

BEFORE THE PANEL

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

AND

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

APPLICATION NO. FTAA-2505-1069

**MEMORANDUM FROM THE DEPARTMENT OF CONSERVATION
RESPONDING TO THE PANEL'S REQUEST FOR INFORMATION (RFI#5)
DATED 27 FEBRUARY 2026**

5 March 2026

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MAY IT PLEASE THE PANEL:

Introduction

1. This memorandum is filed on behalf of the Director-General of Conservation (DOC). It is in two parts:
 - a) **PART A – Issues relating to the setting of concession activity fee conditions under s 78 of and clauses 4(2) and 9 of Schedule 6 to the FTAA; and**
 - b) **PART B – Responses to the specific issues raised in the Panel’s RFI dated 27 February 2026 to DOC.**
2. Part A responds to legal issues raised by Westpower regarding the imposition of mandatory conditions set under s 78 of the FTAA. It also includes explanatory and contextual material relating to s 78 conditions that DOC trusts will be of assistance to the Panel.
3. DOC considers it appropriate and necessary to provide this information to the Panel to assist it in considering the matters it has sought information on from DOC. This includes the degree to which the matters are relevant to the Panel’s decision, and/or the weight that should be afforded them, given the context within which the Panel must make its decision. In particular, the key point DOC wishes to make here is that, given the context set out below, the answers to the questions posed by the Panel are in fact moot.
4. Part B responds to the specific matters set out in the Panel’s request for information from DOC. These responses need to be considered in light of the context set out in Part A of this memorandum. The context includes in particular that:
 - a) DOC has identified relevant conditions specified by the Minister under section 78(1) of the FTAA in its s 51 concession report in relation to the long-term lease/licence concession, in accordance with cl 4(2) of Schedule 6 to the FTAA. This includes conditions relating to the setting of a concession activity fee;
 - b) The Panel must impose these conditions in accordance with cl 9 of Schedule 6 of the FTAA if it grants the long-term lease/licence concession.
 - c) The Panel has no discretion to challenge or otherwise elect not to impose the section 78 conditions exactly as indicated by DOC.

- d) As a result, the Minister of Conservation will set the concession activity fee for the long-term lease/licence concession in accordance with the methodology specified in the s 78 conditions approved by him. That methodology does not require consideration of any valuation procured by Westpower.
 - e) The requirements in cl 7(1) of Schedule 6 (requiring greatest weight to be given to the purpose of the FTAA) and section 83 (requiring conditions to be no more onerous than necessary to meet the purpose of the condition) do not apply to the setting of the concession activity fee conditions. The conditions have been set under s 78 and are required by cl 9 of Schedule 6 to be imposed in the form specified by DOC under cl 4(2) or otherwise.
- 5. A statement from DOC’s valuer Mr Dunckley is attached, setting out responses to the matters in paragraphs (2) to (4) of the Panel’s RFI (**Attachment 1**). This memorandum addresses legal issues raised by those questions and Mr Dunckley’s responses.
 - 6. A redacted copy of Mr Dunckley’s December 2025 valuation report for DOC is also attached (**Attachment 2**).

PART A – ISSUES RELATING TO CONCESSION ACTIVITY FEE CONDITIONS SET UNDER S 78 OF THE FTAA

Section 78 of the Act applies in this case and the Panel must impose the conditions specified by DOC in its s 51 concessions report as per cl 9 of Schedule 6

Westpower’s position is erroneous

- 7. DOC has carefully considered Westpower’s arguments regarding s 78 and concession fee conditions as set out and referenced in Westpower’s Memorandum 14 to the Panel. DOC does not accept Westpower’s overall position that it is the Panel’s role to set the concession activity fee conditions in all cases, nor that it would be *ultra vires* to include the conditions DOC has advised must be imposed in accordance with cl 4(2) of Schedule 6 to the FTAA.

Section 78 and clauses 4 and 9 of Schedule 6 operate as a “code”

- 8. Westpower states that the purpose of the FTAA is to be given the greatest weight when setting conditions.¹ DOC agrees that this is the case where expert panels are considering conditions under clauses 7 and 8 of Schedule 6 to the FTAA. However, section 78

¹ Westpower Memorandum 7 at [Westpower-Memorandum-7,-Response-to-Comments-and-RFI-3,-21-January-2026 Redacted.pdf](#), at [2.28].

conditions are “carved out” of the cl 7(1) framework, as they are imposed under cl 9 of Schedule 6. Clause 9 is not subject to the considerations set out in cl 7(1) of Schedule 6.

9. Section 78 and clauses 4 and 9 of Schedule 6 effectively operate as code, and are not subject to the requirements that apply where the expert panel is exercising discretion in setting conditions. For example, s 83 of the FTAA sets a requirement on expert panels “[w]hen exercising a discretion” to set a condition under the FTAA, that the condition is no more onerous than necessary to address the reason for which it is set. Setting the section 78 conditions that DOC has specified through its s 51 report² must be imposed by the Panel, is not the exercise of a discretion to which s 83 applies. Rather, it is a mandatory requirement.
10. The above paragraph is not to suggest that the section 78 conditions approved by the Minister of Conservation are more onerous than necessary to address the reason for which they are set.
11. To the contrary, the Minister’s decision to approve the suite of conditions under s 78 (attached to this memorandum as **Attachment 3**)³ confirms that the Minister was:

satisfied that it is appropriate to manage risks to, and potential liabilities of, the Crown arising from the granting of an approval of that kind.

12. The Minister’s approval of the suite of conditions under s 78 is referenced in Westpower’s Memorandum 7⁴, and standard (mandatory) condition 10.1 is cited:

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

² In accordance with cl 4 of Schedule 6. See further discussion on DOC’s section 51 reports below.

³ The Minister’s decision is also available online, via the EPA’s Waihi North website at: [25-B-0187 SIGNED Briefing Fast Track Approvals - Mandatory Section 78 conditions - Redacted.pdf](#). DOC provided the Minister’s decision to the Waihi North Expert Panel following a Panel conference where the issue of s 78 bond conditions was raised. This was then uploaded onto the EPA website for that project as part of the Panel’s draft decision documents.³ The issue with the Waihi North project regarding s 78 conditions was limited to bonds. The Panel’s final decision records:³

[716] The Wharekirauponga and Favona Access Arrangements contain bond conditions that have been specified by the Minister under s 78 and cls 4(2) and 10 of Schedule 11 of the FTAA. As we must impose them, they do not warrant further discussion save to record that DOC and OGNZL have agreed to some additional provisions that provide a context for their operation.

⁴ Memorandum 7 at [2.25].

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.

13. This mandatory condition sets out the *process* for setting the fee, not the *fee* itself. The key issue here is that imposing this mandatory condition (along with the other accompanying conditions set out in DOC's s 51 concessions report and attached track-changed conditions) ensures that:

- a concession activity fee will in fact be imposed. As noted by Westpower,⁵ clause 8 of Schedule 6 provides that the Panel “may” rather than “shall” impose a fee condition.
- the Minister responsible for the land's management on behalf of the Crown as landowner, has the final say on the amount of the concession activity fee. DOC considers this is necessary in this case. As noted in DOC's s 51 concessions report⁶:

Activity fees are rent or other money for the privilege of using Crown land. These acknowledge the restrictions associated with private use of public land and provide income to manage risks and potential liabilities that may arise from the proposed activity on conservation land.

Ministerial and Cabinet approval of conditions-setting under s 78 by the Minister of Conservation

14. Westpower's Memorandum 7⁷ records that s 78 of the FTAA was added into the FTA Bill via an Amendment Paper, but states that there is no further explanation available [for] the documents for the Amendment Paper.

15. On 26 May 2025 DOC proactively released via its website⁸ three tranches of Ministerial and other documents relating to the FTA Bill. Tranche 3 includes papers for a meeting of the Fast-track Ministers on 19 August 2024 to discuss land management issues relating to the FTA Bill, including the proposal that that Bill allow the Minister responsible for the land to set mandatory non-environmental terms and conditions.

⁵ Memorandum 7 at [2.23].

⁶ DOC s 51 concession report at [14.3.4]

⁷ Memorandum 7 at [2.26].

⁸ See [Official Information Act responses 2025](#).

16. Included in this meeting pack was an aide memoire to the Ministers dated 15 August 2024, providing detail to assist with decisions that had been delegated to those Ministers by Cabinet, including on land management approvals.⁹ The paper included advice on mandatory non-environmental conditions at pages 4 and 5, expressly referring to the availability through the proposed provisions to impose mandatory conditions for **fees** payable to the Crown. The rationale was stated as:

Addressing risk that Panel may not have access to adequate expertise and knowledge on issues of Crown risks.

The relevant excerpt from the Ministerial paper is snipped below (highlighting added):

Option	Explanation
<p>.....</p> <p>Allow the land-owning Minister to set mandatory non-environmental terms and conditions as a matter of policy that would apply to all fast track contracts. This could include fees, terms, and risk management conditions. The Panel would have no discretion to alter these.</p> <p><i>[Addressing risk that Panel may set conditions that the Crown considers insufficient to protect its interests]</i></p>	<p>This allows the Crown to set standard terms and conditions that should apply across projects, ensuring that frequently occurring risks could be managed as a matter of Government policy. However, there may still be project-specific risks or issues that would need to be addressed through bespoke conditions.</p> <p>As part of the process of developing the standard terms and conditions, an assessment would be made of how proportionate they are</p>

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⁹ Memo: 24-M-0098 Meeting advice for 19 August Fast-track Ministers meeting - at [DOC Fast track proactive release material – Tranche 3](#).

Option	Explanation
	<p>to ensure they protect the Crown's interests but are not prohibitively onerous on applicants.</p> <p>Standard terms and conditions would make the process more efficient, reduce the time the Panel has to spend on non-environmental matters and give applicants certainty about what to expect for their contracts.</p>

17. At the 19 August 2024 meeting of the Fast-track Ministers, the Ministers delegated decisions on land management mitigations to the Minister of Conservation and the Minister of Resources. Briefing 24-B-0424 to the two Ministers followed, and this is also included in Tranche 3 of the documents proactively released by DOC.
18. Briefing 24-B-0424 included the following advice to the Ministers of Conservation and Resources:

Options to grant the responsible Minister the ability to influence decisions	
<p>Allow the land-owning Minister to set mandatory non-environmental terms and conditions as a matter of policy that would apply to all fast track contracts. This could include fees, terms, and risk management conditions. The panel would have no discretion to alter these.</p>	<p>This allows the Crown to set standard terms and conditions that should apply across projects, ensuring that frequently occurring risks could be managed as a matter of Government policy. There would still be project-specific risks or issues that would need to be addressed by the panel through bespoke conditions.</p> <p>As part of the process of developing the standard terms and conditions, an assessment would be made of how proportionate they are to ensure they protect the Crown's interests but are not prohibitively onerous on applicants.</p> <p>Standard terms and conditions would make the process more efficient, reduce the time the panel has to spend on non-environmental matters and give applicants certainty about what to expect for their contracts.</p>

19. These decisions were wrapped into further Ministerial decision papers for amendments to the FTA Bill which have been proactively released by the Ministry for the Environment.¹⁰
20. It is clear that, in agreeing to include provisions in the FTAA to allow the Minister responsible for the land to set mandatory non-environmental terms and conditions, the

¹⁰ See ECO-24-SUB-0200 at <https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/fta-bill-tranche-three/>.

setting of fees payable to the Crown was contemplated as a measure to manage risk to the Crown.

DOC disagrees with Westpower's other arguments why fee conditions cannot be imposed under s 78

21. Westpower has set out further detailed arguments at paragraph 2.28(a) to (e) of its Memorandum 7. Those arguments, and the reasons why DOC disagrees, are set out as follows:

- a) *There was a clear intention to give the panel the decision as to whether to impose a concession fee. The FTAA expressly disapplies s 17Y and the Minister's role in that respect:* DOC disagrees – there is no clear intention to give the panel the decision in all cases. There is a discretionary power for the panel to impose fee conditions. That power becomes redundant when DOC advises the Panel it must impose specified s 78 concession fee conditions.

- b) *It is not appropriate for a s 78 condition (which focuses on 'risks and liabilities' as opposed to fees) to be used to reinstate the Minister's role in setting the concession fee – that is directly contrary to the statutory scheme:* DOC disagrees – It is entirely consistent with the statutory scheme for DOC to invoke s 78 to ensure the Minister has the fee-setting role. Concession fee setting is within the scope of s 78 of the FTAA, i.e. the management of risks and potential liabilities. The Minister has approved the s 78 conditions relating to fees on the basis that they are appropriate to manage risks and potential liabilities to the Crown arising from the granting of an approval, as per s 78(2) of the FTAA. There are several key risks in leaving fee setting conditions to an expert panel that the Crown has addressed by providing for fees through s 78 conditions instead:
 - The panel might not impose a condition requiring the payment of fees at all, or could set a value too low to ensure the Crown receives a fair rental for the use of its land. The setting of activity fees acknowledges the restrictions associated with private use of public land and provide income to the Crown to manage risks and potential liabilities that may arise from the proposed activity on public conservation land.¹¹

¹¹ See DOC's s 51 concessions report at [Appendix-C-Waitaha-Hydro-s512a-concessions-report.pdf](#), at [14.3.4].

- The panel might not be set up with sufficient resources and expertise to quickly and accurately assess what the value of the fees should be. This creates high risk that the fees would not provide a fair return for the use of Crown land. The s 78 conditions which are to be imposed for fees in this case set out the process for the fee setting, rather than requiring the Panel to grapple with the issues and settle on the level of the fee. This is likely to be a novel issue for panel members.
- Potential disputes could arise if the panel was to set the fee at a level perceived as too little or too onerous on the applicant. This would also carry further risk of delay within the approval processes.

Reserving power to the Minister of Conservation to set fees and other non-environmental conditions under s 78 is also consistent with the statutory scheme, which provides for the Minister responsible for managing the land for the Crown to be the final decision maker in fast-track processes where there are risks and liability issues for the Crown. In particular:

- Section 78 of the FTAA provides for mandatory conditions to be set by the Minister and required through the Director-General's s 51 report – the Minister decides on these conditions, the Director-General directs that they be imposed under cl 9, and the Panel must impose them. The Minister is the final decision-maker on these conditions.
 - Sections 74 and 77 of the FTAA provide for the Minister to call in the decision-making on concessions, land exchanges, and access arrangements. Call in results in the Minister being the final decision-maker on the relevant approvals within a substantive application.
 - Section 75 of the FTAA provides for the Panel to transfer the decision-making on concessions, land exchanges, and access arrangements to the Minister. Transfer by the Panel to the Minister results in the Minister being the final decision-maker on those approvals.
- c) *Clause 20 of Schedule 6 of the FTAA also supports that position, in that it refers to the panel having set the fee, not the Minister:* DOC disagrees – cl 20 of Schedule 6 is simply a reflection of situations where the panel has imposed a fee condition as a matter of discretion, and the fee condition comes up for review.

- d) *Parliament intended to give the panel discretion in respect of the concession fee, to ensure a project with significant regional or national benefits would not become unviable due to a concession fee that was too high:* DOC disagrees –there is no material available to support this contention.
- e) *Westpower's primary position, explained above, is that the s 78 condition regarding the concession fee is unlawful:* DOC disagrees – there is nothing in the FTAA or any explanatory or contextual material indicating that it would be unlawful to include fee conditions under s 78. The fact that there is a discretionary power for a panel to impose a fee condition under cl 7 of Schedule 6 does not place any limitation on the Minister's power to set, and DOC's power to require, concession fee conditions to be imposed under cl 9 of Schedule 6.

22. For completeness, DOC notes that Westpower sought amendments to s 78 of the FTAA via submission and evidence to the Environment Select Committee in November 2025. Westpower requested that s 78 be amended by including a new subclause (3) specifying that the setting of a rent, fee or royalty for a concession may not be the subject of a condition under s 78(1).¹² Section 78 was however not amended as requested by Westpower.

DOC has decided it appropriate to require section 78 to be imposed in this case

- 23. DOC has, through its s 51 concessions report, exercised the power available to it under cl 4(2) of Schedule 6, and has specified a concession activity fee condition under s 78 that the Panel must impose.¹³
- 24. The fee conditions the Panel is required to impose on the long-term concession sought by Westpower are set out in the track-changed conditions appended to DOC's s 51 concessions report.¹⁴ The conditions are reproduced below for the Panel's convenience:

¹² Westpower's evidence to the Select Committee can be found at:

[125d1695c21726fec8751e16b0bf920225cb77cc](https://www.mta.govt.nz/125d1695c21726fec8751e16b0bf920225cb77cc)

¹³ [Appendix-C-Waitaha-Hydro-s512a-concessions-report.pdf](#) at [14.3.5] and [14.3.6]. The condition must be imposed in accordance with cl 9 of Schedule 6

¹⁴ See [Appendix-C4-Waitaha-Draft-concession-conditions-lease-licence-long-term-27Nov25-with-DOC-commentary.pdf](#) conditions 100 to 105.

Concession Fee

100. 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.
101. 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.

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102. 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%.
103. 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.

Concession Fee review

104. The Minister will commence a review of the Concession Fee at intervals in accordance with section 17Y of the Conservation Act.
105. 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.

Other charges

106. 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.
107. 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.
108. 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%.

Costs

109. 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.
110. 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.
111. 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.

Commented [DOC75]: Addition of s78 conditions around fees. Discussions with Westpower on these conditions are ongoing. If changes are agreed, DOC will not seek the Panel to impose these conditions under s 78.

25. The Panel has no choice but to impose the conditions as specified by DOC, in accordance with cl 9 of Schedule 6. DOC's concessions report does however include the following advice to the Panel:

14.3.5 *Discussions with Westpower on these conditions are ongoing. In the absence of agreed alternative wording, DOC requires these conditions to be imposed.*

14.3.6 *For the avoidance of doubt, DOC considers that if alternative wording can be agreed, the s78 conditions may not be required. This approach provides flexibility to allow further discussions.*

26. DOC has not been able to reach agreement with Westpower on alternative wording. Accordingly, the requirement that the s 78 concession activity fee conditions for the long-term lease/licence concession be imposed stands, and the Panel must impose these conditions if it decides to grant the concession.
27. The Panel has no discretion to challenge or otherwise elect not impose the section 78 conditions exactly as presented to it by DOC.

PART B – RESPONSES TO SPECIFIC ISSUES RAISED IN THE PANEL’S REQUEST FOR INFORMATION FROM DOC

RFI item (1) - John Dunckley’s 9 December 2025 valuation report to DOC

28. In response to Item (1) of the Panel’s RFI, a redacted copy of Mr Dunckley’s 9 December 2025 valuation report to DOC is attached as **Attachment 2**.
29. DOC is mindful of the issues regarding the potential release of confidential information that have been the subject of correspondence to and from the Panel over the past week. Given the confidential and commercial sensitivity of much of Mr Dunckley’s report, an unredacted version is therefore not being provided to the Panel at this time.
30. DOC understands the Panel has received unredacted copies of Mr Penrose’s 4-page 23 February 2025 “summary” document, Mr Penrose’s 1 February 2026 report, and Mr Griffiths’ 23 February 2026 statement. These unredacted documents have also been provided to DOC, and the concession activity fees proposed by Mr Penrose and Mr Griffiths¹⁵ set out in those documents are noted.

RFI item (2) - Mr Dunckley did not take the matters in items (2)(a) to (c) of the Panel’s RFI into account in preparing his valuation report

¹⁵ The concession activity fee is proposed as a percentage of gross annual revenue.

31. Mr Dunckley's statement confirms that his valuation did not take into account the compensation offered by Westpower,¹⁶ or the purpose of the FTAA.¹⁷ He did however take into account the term requested for the long-term concession. The reasons for this are set out in Mr Dunckley's attached statement. This memorandum also provides further comment on these issues, below.
32. Counsel also wish to draw to the Panel's attention that Mr Dunckley categorically denies the assertion made by Mr Penrose near the end of his 23 February 2026 statement that Mr Dunckley "conceded" that deduction should be made for the proposed adverse effects payments¹⁸ from the revenue-based annual rent, as per the calculation in Mr Penrose's 1 February 2026 report.

RFI item (2)(a) - Inappropriate to take into account the compensation offered by Westpower to reduce the market value assessment

33. DOC's instructions to Mr Dunckley were expressly to *not* take into account Westpower's proposed compensation package in assessing the market value fee/rent to be represented by the long-term concession activity fee.
34. This is reflected at paragraph 19 of Mr Dunckley's valuation report, where he notes:

The scope of the valuation does not include any compensation considerations, and that in line with the TOE this valuation is for a market fee/rent for the use of the Crown land/waters only¹.

¹ Email Kayla Mahon Date: Tuesday, 21 October 2025 at 4:33 PM

35. Mr Dunckley has not factored into his concession activity fee assessment an amount to compensate for adverse effects, and he has not factored in Westpower's proposed compensation package as a reduction to the fee.

¹⁶ DOC assumes the "compensation" referred to in the Panel's RFI is the \$1.945M "proposed compensation measures" referred to in Westpower's application documents (section 6.24 of the Application and AEE, pages 311 and 312: [Waitaha-Hydro-project-substantive-application-documents.pdf](#) which has since been updated as per Westpower's Memorandum #11 Appendix B "Updated Table of Compensation Payments" 13 February 2026.

¹⁷ References in this memorandum to provisions of the FTAA are to the provisions as they were immediately before the 17 December 2025 amendments came into force, in accordance with the transitional provisions in cl 6 in Part 2 of Schedule 1 to the amended Act.

¹⁸ DOC and Mr Dunckley assume that the "proposed adverse effects payments" are Westpower's proposed compensation package.

36. DOC understands from Mr Penrose's valuation report that his assessment factored in the latter, but not the former – Mr Penrose's report:
- records that it is proposed that payments for adverse effects be paid additional to the annual rent/royalty amount;¹⁹ but also
 - makes a downward adjustment to factor in Westpower's proposed adverse effects compensation.²⁰
37. A substantial part of Westpower's proposed compensation package relates to the construction phase of the project.²¹ Westpower is seeking a separate short-term concession for construction, for which the activity fee has been agreed between DOC and Westpower. However, Mr Penrose's proposal to reduce the activity fee for Westpower's long term concession to take into account Westpower's adverse effects compensation package does not factor in that in.²²
38. Mr Dunckley has set out in his statement his concerns with the methodology followed, including deducting a portion of the adverse effects compensation package from the concession activity fee assessment.
39. DOC also considers that, as a matter of principle, it is inappropriate to deduct any portion of Westpower's proposed adverse effects compensation package from the long-term concession activity fee. As explained in both valuers' reports, the concession activity fee is a payment for the right to occupy and use the Crown's land to undertake the concession activity²³; conversely, the compensation package²³ is intended to address adverse effects on the environment.
40. DOC considers it would *only* be appropriate to "discount" a concession fee to take into account an adverse effects compensation payment, where the compensation has already been factored into the concession fee. Put another way, where the fee is increased to allow for compensation on top of what would otherwise be considered the market rental

¹⁹ Section 5.2.4, page 29.

²⁰ Mike Penrose valuation report, pages 45 – 46.

²¹ See updated compensation package referred to and link provided at footnote #16 above.

²² Mike Penrose valuation report, pages 45 – 46.

²³ John Dunckley valuation report, Section 2, paragraph 19, page 7; Mike Penrose valuation report, section 2.1 "Basis of Valuation".

for the activity on conservation land. The Conservation Act seeks to avoid this situation,²⁴ but that is not the case here.

41. DOC considers that reducing the concession activity fee payable to the Crown to take into account that Westpower is proposing to pay compensation for adverse effects of the project, is unlawful. The approach inappropriately discounts the true cost of the project, by seeking to lower what is a standard rental to utilise land otherwise available to the public and thereby avoiding paying the true cost of the adverse effects on the environment of the activity. The Westpower valuation approach is irrational by conflating separate concepts in several respects:

- The adverse effects compensation package and the concession activity fee address completely different issues which stand alone and should not be traded off against each other.
- A substantial part of Westpower's proposed compensation package relates to the construction phase of the project which is irrelevant to the long-term concession.
- There is no indication in the conditions as proposed by Westpower that any of the adverse effects compensation package will be paid to DOC. In relation to the long-term concession activity fee, Westpower proposes to discount what is paid to DOC for the use of Crown land to take into account what is intended to be paid to Whitewater NZ and other un-named organisations. This is a case of "robbing Peter to pay Paul".
- Westpower is proposing that its compensation package be dealt with through conditions on its resource consents,²⁵ which are at arms-length from, and not connected to, the long-term concession where the fee conditions will sit if the Panel is minded to grant approval. The compensation conditions on the resource consents will be enforced by the councils, with no administrative role for DOC.

RFI item (2)(b) - The term sought for the concession is not relevant to the activity fee

42. Mr Dunckley has factored the term sought for the long-term concession into his valuation assessment, and the impact of the expectation he understands is held by Westpower that

²⁴ Sections 17X(d) and 17Y operate together so as to avoid double dipping regarding compensation for adverse effects.

²⁵ See Updated compensation table at: [Memorandum-11-Appendix-B-Updated-Table-of-Compensation-Payments-13-February-2026.pdf](#)

the approvals will be renewed beyond the 49-year concession sought for the scheme's operation.

Item (2)(c) – The purpose of the FTAA is not relevant to a market value assessment

43. Mr Dunckley did not take into account the purpose of the FTAA in his valuation assessment, and nor would it have been appropriate to do so.
44. The implications of taking into account the FTAA purpose are unclear, open to interpretation in the valuation context, and outside the scope of undertaking a market value assessment.
45. In addition, the degree to which the Act's purpose is relevant depends on whether the activity fee conditions are required to be imposed under s 78 and cl 9 of Schedule 6 to the Act, or at the Panel's discretion under clause 7 of Schedule 6. As is discussed above, unless DOC advises otherwise, the Panel is required to impose the fee conditions set out in DOC's s 51 report.

RFI item (4)(a) - Mr Dunckley's valuation would not change now that CPI increases are offered for compensation payments

46. As Mr Dunckley's valuation has not factored in a "discount" for Westpower's proposed compensation package, the inclusion of CPI increases has no bearing on Mr Dunckley's valuation, and it would not change taking the CPI increases into account.

RFI item (4)(b) Impact of Mr Griffiths' statement

47. Mr Dunckley has confirmed in his statement that he has read Mr Griffiths' 23 February 2026 statement relating to fees, and that the content of Mr Griffiths' statement has not changed his view on the appropriate long-term concession fee level.
48. Westpower does not appear to have produced any financial information to assist the Panel to understand the depth of the issues raised in Mr Griffiths' statement on the financial viability of the project. Without this information, it is unclear whether (and if so, how) the Panel can afford particular weight to Mr Griffiths' comments linking the quantum of the concession activity fee to whether or not the project will be built.
49. Given Mr Griffiths' statements are unsupported by financial evidence, DOC's view is that little weight can be given to them. In addition, it is inappropriate for the potential regional or national benefits (if accepted evidentially by the Panel) to further operate to provide a discount for Westpower. The fee is there to ensure the true cost of occupying land otherwise available for all members of the public is paid for. This is not something to be

reduced simply because there might be financial benefits elsewhere to Westpower or the general public.

Conclusion

50. We trust that this memorandum and the attached statement and report are of assistance to the Panel.



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

5 March 2026