

Under the **FAST-TRACK APPROVALS ACT 2024**

In the matter of an application for approvals in relation to the Waitaha Hydro
Scheme

Between **WESTPOWER LIMITED**

 Applicant

**EXPERT PANEL: WESTPOWER LTD MEMORANDUM #8
MEMORANDUM OF COUNSEL RESPONDING TO MINUTE #7**

Dated: 30 January 2026

BUDDLE FINDLAY
Barristers and Solicitors

Solicitor Acting: Paul Beverley / David Allen / Rachael Balasingam
Email: paul.beverley@buddlefindlay.com / david.allen@buddlefindlay.com /
rachaelbalasingam@buddlefindlay.com
Tel 64 4 463 0423 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

MAY IT PLEASE THE PANEL:

1. This memorandum is filed on behalf of the Applicant, Westpower Limited (**Westpower**) in response to the Panel's request for input on the matters in Minute #7.¹ Minute #7 considers joint conferencing or a joint empanelling of the witnesses in relation to hydraulics / fish passage / fluvial geomorphology / freshwater ecology and whio arising solely from the peer review reports of Dr Jon Tunnicliffe and Mr Paul Morgan (**Review reports**).
2. Westpower's understanding of Minute #7 is that the input sought from the Department of Conservation relates only to the expert comment on freshwater ecology and whio.² That is appropriate, however, Westpower's responses to the Review reports on hydraulics / fish passage and fluvial geomorphology are required for effective consideration of effects on freshwater ecology and whio. Westpower proposes an efficient timetable to resolve that for the Panel's benefit before empanelment.

Whether there is any preference between an online conferencing session with the Panel present and able to ask questions or a more formal online joint empanelment (hot-tubbing) of witnesses as part of a discrete hearing convened solely for that purpose

3. While conferencing has a place, Westpower considers that it will be far more efficient and effective for the Panel to formally lead the process, and zero in to any remaining questions it has after reviewing Westpower and the Department's (if any) responses to the Review reports. Therefore, Westpower prefers simple online empanelment of the witnesses to answer questions from the Panel. The Panel has the necessary skill and experience to ensure empanelment is undertaken in the appropriate manner.

Which of their respective experts they consider should attend any such conferencing/joint empanelling session

4. The relevant Westpower witnesses for empanelment are:
 - (a) Dr Murray Hicks, author Appendix 19: Sediment Report;³
 - (b) Mr Martin Doyle, author Appendix 18: Hydrology Report;⁴

¹ [FTAA_2506-1069-Minute-7-Waitaha-Hydro-27-Jan-26_FINAL.pdf](#)

² If this is not correct Westpower requests the Panel to urgently let the parties know.

³ [Appendix-19-sediment-report.pdf](#)

⁴ [Appendix-18-hydrology-report.pdf](#) For completeness, Mr Doyle is also the author of Appendix 32: Public River Safety Report).

- (c) Dr Dougal Clunie and Mr Jeremy Kent-Johntson, authors Appendix 31: Downstream Flow Modelling Report and Appendix 42: Conceptual Scheme Design Drawings;⁵
- (d) Ms Shelley McMurtie, author Appendix 25: Freshwater Ecology Report;⁶
- (e) Dr John McLennan, peer reviewer Appendix 22: Whio Report;⁷
- (f) Mr Mason Jackson, author, Assessment of Environmental Effects⁸ and resource consent conditions (for condition explanation and should conditions change / be added to); and
- (g) Mr Rodger Griffiths, author Appendix 3: Project Overview Report Part 1 and Part 2.⁹

The availability of those witnesses to attend an online session on Friday 13 February 2026 in the afternoon (this being the Panel's preferred date and time slot given the peer reviewers' and Panel's respective availabilities)

5. All witnesses listed above are available in the afternoon of Friday 13 February 2026.

Whether legal counsel should be present and if so in what capacity (observer v active participant)

6. Westpower does not consider active participation by legal counsel is required for the Panel to undertake the process it prefers above. However, Westpower proposes one legal counsel, David Allen, observes. He is available on the afternoon of 13 February 2026.
7. Westpower is, of course, happy if the Department also wishes to have a lawyer in an observer capacity.

⁵ [Appendix-31-downstream-flow-modelling-report.pdf](#); and [Appendix-42-conceptual-scheme-design-drawings.pdf](#).

⁶ [Appendix-25-freshwater-ecology-report.pdf](#)

⁷ [Appendix-22-Whio-report.pdf](#)

⁸ [Waitaha-Hydro-project-substantive-application-documents.pdf](#)

⁹ [Appendix-3-project-overview-report-part1.pdf](#); and [Appendix-3-project-overview-report-part2.pdf](#).

Whether a joint statement of issues can be produced by no later than 12pm on Thursday 12 February 2026

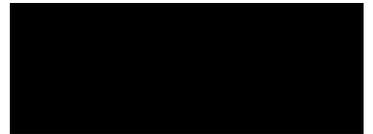
8. Westpower assumes the Panel proposes that the 'joint statement of issues', is solely for those issues where the Department is involved (freshwater ecology and whio).
9. To ensure the joint statement of issues can be produced efficiently, unnecessary cost is avoided, and the online session assists the Panel, Westpower proposes:
 - (a) Westpower's witnesses respond to all matters raised in the Review reports by **5pm, 10 February 2026**;
 - (b) the Department shares (with the Panel and Westpower) any expert comments on freshwater ecology and whio following the Review reports and Westpower's responses by **5pm, 11 February 2026**;
 - (c) as requested by the Panel, a joint statement of issues (between Westpower and the Department) related to freshwater ecology and whio is filed by **12pm, 12 February 2026**; and
 - (d) Westpower files a response to the Department's comments by **5pm, 12 February 2026**.
10. Westpower will also file a statement of other issues raised in the Review reports (hydraulic engineering, fish passage, and fluvial geomorphology) by **12pm, 12 February 2026**.
11. The two statements of issues will then form the agenda for the online empanelment session.
12. In advance of that, and as will be evident to the Panel given its experience, it is not the Panel's role, nor is it a legal requirement, that it, or any individual expert, be "*convinced that the proposed intake structure is the best and most suitable option for this location and purpose*" as commented on in the Review report: Review of Intake Engineering and Fish Passage.¹⁰ Rather than design a project, it is the Panel's role to assess the Project before it in

¹⁰ [Microsoft Word - Waitaha Hydro Power Review of Intake 26 Jan 2026](#) 8.0, pg 17.

accordance with the relevant FTAA legal requirements (as previously provided to the Panel).¹¹

13. However, to ensure that the Panel has ample information on the matters covered in the Review reports, Westpower's witnesses are preparing a fulsome description of the significant technical input and consideration of environmental effects and design responses (relating to over a decade of evidence and analysis) that sits behind the technical reports appended to the Application. Ultimately, in relation to outcomes and effects of relevance to the Panel, Mr Jackson's alignment of any legitimate concerns raised against the proposed conditions is of most importance.

Dated: 30 January 2026



Paul Beverley / David Allen / Rachael Balasingam

Counsel for Westpower Limited

¹¹ Westpower Memorandum 1 to the Expert Panel, 7 November 2025 ; and [Westpower-Memorandum-7,-Response-to-Comments-and-RFI-3,-21-January-2026 Redacted.pdf](#).