Westpower considers that certification is the correct term as it is a technical matter.
•DOC considers "approval" should be used.

Commented [WP27]: Reasons for disagreement:
•Westpower considers that certification by DOC is not necessary (for the reasons set out in Memorandum #7).
•DOC considers that all approvals of Management Plans relating to activity on public conservation land and authorised under the concessions should go through DOC approval before works commence.

Concession Number: [to add]

reviewing and providing feedback on relevant management plans.

~~B.~~ In the event the DOC local office does not provide a response within 20 working days of receiving the draft Management Plan amendment, the Concessionaire is entitled to submit the draft Management Plan amendment to WCRC and/or WDC for certification in accordance with the conditions for the Consents.

Commented [WP28]: DOC has not provided alternative wording in track, but given its comments it is unlikely to support this wording.

~~4-9.~~ From the Commencement of Generation, and to the extent of their respective tenures, copies of all the Relevant Management Plans must be kept at the Power Station Site at all times.

Permanent Scheme Footprint

~~5-10.~~ The maximum operational footprint of the Project Site authorised by this Concession must not exceed the following.

Project Site Area	Maximum Area (ha)
Headworks	0.3
Power Station Site and access road / transmission line corridor south of Macgregor Creek	4.7
Overall Total	5

Accidental discovery protocols

~~6-11.~~ If, at any time during any Streamworks authorised by this Concession, any archaeological features (including human remains, archaeology and artefacts) are uncovered, works in the immediate area must cease and Poutini Ngāi Tahu, the DOC local office, Heritage New Zealand Pouhere Taonga (09 307 9920) notified immediately.

~~7-12.~~ If any human remains are uncovered, the New Zealand Police, must be notified immediately.

~~8-13.~~ In all cases, the following protocols must be followed:

Wait for and enable inspection of the site

- (a) Stop work and wait for the site to be inspected by the relevant authority or agency:
 - (i) The New Zealand Police are required to investigate the human remains to determine whether they are those of a missing person or are a crime scene. The remainder of this process will not apply until the New Zealand Police confirm that they have no further interest in the discover.
 - (ii) A site inspection for the purpose of initial assessment and response will be arranged by the DOC local office in consultation with Heritage New Zealand Pouhere Taonga and appropriate Poutini Ngāi Tahu representatives.
- (b) Following site inspection and consultation with all relevant parties (including the Concessionaire), the DOC local office will determine the area within which work must cease, until the requirements of this condition have been satisfied.

Recommencement of work

- (c) Work within the area determined by the DOC local office must not recommence until all of the following requirements, so far as relevant to the discovery, have been met:

Concession Number: [to add]

- (i) Heritage New Zealand has confirmed that an archaeological authority has been approved for the work or that none is required;
 - (ii) Any required notification under section 11(3) of the Protected Objects Act 1975;
 - (iii) Any material of scientific or educational importance has been recorded and if appropriate recovered and preserved; and
- (d) Where the site is of Māori origin and an authority from Heritage New Zealand Pouhere Taonga is not required, the DOC local office will confirm, in consultation with Poutini Ngāi Tahu, that:
- (i) Any koiwi have either been retained where discovered or removed in accordance with the appropriate tikanga; and
 - (ii) Any agreed revisions to the planned works to be/have been made to address adverse effects on Māori cultural values.

~~9-14.~~ If, at any time during any Streamworks authorised by this Concession, any pounamu (greenstone) is discovered, the Concessionaire must follow the Pounamu Accidental Discovery Protocol set out in Schedule 10 of the Operative West Coast Regional Land and Water Plan.

Notification of fuel spill

~~10-15.~~ The Concessionaire must inform the DOC local office immediately after becoming aware of any fuel spillage in excess of 20 litres that occurs onto the land surface or into water.

Hazardous substances

~~11-16.~~ The Concessionaire must comply with all Hazardous Substances and New Zealand Organisms Act 1996 (HSNO) regulations and requirements for storage of hazardous substances (including fuel).

Didymo

~~12-17.~~ To prevent the spread of Didymo or any other aquatic pest, the Concessionaire must ensure that activities authorised by this Concession are undertaken in accordance with the Biosecurity New Zealand's hygiene procedures.

Advice note: You can access the most current version of these procedures from the Biosecurity New Zealand website <http://www.biosecurity.govt.nz>

Air discharges from emergency diesel fired generator

~~13-18.~~ The Concessionaire must maintain and test the emergency generator at the Power Station Site in accordance with the manufacturer's instructions. Records of the tests within the last two years must be retained and provided to the DOC local office on request.

Power Station parking and manoeuvring

~~14-19.~~ All permanent vehicle manoeuvring areas and parking spaces at the Power Station must be formed and drained and thereafter maintained in a permanent all-weather surface such as concrete, cobblestones, chip seal, asphalt or similar.

Operational noise

~~15~~20. The Concessionaire must ensure that any operational noise (excluding helicopter use and maintenance construction activities) from the Scheme achieves the following limits:

Times		Noise from any activity must not exceed the following noise limits at any point at the notional boundary of any site within the GRUZ (General Rural Zone)
Daytime	Monday to Friday 7:00am – 10:00pm	55 dB L _{Aeq} (15 min)
	Saturday, Sundays and Public Holidays 7:00 am –10:00pm	50 dB LAeq
Night-time	10:00pm – 7:00am	45 dB L _{Aeq} (15 min)
		75 dB L _{Afmax}

Site Operations and Maintenance Plan

~~16~~21. The objective of the SOMP is to set out the operational practices and procedures to be adopted to ensure compliance with all relevant operational conditions of the Concession are complied with and adverse effects on neighbours and their property, the wider community including recreational users of the Waitaha Valley and the receiving environment resulting from operational and maintenance activities within the Project Site are minimised and appropriately avoided, remedied or mitigated.

~~22~~. The Site Operations and Maintenance Plan must be provided to the DOC Liaison Officer and approved by DOC before any works commence.

Commented [WP29]: Reasons for disagreement: see comment above regarding management plans.

~~17~~23. The SOMP must include:

- (a) General site operations, monitoring, and maintenance procedures for the Project Site including standard operating and maintenance procedures for:
 - (i) Controlled (planned) Power Station start-up and shut-down;
 - (ii) Unplanned Power Station trip events;
 - (iii) Ensuring ongoing downstream passage of sediment past the Headworks and ensuring the occurrence of “clogging” events at or near the Headworks requiring instream sediment excavation works is minimised;**
 - (iv) Monitoring of the frequency, duration, and spatial extent of in-stream sediment excavation works required above the Headworks;**
 - (v) Discharging sediment through the desander sluicing pipe at the tailrace of the Power Station including the timing and duration of such discharges;
 - (vi) Establishing no-take days in accordance with the agreement with Whitewater NZ Incorporated, including processes used to communicate and co-ordinate the use of them to/with relevant recreational users; and
 - (vii) Routine instream maintenance works;
- (b) Measures and actions to respond to warnings of heavy rain;

Concession Number: [to add]

- (c) Trial methodologies and associated monitoring details to confirm the appropriateness of maximum ramping rates set out in Conditions 40 and 41 in respect of fish stranding (during planned Power Station shut down) and public safety (during planned Power Station start-up and shut down);
- (d) Methods for providing for the health and safety of the general public including any measures identified in the Public River Safety Risk Report required under Condition 30 of this Concession;
- (e) Procedures for the refuelling and maintenance of plant and equipment to avoid discharges of fuels or lubricants to watercourses;
- (f) Methods for managing sewage, solid wastes and refuse generated from the Project Site;
- (g) Procedures for incident management including natural hazard events;
- (h) Procedures for monitoring and maintaining in-stream structures, including the Headworks, culverts and culverted ford river crossing structures and associated Streamworks;
- (i) The management and maintenance steps taken to minimise adverse effects on the passage of fish and ensure that each instream structure's ability to provide for the passage of fish does not reduce over its lifetime;
- (j) Procedures for desander flushing in accordance with Condition 58 or, once they have been developed following any desander flushing trials undertaken under Condition 59, procedures for desander flushing including minimum river flows for desander flushing events;
- (k) The Monitoring Plan required under Condition 25 including detailed information on all monitoring locations and methods;
- (l) When available, procedures for flushing Morgan Gorge in accordance with the Morgan Gorge Flushing Management Plan;
- (m) Indigenous tree trimming protocols;
- (n) Public complaint procedures; and
- (o) Annual reporting procedures.

~~18.24.~~ The Concessionaire must review the SOMP at least once every 5 years following the Commencement of Generation. Any amendments made to the SOMP must be certified in accordance with Condition 4.

Monitoring Plan

~~19.25.~~ The Concessionaire must prepare and implement an operations phase Monitoring Plan for the Project Site to be included in the SOMP. As a minimum, the Monitoring Plan must include the monitoring activities set out in the table below:

Monitoring Parameter	Monitoring location(s)	Units	Measurement Frequency
WATER FLOWS			
Station Inflow	Power Station Site	m ³ /sec	At 15 minute measurement intervals
Residual flow to abstraction reach	Immediately downstream of	m ³ /sec	At 15 minute measurement intervals

Monitoring Parameter	Monitoring location(s)	Units	Measurement Frequency
	diversion weir		
Waitaha River Flow	Immediately upstream of the diversion weir and intake (calculated as the sum of measured station inflow and residual flow)	m ³ /sec	At 15 minute measurement intervals
ECOLOGY			
All fish (presence/absence)	In tributaries above the intake in the Kiwi Flat area Above weir and as set out in the FEMP	Fish presence (for eDNA samples a detection must also meet the minimum eDNA signal strength requirements), as set out in the FEMP 1. Success of exclusion of trout/salmonids upstream of weir. 2. Kōaro abundance upstream of weir	Yearly monitoring for a prescribed number of years after completion of the scheme, as set out in the FEMP. Yearly
Koaro recruitment	In tributaries above the intake in the Kiwi Flat area and in tributaries below the intake, as set out in the FEMP	number caught/100m ² ; length frequency histograms; proportion of juveniles vs adults – all as set out in the FEMP	Following a BACI design with yearly monitoring for a prescribed number of years before and after completion of the Scheme, as set out in the FEMP
Periphyton	Abstraction reach and	% cover of	Following any prolonged

Concession Number: [to add]

Monitoring Parameter	Monitoring location(s)	Units	Measurement Frequency
	as set out in the FEMP	filamentous algae as set out in the FEMP Measure of cover of Filamentous algae	period of residual flow, as well as during the first 12 months of the Scheme's operation if this prolonged residual flow period is not exceeded, as set out in the FEMP Monthly November to April (inclusive).
Accumulated sediment reference state	Abstraction reach and as set out in the FlushMP	Extent and thickness of fine sediment, as set out in the FlushMP Measure of change of sediment accumulation from set baseline addressed spatially via a map.	As set out in the FlushMP
RIVER MORPHOLOGY			
Kiwi Flat river bed morphology	Between the bottom of Waitaha Gorge to the Headworks	Lidar or similar	Annual for the first five years following Commencement of Generation then 10-yearly Yearly

Kayaking and No-take days

~~26:~~26. Within three months following Commencement of Generation, and then every twelve months thereafter, the Concessionaire must offer WWNZ four no-take days along the abstraction reach of the Waitaha River for the upcoming 12 month period with one no-take day occurring during each month between November and February (inclusive) unless agreed otherwise by WWNZ.

~~24:~~27. The Concessionaire must pay WWNZ \$15,000 (excluding GST) per annum and make publicly available through its website, in consultation with WWNZ:

- (a) information regarding access to and the kayaking opportunities on the Waitaha River; and
- (b) information on risks and safety requirements due to the Scheme.

Advice Note: For the avoidance of doubt, these requirements are also required pursuant to the

Commented [WP30]: DOC has not proposed tracked changes (beyond deleting this text), but based on its comment it is unclear if it supports these conditions. DOC's view is that payments to WWNZ should not be specified in concession conditions as they are a private agreement and not enforceable by DOC.

Concession Number: [to add]

Concessionaire's RMA Consents for the Scheme, and to this extent, any associated financial payment obligations on the Concessionaire are not duplicated by this Concession. These conditions are included in this concession but the DOC local office is not required to enforce compliance with these obligations including the payment obligations

~~22:~~28. During each no-take day, the Concessionaire must operate the Hydro Scheme (inclusive of the Power Station and the bypass valve), as far as is reasonable, to benefit the kayaking experience during the no-take day while considering public health and safety.

Flow data available to the public

~~29:~~29. The Concessionaire must implement and maintain a communication method that provides the following flow monitoring data to members of the public via a website following the Commencement of Generation.

Monitoring Parameter	Monitoring location(s)	Units	Frequency
Waitaha River Flow	Immediately upstream of the diversion weir and intake (calculated as the sum of measured station inflow and residual flow)	m ³ /sec	At 15 minute measurement intervals
Residual flow to abstraction reach	Immediately downstream of diversion weir	m ³ /sec	At 15 minute measurement intervals
Water tunnel diversion flow	Power Station Site	m ³ /sec	At 15 minute measurement intervals

Public access and safety

~~24:~~30. No less than 6 months prior to the Commencement of Generation, the Concessionaire must engage a suitably qualified and experienced person to prepare a Public River Safety Risk Report that identifies and recommends methods to address the public river safety risks that may arise from its exercise of this concession. As a minimum the Public River Safety Risk Report must address any potential hazards that may arise from rapid changes in water flows and levels, and the use of the by-pass valve, and the need for signage and audible sirens at the Powerhouse and Headworks. Public River Safety Risk Report must also consider and address the suggested public safety measures set out in the Public Safety Report provided as Appendix 32 to the Application. The Concessionaire must provide a copy of the Public Safety Risk Report to the DOC local office on request.

~~25:~~31. The Concessionaire must implement the methods to address public river safety risks in accordance with the Public River Safety Risk Report, including the installation and maintenance of any required signs and/or sirens to warn the general public of any hazard.

~~26:~~32. The use of emergency sirens must be limited to near the Headworks and Power Station and each siren must be designed and directed in a way to ensure they are audible in areas where staff and recreational users need to be alerted of sudden river level changes, but no louder than necessary to limit potential noise exposure to wildlife under the advisement of an appropriately qualified and experience ecologist.

~~27-33.~~ Subject to the agreement of the DOC local office, the Concessionaire must provide alternative track access on the true right of the Waitaha River for recreational visitors to avoid the Power Station Site. This must be provided to meet the Tramping Track Standard described in the New Zealand Handbook Tracks and Outdoor Visitor Structures SNZ HB8630:2004 at the Concessionaire's expense for the duration of the Concession.

Power Station Site Stormwater Management Plan

~~28-34.~~ The objective of the Stormwater Management Plan (SMP) is to manage and reduce risks associated with potential spills and to avoid, or otherwise minimise, the release of other contaminants into the environment via stormwater generated within the Project Site, and in particular, within the Power Station Site.

~~35.~~ The SOMP must be submitted to DOC for approval.

Commented [WP31]: Reasons for disagreement: see comment above regarding management plans.

~~29-36.~~ The SMP must include, but not be limited to:

- (a) Identification of the specific activities conducted on the site;
- (b) Identification of potential contaminants associated with these activities;
- (c) Descriptions of the methods to be used to prevent identified contaminants being discharged into stormwater and manage environmental risks from site activities;
- (d) An up-to-date and accurate site drainage plan showing the location of all site catchpits, treatment devices and the discharge point(s) of the site stormwater system;
- (e) Operation and maintenance plan for any oil detection and/or any other interceptor systems installed on site; and
- (f) Copies of relevant Material Safety Data Sheets (MSDS).

~~30-37.~~ The Concessionaire must review the SMP at least once every 5 years following the Commencement of Generation. Any amendments made to the SOMP must be certified in accordance with Condition 4.

Hydro scheme diverted water management

~~31-38.~~ The maximum rate of water taken and diverted from the Waitaha River at the Headworks must not exceed 23 m³/sec.

~~32-39.~~ Except for any water taken and used for domestic purposes at the site as a permitted activity, all water diverted under Condition 38 of this Concession and used for electricity generation must be done so non-consumptively and returned to the Waitaha River via the Power Station tailrace and/or the by-pass valve in a "run-of-river" fashion.

Advice note: For the avoidance of doubt, any water left within the water tunnel following a shut-down of the Power Station is excluded from this run-of-river operation requirement.

~~33-40.~~ During any controlled power station start-up, the ramp-up rate for discharges to the tailrace must not exceed those set out in Table 1 below.

~~34-41.~~ During any controlled power station shut-down, the ramp-down requirements for discharges to the tailrace must not exceed those set out in Table 1 below.

Table 1: Power Station Ramping Requirements

Concession Number: [to add]

River flow above intake (m ³ /s)	Maximum ramp-up and ramp-down rates
< 8.5	"(X m ³ /s - 3.5 m ³ /s) / 10 minutes (where "X" = River Flow)
8.5 – 40	0.5 m ³ /s/minute
40 – 180	X m ³ /s/minute (where "X" = 1.3% of the river flow)
180 or more	No restriction

35:42. Deviations from the ramping requirements set out in Conditions 40 and 41 may only occur when one or more of the following circumstances apply:

- (a) When undertaking trials to establish the appropriateness of the Power Station ramping requirements set out in Conditions 40 and 41 of this Concession in terms of potential fish stranding and public safety effects;
- (b) When ramping up at "night", being the time between the end of evening civil twilight and the beginning of morning civil twilight;
- (c) When undertaking an Emergency Black Start;
- (d) When there is a threat to the structural integrity of the structures of the Scheme;
- (e) When otherwise lawfully directed in writing by the WCRC for flood management or Civil Defence purposes;
- (f) When requested by the police, army, fire or other emergency service provider;
- (g) When necessary to respond to the uncontrolled release and spread of contaminants; and
- (h) Any force majeure event.

Advice Note: An Emergency Black Start is defined as starting the Power Station when there is no supply from the electricity grid. In this rare situation (anticipated to occur approximately once every 5 years when there is a total loss of supply from the grid), the Power Station may need to increase flow at higher ramping rates to accept blocks of electrical load while maintaining a stable electricity network frequency.

36:43. Whenever a deviation from the defined ramping rate regime occurs due to any of the circumstances described in Conditions 42(c) to 42(h), the Concessionaire must return to the normal operating regime as soon as practicably possible.

37:44. To avoid bank erosion, all diverted water returned to the Waitaha River via the by-pass valve must be directed downstream and not towards the true left riverbank.

38:45. All groundwater diverted into the access tunnel must be directed to the Waitaha River either via a

dedicated drain or pipe that directs flow to the Power Station tailrace or via a dedicated drain or pipe that directs flow to Kiwi Flat.

~~39-46~~ Any groundwater diverted into the access tunnel and subsequently discharged to the Waitaha River must comply with the following quality standards:

- (a) Clarity of no less than 100mm; and
- (b) PH of between 6.7 and 8.2.

Ramping Rate Effects

~~40-47~~ The Concessionaire must engage a suitably qualified and experienced freshwater ecologist to design a trial methodology and implement a monitoring programme to establish the appropriateness of the Power Station ramp-up and ramp-down requirements set out in Conditions 40 and 41 of this Concession in terms of minimising the displacement or stranding of downstream fish. Details of trial methods and monitoring must be included in the SOMP.

~~41-48~~ For the purpose of confirming the extent, magnitude and timing of flow changes downstream of the Power Station and the diversion weir associated with its operations, the Concessionaire must engage a suitably qualified and experienced freshwater ecologist and a recreational river safety expert to undertake trials, including monitoring downstream river levels and fish to establish the appropriateness of the Power Station ramp-up and ramp-down requirements set out in Conditions 40 and 41 of this Concession in terms of appropriately minimising public river safety risks and minimising fish displacement or stranding effects. These trials must be undertaken for a period of no less than 12 months following Commencement of Generation and the details of the trial methods and monitoring must be included in the SOMP.

~~42-49~~ The Concessionaire must engage suitably qualified and experienced freshwater ecologist and a recreational river safety expert to jointly prepare a Ramping Rate Adaptive Management Report based on the monitoring information collected in accordance with Conditions 47 and 48. Unless authorised by the DOC local office following a request by the Concessionaire to extend the timeframe due to unfavourable flows for conducting the monitoring, the Ramping Rate Adaptive Management Report must be submitted to the DOC local office within 18 months following the Commencement of Generation and it must, as a minimum, include the following information:

- (a) In relation to confirming ramping rate impacts on public safety;
 - (i) Results of downstream river water level monitoring and Power Station ramp-up and/or ramp-down flow curves and any corresponding by-pass flows;
 - (ii) Observational details of any downstream safety issues associated with controlled Power Station ramp-up and/or ramp-down; and
- (b) In relation to confirming ramping rate impacts on downstream fish displacement or stranding;
 - (i) Details of downstream fish monitoring undertaken including: monitoring dates, times, ambient river flows and Power Station ramp-up and/or ramp-down flow curves;
 - (ii) Observational details of any downstream fish displacement or stranding during, or associated with, controlled Power Station ramp-up and/or ramp-down; and
- (c) Any recommended changes to the Power Station ramp-up and ramp-down requirements set out

in Conditions 40 and 41 of this Concession and any likely corresponding changes to renewable electricity generation.

Hydro scheme residual flow

~~43-30~~ The Concessionaire must ensure that a residual flow of at least 3.5 m³/sec is maintained in the Waitaha River immediately below the intake except during any time when natural flows at the intake are less than 3.5 m³/sec, in which case, all flows at the intake must flow to Morgan Gorge and must not be used for hydro generation purposes.

Morgan Gorge flushing for removing accumulated fine sediment

51. The Morgan Gorge Flushing Management Plan (FlushMP) must be submitted to the Consent Authority for certification no later than 18 months following the Commencement of Generation.

52. The Morgan Gorge Flushing Management Plan (FlushMP) must be submitted to DOC for approval no later than 18 months following the Commencement of Generation.

53. The Concessionaire must supply a draft copy of the FlushMP to the DOC local office and invite them to provide feedback. The Concessionaire must provide feedback from the DOC local office as to whether the FlushMP meets the purpose and requirements set out in the relevant conditions. In the event the DOC local office's feedback confirms they do not consider the FlushMP meets its relevant purpose and requirements, the Concessionaire must also provide the Consent Authority with:

(a) The DOC local office's specific concerns about the FlushMP and/or the reasons why they consider the FlushMP does not meet its relevant purpose and requirements; and

(b) The Concessionaire's reasons why they have not actioned or addressed the DOC local office's concerns.

54. In the event the DOC local office does not provide a response within 20 working days of receiving the draft FlushMP, the Concessionaire is entitled to submit the draft FlushMP amendment to WCRC and/or WDC for certification in accordance with the conditions for the Consents.

~~44-55~~ The purpose of the FlushMP is to minimise adverse impacts on the quality of habitat for biota in the abstraction reach associated with accumulated fine sediment that may occur following extended low-flow periods by, firstly, establishing a reference state of fine sediment cover and thickness in the abstraction reach which, if exceeded, would trigger a flushing flow release to Morgan Gorge and, secondly, setting out the details for flushing Morgan Gorge.

~~45-56~~ In establishing the reference state of fine sediment cover and thickness under natural low flow conditions, the Concessionaire must undertake flushing trials and monitoring that generally aligns with the guidance set out in Appendix F of the Sediment Report provided in Appendix 19 of the Application including the following:

- (a) The use visual bankside assessment of fine sediment cover to assess the width of any fine sediment depositional zone, then sampling the sediment thickness within that zone by direct measurement; and
- (b) The engagement of a suitably qualified and experienced geomorphologist to design the trials and associated monitoring; and
- (c) The implementation of the trials within the first 12 months following the Commencement of

Commented [WP32]: Reasons for disagreement: see comment above regarding management plans.

Generation.

~~46-57~~ The FlushMP must include the following information;

- (a) Methodology details and results of the trials;
- (b) A critical analysis of the trial results to be prepared by an appropriately qualified and experienced geomorphologist and freshwater ecologist;
- (c) The location of the nearest slow run habitats within the abstraction reach where the accumulated sediment reference state will be monitored;
- (d) Monitoring details for fine sediment cover and thickness at the monitoring site including timing, frequency and methodology;
- (e) Confirmation of the fine sediment cover (i.e. as compared with the reference states established for these parameters during the trials) along with any other pre-requisite conditions (e.g. no forecasted rainfall) that require a manually controlled flush of water through Morgan Gorge; and
- (f) Morgan Gorge flushing procedures including minimum flush rate and duration.

Commented [WP33]: Removal of the 20% prescribed trigger as per recommendation in Dr Hicks' statement in response to the Panel's Expert reports.

Desander Flushing

~~47-58~~ Unless associated with trials undertaken in accordance with condition 57 of this Concession or otherwise provided for by a certified Low Flow Desander Flushing Trial Report in accordance with Condition 59 of this Concession, the Concessionaire must limit desander flushing activities to times when Waitaha River flows, as measured at the Headworks diversion weir, are 75 m³/s or greater.

Low Flow Desander Flushing Trials

~~49-59~~ For the purpose of investigating the effects of desander flushing events during river flows less than the 75 m³/s minimum flow limit required under Condition 58 of this Concession, the Concessionaire may, following the Commencement of Generation, undertake a series of desander flushing trials at the Power Station Site. As a minimum, the methodology for any low flow desander flushing trials must include:

- (a) Desander flushing events undertaken across a range of Waitaha River flow rates;
- (b) Recordings of Waitaha River flows during each desander flushing event;
- (c) Recordings of the duration of each desander flushing event;
- (d) Where practicable (i.e. when river water clarity allows), monitoring of riverbed sediment cover upstream and downstream of the tailrace before and after flushing;
- (e) Monitoring of river turbidity/clarity upstream and downstream of the tailrace during flushing; and
- (f) No less than 1 week prior to commencing any trials, written notice to the DOC local office of the intended commencement date of any trials and the anticipated duration of the trial period.

~~60.~~ Following any low flow desander flushing trials carried out in accordance with Condition 59 of this Concession, the Concessionaire may provide a Low Flow Desander Flushing Trial Report to the Consent Authority for certification. The Low Flow Desander Flushing Trial Report must be prepared by a suitably qualified and experienced expert and include, as a minimum, the following information;

- (a) Confirmation of trial methodologies used;

Concession Number: [to add]

(b) Results of desander flushing event trials including all monitoring results; and

(c) Any recommendations to amend related desander flushing event parameters required under Condition 58 of this Concession or as set out in the SOMP along with supporting evidence.

61. Following any low flow desander flushing trials carried out in accordance with Condition 59 of this Concession, the Concessionaire must provide a Low Flow Desander Flushing Trial Report to the DOC for approval. The Low Flow Desander Flushing Trial Report must be prepared by a suitably qualified and experienced expert and include, as a minimum, the following information:

(a) Confirmation of trial methodologies used;

(b) Results of desander flushing event trials including all monitoring results; and

(c) Any recommendations to amend related desander flushing event parameters required under Condition 58 of this Concession or as set out in the SOMP along with supporting evidence.

Commented [WP34]: Reasons for disagreement: see comment above regarding management plans.

~~49-52~~ For any desander flushing events during river flows less than 75 m³/s, the Concessionaire must undertake these in accordance with the certified Low Flow Desander Flushing Trial Report.

Hydro Scheme Maintenance

~~50-53~~ The Concessionaire must ensure any physical disturbances to earth associated with maintenance of the access road between Macgregor Creek and the Power Station are set-back more than 20 metres from any part of the Stable Trib.

Fish passage

~~54-54~~ Fish passage must be maintained at all times for permanently flowing waterways during the operation of all in-stream structures except where pumping over or around culvert structure locations is required for maintenance purposes.

Streamworks

~~52-55~~ Streamworks associated with the maintenance of structures authorised by this Concession must be undertaken in accordance with the SOMP.

~~59-59~~ Any diversion pumping activities during maintenance must be undertaken under supervision of an appropriately qualified and experienced ecologist.

~~54-57~~ The Concessionaire must ensure that any diversion does not reduce the natural surface water flow except in the location the works are taking place, or exacerbate flooding of another person's property, erosion, land instability, sedimentation or property damage.

~~55-58~~ The Concessionaire must ensure that no wet concrete is placed in any flowing water of any river or waterway.

~~56-59~~ All machinery must be cleaned prior to its arrival on site to ensure it is free of weeds, seeds and plant material and upon request, provide proof to the DOC local office that this has occurred. No cleaning of any machinery or vehicles may occur within 20 metres of a waterbody or natural wetland.

~~57-70~~ The Concessionaire must not leave machinery unattended on the bed of a waterway at any time during the exercise of this Concession.

Advice Note: For the avoidance of doubt, the intent of this condition is to avoid machinery being exposed to flood events and becoming washed downstream. To this extent, "unattended" in the

context of this condition excludes periods of time a worker might leave an item of machinery as part of their normal work.

Freshwater Ecology Management Plan

~~58:~~71. The Concessionaire must comply with the Freshwater Ecology Management Plan (FEMP), including the:

- (a) Methods for fish capture and relocation within flowing stream or riverbeds (e.g. for waterway crossings) prior to associated Steamworks;
- (b) Methodologies for monitoring and reporting kōaro recruitment into Kiwi Flat;
- (c) Methodologies for monitoring for any other fish species in Kiwi Flat waterways;
- (d) Abstraction reach periphyton monitoring and triggers for undertaking flushing flows to reduce growth build-up;
- (e) Design criteria and operational management methods for the weir and tailrace to minimise effects on fish; and
- (f) Reporting requirements.

~~59:~~72. As part of the FEMP or the SOMP, the Concessionaire must include a monitoring and maintenance plan for all in-stream structures authorised by this Concession including information on activities to ensure ongoing compliance. As a minimum, the monitoring and maintenance plans must include the following information:

- (a) What monitoring and maintenance will be done;
- (b) The frequency and/or duration of monitoring and maintenance that will be done;
- (c) The steps to be taken to ensure that the structure's provision for the passage of kōaro does not reduce over its lifetime;
- (d) Any other steps taken to minimise any adverse effects on the passage of fish (including maintaining the exclusion of salmonids from Kiwi Flat).

~~60:~~73. A copy of the FFEMP must be provided to the DOC Liaison Officer and approved by DOC prior to any works commencing.

~~64:~~74. The Concessionaire must provide an updated version of the information required by Condition 72 of this Concession in an electronic format to the DOC local office as follows:

- (a) Each time any maintenance is done that materially alters any structure; and
- (b) Each time a significant natural hazard affects the structural integrity of any structure to an extent requiring amendments to the monitoring and maintenance plans.

Fish screen

~~62:~~75. A fish screen with a mesh aperture size no greater than 3 mm (or no greater than 5 mm if combined with the pump head being submerged in a ballast-filled well pit or ballast-filled permeable vessel) must be maintained on the intake structure to minimise fish passing through the intake or being trapped against the screen.

Helicopter flight management

Commented [WP35]: Reasons for disagreement: see comment above regarding management plans.

Commented [WP36]: Reasons for disagreement:
• Westpower considers the conditions are unnecessary. Minimising helicopter trips during the who breeding season is already in the conditions through the AMP.
• DOC's view is that these conditions should be included in the long-term concession as well as the short-term.

Concession Number: [to add]

76. The purpose of the Flight Management Plan (FMP) required by Table 1 is to:

- (a) Confirm helipad locations, flight paths and helipad use protocols for all pilots during construction and operations;
- (b) Inform pilots flying to and from the Project Site of the relevant requirements of this Concession; and
- (c) Raise the awareness of pilots flying to and from the Project Site of the proximity of high value ecological areas supporting wildlife that can be adversely affected by helicopter noise.

77. The FMP must include:

- (a) Pilot briefing notes including:
 - (i) The maximum number of helicopter flights as set out in Condition 75 of this concession;
 - (ii) Relevant information that alerts pilots of high value ecological areas near the Site that support wildlife that can be adversely affected by helicopter noise; and
 - (iii) Any other helicopter operator instructions required by the Concessionaire including pre flight communications to ensure Concession requirements, on-site health and safety or operational procedures or requirements are met;
- (b) Protocols to manage noise impacts on local residents when flying helicopters to and from the Project Site and when flying within the Project Site;
- (c) Protocols to ensure that all new operators are informed of the certified FMP, including information on relevant consent conditions, approved helipad locations, flight paths, flight exclusion areas and protocols; and
- (d) FMP review procedures.

78. The Helicopter Flight Management Plan must be provided to the DOC Liaison Officer and approved by DOC before any works commence.

79. The approved FMP is to be implemented and maintained on a continuing basis by the Concessionaire for all movements to/from the site during Construction and the Concessionaire must issue annual reminder notices to all helicopter operators to reiterate compliant, safe and courteous flying practices.

80. During Construction, helipads authorised for use by this Concession are limited to one helipad each at the following locations:

- (a) Within Construction Staging Area 1 (Headworks);
- (b) Within Construction Staging Area 2 (Power Station Site); and
- (c) Within the weather station monitoring areas.

81. There must be no more than 30 helicopter movements during any one day during Construction.

Advice note: For the avoidance of doubt, a helicopter movement comprises a take-off from any helipad on the Project Site and a landing at any helipad on the Project Site, i.e. One helicopter taking off and landing within the Project Site constitutes one helicopter movement.

82. There must be no helicopter movements at night, other than in emergency situations.

Concession Number: [to add]

Advice note: The Civil Aviation Authority defines "night" as the time between the end of evening civil twilight and the beginning of morning civil twilight.

83. The Concessionaire must maintain a complete and accurate log of all helicopter movements to and from the site during Construction. The Concessionaire is to keep the following information in this log:

(a) The date and time of each movement;

(b) Records of the helicopter owner, operator or helicopter transit company undertaking the helicopter flight; and

(c) The helicopter model type or Civil Aviation Authority registration number.

The log must be made available to the DOC Liaison Officer within ten working days upon request.

84. To minimise impacts on whio, the Concessionaire must 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.

Advice Note: The Concessionaire will not be in breach of this condition if it is not practicable for a helicopter to remain landward of the true right bank of the Waitaha River in order to deliver equipment or materials to a specific location within the Project.

85. No aircraft is authorised to sit and idle on the ground for longer than 10 minutes, except for the periods required for construction and operational purposes immediately prior to take off and after landing.

86. Helipads are not to be used for engine testing unless required for safety or emergency reasons.

Remotely Piloted Aircraft Systems (RPAS)

87. Remotely Piloted Aircraft System (RPAS) includes any pilotless aircraft, Unoccupied Aerial Vehicle or drone.

88. The Concessionaire shall immediately cease the operation of the RPAS if there is any indication of wildlife disturbance.

89. The Concessionaire shall ensure that a fire extinguisher in good working order is carried at all times that the RPAS is in use, and that the Concessionaire and its staff (if applicable) are trained in the use of the fire extinguisher.

90. The Concessionaire is not authorised to operate the RPAS in areas that have a Fire Risk of High or above as published on the National Rural Fire Authority website <http://fireweather.nrfa.org.nz>

Vegetation Management Plan

~~89~~ 91. The Concessionaire must comply with the Vegetation Management Plan (VMP), including the

(a) Methods, procedures or protocols for;

(i) Sourcing West Coast indigenous plants for any new plantings required as part of Rehabilitation Works; and

(ii) Rehabilitating the temporary construction areas;

(b) Weed monitoring and control plan; and

(c) Reporting of monitoring data, incidents and inspections.

Commented [WP37]: Reasons for disagreement:
•Westpower considers the conditions are unnecessary.
•DOC's view is that these conditions should be included in the long-term concession as well as the short-term.

Landscape Management Plan

~~64~~⁹² The Concessionaire must comply with the Landscape Management Plan (LMP) through the rehabilitation and establishment phases of the Project, including the:

- (a) Landscape rehabilitation processes and/or options for the Headworks, Power Station Site, access road between the Power Station Site and Macgregor Creek; and
- (b) Contingency options for landscape management in the event of unforeseen events (e.g. slips); and
- (c) Use of West Coast-sourced indigenous plants for any new plantings required as part of Rehabilitation Works.

~~65~~⁹³ During all Rehabilitation Works, the Concessionaire must prioritise options other than the use of shotcrete as a landscape treatment method. If other more sensitive treatments methods are not practicable due to engineering, structural integrity or health and safety reasons then shotcrete may be used. Where the use of shotcrete is required, the Concessionaire must adopt all reasonable endeavours to use it sparingly.

~~66~~⁹⁴ Any digger or excavator used in the river bed at Kiwi Flat after the Commencement of Generation must be painted black, karaka green or a similarly recessive colour, and when not in use, it must be stored within the access tunnel at a location no less than 100m from its top portal.

Avifauna Management Plan

~~67~~⁹⁵ The Concessionaire must comply with the Avifauna Management Plan (AMP), including the:

- (a) Methods, procedures or protocols for managing effects on indigenous avifauna including, to the extent practicable:
 - (i) undertaking Streamworks maintenance at the Headworks outside of the whio breeding season (September – December); and
 - (ii) minimising helicopter trips within the Site during the whio breeding season; and
- (b) Compensation details designed to address residual construction related effects on forest birds and whio; and
- (c) Compliance monitoring and reporting processes.

~~68~~⁹⁶ The Avifauna Management Plan must be provided to the DOC Liaison Officer and approved by DOC before any works commence.

Commented [WP38]: Cross-references to compensation conditions removed as those conditions were moved to the Wildlife Approval at DOC's request.

Commented [WP39]: Reasons for disagreement: see comment above regarding management plans.

Lighting

~~69~~⁹⁷ The Concessionaire must minimise light sources and light spill from any lighting used during operations and maintenance activities to the greatest extent practicable.

~~70~~⁹⁸ The Concessionaire must ensure any outside light sources used within the Project Site (excluding within the tunnels) have a colour temperature of no more than 2700K to minimise the emission of light with blue/ ultra-violet wavelengths.

Annual Report

~~71~~⁹⁹ By the end of September every year following the Commencement of Generation, the Concessionaire

Concession Number: [to add]

must prepare and provide to the DOC local office an Annual Report that presents a summary of all monitoring and operational information relating to the period between 1 July in the preceding year and 30 June of the year in question.

~~72:~~100. The Annual Report must contain at least the following:

- (a) A general description of operations including any major maintenance and/or operational or compliance issues **including frequency, duration, and spatial extent of in-stream sediment excavation works required above the Headworks;**
- (b) All Monitoring Plan data collected during the reporting period;
- (c) Within the first five years following the Commencement of Generation, a description of all restoration planting areas including monitoring and maintenance records as set out in the VMP;
- (d) Results of ongoing ecological monitoring undertaken in accordance with the FEMP along with a critical analysis of any trends identified, any recommended adaptive management responses along with any associated recommended amendments to the SOMP, Monitoring Plan, and FEMP;
- (e) Results of any other operational information required in accordance with the SOMP;
- (f) Details associated with any complaints received and any associated corrective actions undertaken; and
- (g) Details of any future significant changes to the Scheme or its operations.

Compliance with Concession

~~73:~~101. The Concessionaire must supply a copy of these conditions to any agent or contractor undertaking any activities authorised by this Concession.

~~74:~~102. The Concessionaire must, following the Commencement of Generation, keep a copy of this Concession document at the Power Station, and present it to the DOC local office upon request.

~~75:~~103. Unless otherwise stated in this Concession, in the event of any breach of compliance with the conditions of this Concession, the Concessionaire must notify the DOC local office within 48 hours of becoming aware of the breach. Within 7 days of becoming aware of the breach, the Concessionaire must provide written notification to the DOC local office, which explains the cause of the breach, and if the cause was within the control of the Concessionaire, steps which were taken to remedy the breach and steps which will be taken to prevent any further occurrence of the breach.

SCHEDULE 4: PLAN OR MAP

Area(s) as shown in Maps 1 – 5	Activity ¹	Details
Lease Land (and general description of activities)		
9	In-stream structures at Alpha Creek	Box culvert and associated river training structures
12	Power station	Switchyard, Power Station, rockfall and slope protection works, tailrace Water take for amenities, siren, stormwater management, bypass valve plume; water take for generation, sediment discharge, lighting, security and operation cameras, comms equipment, septic holding tank; hazardous substance storage
14, 18, 19	Tunnels	Access and pressurised water tunnels, portals, stormwater management from tunnels, services (electricity, ventilation, communications), sediment management, lighting, storage, rockfall and slope protection works;
22	Intake and headworks	Including kōaro and whio passage, kayak passage, siren, water take for generation, lighting, security and operation cameras, comms equipment, signage
	Ancillary Activities	All ancillary activities including structures for weather and flow monitoring stations
Licence Land (and general description of activities)		
20, 23	Maintenance of intake – in-stream works	In-stream works - clearing area upstream of intake
	Ancillary Activities	All ancillary activities including helicopter and drone use and access for predator control, weed control, ecosystem monitoring eg eDNA, flushing trials, whio, fish, bats, kōaro etc Signage for HSE, bypass valve plume

Commented [WP40]: Changes made in accordance with Memorandum #9 to remove “geotechnical bore holes and access to and use of for monitoring activities”.

¹ This table is a summary only: the Concession authorises all activities within the definition of Concession Activity.