

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
COMMENTS ON THE PANEL'S DRAFT CONDITIONS OF CONSENT
IN ACCORDANCE WITH SECTION 70 OF THE FTAA**

27 March 2026

Barrister Instructed:

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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 forms part of the suite of documents comprising DOC's comments on the Panel's draft conditions of consent. These documents need to be read together.
2. This memorandum discusses DOC's key areas of concern with the Panel's draft conditions, and how DOC proposes that the Panel addresses them. DOC's key areas of concern (which in respect of (a) to (e) are inter-related), are:
 - a) Which approvals the various compensation conditions should sit in.
 - b) Who receives the compensation for the various adverse effects of the scheme.
 - c) The amount of compensation required to address the adverse effects of the scheme on recreation (particularly trampers), and how this figure has been settled upon by the Panel.
 - d) Which approvals the conditions dealing with management plan certification should sit in.
 - e) Who certifies the management plans required to be prepared under the conditions.
 - f) Requirements for the removal of structures at the expiry of the concession term.
 - g) Conditions dealing with in-stream maintenance work.
3. DOC also wishes to draw the Panel's attention to a typographical error requiring correction.
4. In summary, DOC considers that:
 - a) The various compensation conditions should sit in all relevant approvals, but enforcement should be via conditions in the approval which is most relevant – namely the approval that authorises the adverse effect(s) the compensation is intended to address.
 - b) DOC must receive the recreation compensation required to be paid under the concession conditions. This is necessary to ensure DOC will be able to comply with its obligations under clause 21 of Schedule 6 of the FTAA.

- c) The amount of compensation for adverse effects on recreation (particularly trampers) is inadequate, and the Panel has erred in several respects in its approach to establishing the \$25,000 figure to be paid by Westpower as recreation compensation.
 - d) The management plan certification conditions should sit in the relevant approvals which authorise the effects that the management plan addresses. In most cases this is more than one approval.
 - e) DOC should have a dual (side by side) certification (rather than comments only) role with the relevant council in respect of the management plans for wildlife and freshwater fisheries approvals. For activities on public conservation land, DOC considers it should be required to sign off that the management plans meet their objective and the other relevant conditions before they are submitted to the relevant council (i.e. a joint certification role). These management plans squarely fall within DOC's expertise, align with its statutory functions, and its responsibilities as administering agency on behalf of the Crown as owner of both the land, the terrestrial resources on it, and the protected wildlife that will be harmed through the construction of the scheme.
 - f) Regarding what structures are required to be removed at the end of the concession term, DOC's approach throughout this fast-track process has been that it is the role of the Minister of Conservation to make this decision. However, the Panel's draft conditions depart significantly from DOC's recommended conditions and provide for key components of the scheme to remain in place at the end of the concession term. This approach raises significant risks and liabilities for the Crown. Accordingly, the Director-General directs the Panel to impose conditions for the removal of structures as set out in the s 78 conditions approved by the Minister of Conservation. These additional conditions are to be imposed as part of the lease-lisence concession.
 - g) DOC seeks that the draft conditions dealing with the use of the 20-tonne excavator for in-stream maintenance works be amended to include an upper annual limit on the number of times this can occur, and provision for a review of the resource consent conditions if this limit is exceeded.
5. DOC accordingly seeks that the Panel amend the draft conditions as set out in:
- a) The comments above and below;

- b) The accompanying commentary and track-changed table of the draft conditions;
and
- c) The accompanying expert statements of Mr Kerr (recreational compensation modelling) and Ms Sidley (relevance of compensation biodiversity and wildlife compensation on recreational values).

A. The compensation conditions should sit in the most relevant approval(s)

- 6. The Panel has recorded its agreement with DOC that the recreation compensation payment most appropriately sits within the concession approval, rather than the resource consent conditions. The rationale for this is that, given the payment is for recreation effects and the land involved is public conservation land, the recreation compensation requirement most appropriately sits in the concession conditions.¹
- 7. DOC's view is that the rationale for requiring compensation for recreation effects to be included in the concession conditions applies equally to compensation for other adverse effects. Thus, the compensation requirements should sit within the conditions of the approvals that authorise the effects that the compensation is intended to address (i.e. not just the resource consents).
- 8. The Panel has noted in its draft decision that it does not consider it appropriate for the compensation to sit in both approvals (i.e. concessions and resource consents), as this would raise issues in relation to enforcement. The Panel has therefore included all compensation other than recreation compensation in conditions of the resource consent conditions.² DOC does not consider having compensation sitting in two approvals a problem, provided it is made clear compensation payments are not intended to be duplicated. Under BAU non-FTAA processes there would be compensation attaching to the different approvals, as well as overlap in effects management amongst the approvals.
- 9. DOC does not consider it appropriate that the compensation for effects on biodiversity and wildlife sit solely within the resource consents. If they must sit in one place, these requirements sit more appropriately within the wildlife approvals given it is these approvals that authorise the harm giving rise to the need for compensation. The updated compensation table provided by Westpower as Appendix B to Memorandum #11 clearly indicates the adverse effects that the different elements of compensation are intended to

¹ Draft decision paragraph 1116.

² Draft decision paragraph 1116.

address. For example, the first half of the table on page 1 of Appendix B records the adverse effect compensated for as below:

Appendix B: updated Table 33, Application¹: Summary of Westpower's Compensation Measures

Residual Adverse Effect	Proposed Compensation	Total Financial Commitment	Commencement of payment as per conditions	Term post grant of consents
Construction related effects on bats	Ten annual payments of \$15,000 to an ecosystem programme in the region that supports the West Coast region's bat population	\$150,000	Two months after the commencement of construction Part D, Condition 54 ²	Annually for ten years
Construction related effects on who	Ten annual payments of \$35,000 to an ecosystem programme in the region that supports the West Coast region's bat who population	\$350,000	Two months after the commencement of construction Part D, Condition 55	Annually for 10 years
Construction related effects on forest birds	\$10,000 for each year during the construction of the Scheme where indigenous vegetation clearance is undertaken south of McGregor Creek	\$20,000 (assuming two years of clearance activities required)	Two months after the commencement of construction Part D, Condition 57	Annually for 2 years

B. DOC should receive the compensation for the adverse effects authorised by the approvals

10. The draft conditions do not state who is to receive the various elements of compensation, but rather, leave the detail of this to the relevant management plan.
11. This leaves a large amount of discretion to the consent holder regarding who will receive the compensation payment and no control for the entity required to administer the approval. If the conditions are left vague, it is also unclear how the Panel can have certainty that the compensation will be applied to achieve the intended outcome.

The compensation for recreation effects needs to be paid to DOC and applied to conservation land

12. For compensation relating to recreation effects, which the Panel has determined should be included in the conditions of the lease-licence concession,³ DOC seeks that a requirement be included in the condition that the money be paid to DOC to be applied to public conservation land. DOC also seeks that the current restriction on what the moneys are to be applied to (current tracks and huts) be removed, and a clear purpose for the

³ DOC supports the recreation compensation sitting in the concession conditions.

money is included. DOC considers the restriction on use of the compensation in the draft conditions is inappropriate.

13. Making these amendments to the compensation condition is necessary to ensure that this money is earmarked in DOC's financial accounting system, and to ensure DOC can comply with clauses 21(1) and (3) of Schedule 6 to the FTAA, which specify that DOC must ensure that compensation paid in relation to a concession is applied to conservation land. Clause 21 provides:

21 Compensation must benefit conservation land

(1) *The Director-General of Conservation must ensure that compensation in relation to a concession granted under this Act for land administered by the Department of Conservation is applied to land administered by the Department of Conservation (and not other land) with the objective of achieving positive effects.*

...

(3) *In this clause, **compensation** means any measure—*

(a) *proposed or agreed to by the applicant who is the proposed holder of a concession to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing an activity; or*

(b) *imposed by a panel in accordance with clause 8.*

14. The recreation compensation moneys need to be paid to DOC and earmarked for a specific purpose to ensure DOC can meet this statutory requirement.

C. The amount of compensation for adverse effects on recreation is inadequate

15. DOC has a range of concerns with the amount of compensation required for recreation effects, and the Panel's reasoning for imposing a condition requiring a one-off payment of only \$25,000.

16. The Panel has determined that:

- a) landscape and recreation effects of the scheme are a key issue for its

consideration;⁴

- b) the scheme will have significant adverse effects on recreation values both during construction and operation;⁵ and
 - c) compensation must be proportionate to the size and scale of the effect it is addressing.⁶
17. DOC considers that \$25,000 is inadequate and inappropriate, being disproportionately small to the recreation effects it is intended to address. Impacts to recreation are recognised as significant effects of the scheme yet are being afforded the least amount of compensation by the Panel.
18. DOC proposed a more appropriate sum in its Section 51 report of \$315,000, based on modelling undertaken by DOC's Principal Commercial and Revenue Advisor Mr Kerr.⁷
19. The Panel has not accepted DOC's proposal, based on:
- a) criticisms made by Westpower's experts of Mr Kerr's methodology;
 - b) the absence of any other methodology to justify a different amount; and
 - c) the other compensation offered for biodiversity and kayakers which the Panel considers will also address aspects of effects on recreational values.⁸
20. There is no clear basis for the \$25,000 figure, and DOC notes the Panel's comment to this effect in its draft decision.⁹
21. DOC does not accept the criticisms of Mr Kerr's methodology, as is explained below. DOC considers the methodology used by Mr Kerr is appropriate and fit for purpose. The fact that Westpower has not proposed an alternative methodology does not justify the \$25,000 sum. Other compensation offered such as that for effects on biodiversity and the private arrangement with WWNZ is irrelevant when considering compensation for the significant residual impacts on recreational visitors.

⁴ Draft decision, paragraph 706.

⁵ Draft decision, discussion at paragraphs 706 to 721.

⁶ Draft decision, paragraph 1113.

⁷ See detail in DOC Section 51 Report, Recreation Appendix C2.

⁸ Draft decision, paragraph 1179.

⁹ See paragraph 725.

22. DOC considers the requirement in the draft conditions of a one-off payment of \$25,000:
- a) is not commensurate with the size and scale of the adverse effect – i.e. the significant adverse effect that will endure for the life of the scheme;
 - b) is not supported by the expert evidence before the Panel;
 - c) has not been calculated and is therefore not defensible by reference to any of the available valuation methodologies;
 - d) inappropriately factors in the total sum of the “overall package” of compensation proposed by Westpower and included elsewhere in the draft consent conditions; and
 - e) inappropriately factors in compensation for effects on wildlife and biodiversity as an enhancement to the experience of recreational users and therefore their values.

(a) The amount is not commensurate with the size and scale of the adverse effect

23. Recreation is recognised as being a significant adverse effect by the Panel.
24. DOC notes the Panel’s findings in its draft decision that:
- recreation effects are an exception to the conclusion reached by the Panel that adverse effects are appropriately addressed by the draft conditions;¹⁰ and
 - from a recreation effects perspective, the Scheme is not appropriate in this setting.¹¹
25. Increasing the amount of recreation compensation in line with the amount DOC seeks (which is supported by expert advice), would better address the significant recreation effects of the scheme.
26. Section 83 of the FTAA provides that the Panel must not set a condition that is more onerous than necessary to address the reason for which the condition is set. The recreation compensation condition offered by Westpower and adopted by the Panel¹² is

¹⁰ Draft decision at paragraph 882(b).

¹¹ Draft decision at paragraph 731.

¹² Although included in the draft concession conditions by the Panel rather than the resource conditions as proposed by Westpower.

set to address the significant “residual effects on recreational visitors”.¹³ DOC’s view is that the amendments to the compensation condition it seeks is necessary to address the reason for setting it, and cannot on the basis of the expert advice available to the Panel be considered to be more onerous than necessary. DOC’s proposed condition as set out in the attached track-changed conditions document¹⁴ meets the requirements of s 83, and there is no impediment to the Panel amending the condition as DOC seeks.

(b) The amount is not supported by the expert evidence before the Panel

27. The draft decision records at paragraph 351(i) that Mr Greenaway recommended¹⁵ as potential mitigation for recreation effects:

“financially support track development and maintenance in the Waitaha Valley, or elsewhere in the region, to enable user groups to best respond to changes in the setting”

28. However, the draft decision goes on to note that Westpower did not support its recreation expert’s recommendation, on the basis that:¹⁶

Financial contributions to walking track and recreation asset development fund:
Westpower did not support the making of such contributions as further access development conflicts with the backcountry-remote setting experience that the area promotes. Instead Westpower offered a one-off payment \$25,000 to an appropriate entity (e.g. DOC) to assist with track and hut maintenance.

29. The draft decision later records that Westpower’s experts Mr Copeland and Mr Greenaway also do not support making financial contributions to a walking track and recreation asset development fund for the above reasons.¹⁷ However, there is no evidence before the Panel from DOC (or anyone else) proposing the compensation moneys be applied to such conflicting development. As DOC’s track record demonstrates, its *modus operandi* in remote backcountry settings is to avoid this from occurring. Therefore, if this project is approved then the remote values will be diminished.

¹³ The purpose of each of the different elements of compensation is set out in [Memorandum-11-Appendix-B-Updated-Table-of-Compensation-Payments-13-February-2026.pdf](#).

¹⁴ Concession (lease-licence) Condition 125.

¹⁵ In his Recreation Report, see [638].

¹⁶ Draft decision at paragraph 652(c).

¹⁷ Draft decision at paragraph 725.

30. The draft decision records Ms Sidley's view that the one-off \$25,000 contribution toward track and hut maintenance is neither meaningful nor adequate, given the scale and duration of adverse effects.¹⁸
31. There is therefore no evidential support for the \$25,000 compensation figure for recreation effects which has been settled upon by the Panel.

(c) The \$25,000 amount has not been calculated by reference to any of the available valuation methodologies, while the amount proposed by DOC is the result of a valid modelled approach

32. DOC provided expert advice from Mr Kerr and recommended in its s 51 report:¹⁹

"provision of a higher level of compensation to address unmitigated effects with a 'one-off' payment for the loss of recreation value estimated in the order of \$315,000 or within a range of \$252,000 to \$378,000 or alternatively, a \$16,000 p.a. over a 20-year period;²⁷⁰

²⁷⁰ The methodology for this calculation is set out in Appendix 2 of the DOC Recreation Report.

33. Mr Greenaway and Mr Copeland have criticised the modelling method Mr Kerr has used to come to his above recommendation. DOC does not accept those criticisms, and Mr Kerr's further statement responds to Mr Greenaway's and Mr Copeland's comments in detail. Mr Kerr's further statement confirms that:

- The methodology used by Mr Kerr used is a credible method for valuing time.
- The approach Mr Kerr took was straightforward and conservative.
- Mr Kerr has applied a discount rate in his modelling. The discount rate use was as recommended by the Treasury Guidance, i.e. 2% and not 8% as proposed by Mr Copeland.
- Mr Kerr used a conservative number of recreational users, compared to Mr Greenaway's figure which would result in the compensation being assessed at \$638,00 as opposed to Mr Kerr's \$315,000.

¹⁸ Draft decision paragraph 657(g).

¹⁹ Draft decision paragraph 658(b).

- Mr Kerr's 15-year versus Mr Greenaway's 5-year average for recreational users was conservative, and adopting Mr Greenaway's figure would result in compensation being assessed at \$426,00 as opposed to Mr Kerr's \$315,000.
 - Mr Kerr considers it appropriate to use the full hourly rate as opposed to a partial rate which some modellers using the Time Cost Method adopt. This is due to the purpose and scope of the analysis, and the limited data available.
 - The potential compensation range of \$252,000 to \$378,000 is appropriate.
 - The wildlife and biodiversity compensation included in the draft conditions cannot reasonably be relied upon as delivering recreation-related benefits and cannot be considered as an all-compassing compensation package.
34. The only expert advice before the Panel using a credible methodology²⁰ therefore is that of Mr Kerr, and DOC confirms its view that the amount recommended by Mr Kerr for recreation compensation is appropriate. DOC accordingly seeks that the recreation compensation condition²¹ be amended to require the payment by Westpower of \$315,000 as per Mr Kerr's original recommendation.

(d) "Overall package" approach to assessing compensation is not appropriate

35. The Panel has taken an "overall package" approach in finding that a one-off payment of \$25,000 is adequate compensation for recreation effects. Put another way, the compensation for recreation was seen as adequate when measured against the overall amount of compensation for matters that do not benefit recreation such as effects on biodiversity.
36. DOC considers this approach is inappropriate as it conflates the adverse effects and applies a composite approach to assessing the compensations' adequacy. This approach allows compensation for disparate adverse effects which are irrelevant to be factored into the calculation for recreation compensation. Compensation that is part of the package for other things has no material bearing on nor compensates for recreation effects.
37. Compensation for effects on wildlife and biodiversity is not relevant to recreation effects. It might be that compensation for effects on landscape values could be considered in

²⁰ As opposed to a token amount.

²¹ Draft Condition 125 of the lease-licence concession.

assessing the appropriate level of compensation for recreation effects, as landscape effects materialise as impacts on the recreation experience. However, there is no compensation for landscape effects proposed by Westpower nor imposed by the Panel in the draft conditions.

(e) The wildlife and biodiversity compensation are not relevant to assessing the amount of compensation for recreation effects

38. The Panel's draft decision sets out at paragraph 723 records the Panel's conclusion that wildlife/biodiversity/compensation will enhance to some extent the experience of recreational users and therefore their values. This infers that the biodiversity compensation will deliver broader public benefits capable of contributing meaningfully to recreation outcomes for visitors of the Waitaha Valley.
39. DOC considers this reasoning that underpins the conditions is mistaken, so comments on it to the extent this assists the Panel to understand why DOC takes issue with the amount being set aside for compensation. In short, compensation for adverse effects on biodiversity and harm to wildlife payable under the draft consent conditions is not relevant and should not be considered in setting an appropriate level of compensation for recreation effects.
40. As Ms Sidley's further statement explains, biodiversity and wildlife compensation in this case cannot be relied on, either directly or indirectly, as compensation for the recreation effects or enhancement of the recreation experience.²²
41. This is because the wildlife and biodiversity compensation required in the draft conditions is not spatially constrained to the relevant recreation environments and may be directed to other locations in the region. These elements of the "compensation package" are not functionally connected to the recreation experiences that will be adversely affected. Accordingly, there is no assurance that such compensation will be applied in locations or programmes experienced by the recreation users affected by the Scheme. It is also not evident how such funding would in practice "enhance" the recreation experience at this site in practice. Even if that compensation was expended in the same locality, there is no evidence that benefiting wildlife or biodiversity more generally would have any discernible impact on the recreational experience.

²² Attachment 1 to Statement of Advice from Steve Kerr, 27 March 2026.

D. The management plan certification conditions should sit within the approvals which authorise the effects that the management plan addresses

42. DOC considers that, as a matter of principle, the certification process for management plans should be provided in the most relevant approval. In this case, given the novel “one stop shop” fast-track approvals process, there are multiple approvals dealing with overlapping activities and effects. There are also multiple management plans dealing with effects on various natural resources which are administered by different agencies. Some form of dual or joint management plan certification is therefore warranted.
43. DOC therefore considers that dual or joint certification of the management plans should be provided for in the conditions, rather than leaving all certification in the hands of the councils via certification under the resource consent conditions. The councils do not have the knowledge or expertise to deal with effects on public conservation land, harm to wildlife, or impediments to fish passage, given these issues concern matters that go beyond the usual statutory role of councils in the RMA context, and beyond what may be authorised under the RMA.
44. Resource consents provide authority to undertake activities that will cause adverse effects on the environment including habitat of threatened species. The district and regional councils, being the usual regulatory agency for these approvals, hold the necessary knowledge and expertise to administer resource consents, including certifying management plans that deal with how adverse environmental effects (such as habitat) are managed.
45. However, resource consents do not provide landowner approval on behalf of the Crown.²³ Outside of FTAA processes, this is DOC’s role as the agency with responsibility for managing public conservation land on the Crown’s behalf.
46. Resource consents also do not provide authority to harm wildlife. As Mallon J put it very clearly in *Solid Energy New Zealand Ltd v The Minister of Energy*:²⁴

[112] Under the RMA a land use consent authorises a person to make a “use” of the land that would otherwise contravene a district or regional plan. Because a “use” of land includes “any destruction of, damage to, or disturbance of, the habitats of plants or animals in, on, or under the land”, potentially a land use consent can

²³ Other than in the coastal environment which is not relevant here.

²⁴ *Solid Energy New Zealand Ltd v The Minister of Energy & Ors*, High Court of New Zealand, Wellington Registry, Mallon J, CIV-2007-485-001381, 18 June, 10 December 2008, at [112].

be granted to carry out such destruction, damage or disturbance which, absent the consent, would otherwise contravene the relevant district or regional plan. Destruction of a habitat is likely to involve some harm to animals within it. The RMA does not empower a consenting authority to authorise that harm. Rather, the consenting authority is empowered to impose conditions to address adverse environmental effects of the proposed use of land. Thus the harm to plants and animals from a proposed use may be addressed either by refusing consent to the use or by imposing conditions to address the harm. In this way the RMA process is intended to achieve its purpose of sustainable management of our natural and physical resources (which includes plants and animals).

47. Protected wildlife is property of the Crown,²⁵ and outside of FTAA processes, approval for causing harm to wildlife is the role of the Director-General of Conservation under the Wildlife Act, with DOC administering the Act. Councils cannot be expected to hold the necessary expertise to certify management plans dealing with detailed management of interactions of the consent holder with protected wildlife.
48. Concessions in respect of public conservation land constitute the approval of the Crown as landowner. Councils cannot be expected to have the knowledge or expertise to deal with all aspects of management plan certification for concessions.
49. Similarly, freshwater fisheries approvals deal with fish passage and structures that may impede the passage of fish. This is also outside the usual role of councils, and they cannot be expected to have the expertise or knowledge to deal with all aspects of management plan certification for the freshwater fisheries approvals.
50. DOC therefore considers that councils should not be required to be the sole certifier of the management plans that will flow from this fast-track process, and it is DOC's understanding from the district council that it does not wish this either.

E. DOC should have a certification role in the management plans dealing with core DOC statutory functions and activities on public conservation land

51. DOC has previously commented that any management plans relating to wildlife approvals and activities on public conservation land should include a certification role for DOC.²⁶ DOC still holds this view, for the reasons explained above.

²⁵ Section 57(3) of the Wildlife Act 1953.

²⁶ DOC Section 51 Cover report, paragraphs 5.3.1 to 5.3.3; section 53 comments paragraph 50.

52. Under the draft conditions DOC has a commentary role in the certification by the relevant council of the AMP, BMP, LizMP, FWEMP, LMP, FMP and other construction-focused management plans where relevant to construction activities undertaken on public conservation land.
53. DOC seeks a dual (side by side) certification role with the relevant council in respect of the management plans for wildlife (AMP, BMP and LizMP) and the FWEMP.
54. For activities on public conservation land, DOC considers it should be required to sign off, on behalf of the landowner, that all relevant construction management plans including the Landscape Management Plan, the Helicopter Flight Management Plan, and operations management plans including the Site Operations and Maintenance Plan (SOMP) and Monitoring Plan, meet their objectives and other relevant conditions before they are submitted to the relevant council (a joint certification role).
55. These management plans fall squarely within DOC's expertise and would be certified by DOC under normal statutory processes or approved as part of the approval process itself. This role reflects DOC's statutory functions and responsibilities as administering agency on behalf of the Crown as owner of the land, the terrestrial resources on it, and the protected wildlife reliant on the land as habitat that may be harmed.
56. However, the Panel has recorded throughout its draft decision, and in its main findings, that it does not consider it appropriate to provide for a joint/dual certification role for management plans, due to the uncertainty and complexity that it considers would arise. Instead, it has included conditions requiring DOC (and where relevant WCRC or WDC) to be given the opportunity to provide feedback on relevant construction-related management plans relating to public conservation land, and to require DOC's feedback be considered and reported on to the council.
57. DOC does not consider that a dual or joint certification role would create the uncertainty or complexity the Panel appears to be concerned about. It also would not necessarily result in lengthier certification processes. Dual certification by DOC could occur simultaneously with the council certification process, and joint certification by DOC (DOC certification prior to council certification) would be sought in the place of feedback, amendment and explanatory documentation which has been factored in for construction-related management plans applying to public conservation land in the draft conditions.
58. There are further reasons for requiring a dual or joint certification process. First, the draft conditions relating to compensation do not provide certainty that the monetary sums will

be spent on worthy biodiversity and wildlife projects. For example, there is nothing in the draft conditions preventing the consent holder from paying the moneys to an organisation that DOC does not have confidence in, or to programmes that DOC does not support. This detail has been left to the management plans that will be prepared later. DOC having a certification role in respect of the management plans relating to biodiversity, wildlife and public conservation land will provide greater certainty that the money is being spent on worthwhile projects.

59. Second, DOC accepts a distinction in the conditions being made for the certification of management plans affecting conservation land where this is not related to core DOC functions. What is and is not core is very much a case-by-case assessment considered against s 6 of the Conservation Act. However, DOC considers a different approach should be taken to certification of management plans dealing with core DOC functions, and that the certification of these managements should sit in all relevant approvals.
60. Third, the Panel has expressed a concern that dual certification would result in delays and complexities, particularly if one certifying body considered the condition met, and the other did not.²⁷ DOC considers that this point highlights the benefit of having DOC as dual/joint certifier. This would operate as an important safeguard which is particularly desirable, considering the truncated timeframe and process within which the Panel has been required to process Westpower's application for approvals. The context also includes that the Panel has included a 10-year lapse provision, so there would logically be ample opportunity for Westpower to build in any additional time needed to provide for a joint certification process.
61. Rather than creating delays and complexities, a dual certification process would appropriately provide for the joint regulatory regime under which the approvals will operate once given effect to. The Panel does not appear to have considered making DOC the sole certifier. If a dual certification process is considered too complex, then an alternative would be to provide for DOC as the sole certifier for appropriate management plans. DOC understands however that the district council's preference is for a dual certification role with DOC on wildlife approval matters. DOC understands from discussions with WDC staff that the council does not hold the necessary technical expertise required for these certification processes, and this is why the council supported DOC having a dual role as outlined in the council's s 53 comments.

²⁷ Draft decision paragraph 1127.

62. The Panel has acknowledged that the AMP, BMP and LizMP will be relevant to the way the wildlife activities are carried out under the wildlife approval, and noted that it has included reference to those plans in the relevant conditions.²⁸ The Panel has further acknowledged that because the AMP, BMP and LizMP (and other management plans) address effects on wildlife under more than one regulatory regime, it has determined they should be certified by the relevant council after DOC has had an opportunity to comment and those comments have been considered.²⁹ That is only however where those management plans relate to construction activities on public conservation land.³⁰
63. DOC seeks that the Panel take this a step further to require that, in as far as management plans are relevant to activities on public conservation land, DOC has a joint certification role.
64. DOC therefore seeks that the conditions be amended to provide for dual and joint certification as follows:
- a) Dual (side by side) certification by DOC and the district council of management plans prepared to address harm to wildlife (AMP, BMP, LizMP), whereby the draft management plans are provided to DOC and the council for certification at the same time. These conditions would be included in the wildlife approvals.
 - b) Dual (side by side) certification by DOC and the regional council of the management plan prepared under the freshwater fisheries approvals (FWEMP), whereby the draft management plan is provided to DOC and the council for certification at the same time. These conditions would be included in the freshwater fisheries approvals.
 - c) Joint certification by DOC and the district council of management plans relevant to construction and operational activities on public conservation land, with the draft management plans being provided to DOC for certification that they meet the objectives and other relevant conditions before being provided to the district council for final certification. These conditions would be included in the resource consents and lease-licence concession, with advice notes indicating the dual processes for

²⁸ Draft decision paragraph 1193.

²⁹ Draft decision paragraph 1194.

³⁰ See resource consent conditions CC10 and CC11. There is no requirement for engagement with DOC on management plans under any of the other approvals.

the certification of management plans under the freshwater fisheries and wildlife approvals (as per (a) and (b) above).

F. Conditions requiring the removal of structures at the end of the concession term

Draft Condition 12.3 – removal of structures

65. Draft Condition 12.3 of the lease-licence concession provides that Westpower *may* remove any specified scheme structures provided the Minister of Conservation consents, and a requirement that it *must* remove any structures and other improvements on the Land as notified by the Minister.³¹ This requirement however comes with the significant proviso that Westpower is *not required* to remove the tunnels, the weir, any power station structures below ground or any other structures below ground, the drift deck at Macgregor Creek, the river training at Alpha Creek, or the Granite Creek bridge piers.
66. DOC has serious concerns with this draft condition as it raises significant potential risk and liability issues for the Crown once the concession comes to an end. For the reasons explained below, the Director-General accordingly gives notice that Conditions 6.1 to 6.4 in Attachment A of the Minister of Conservation's approved Section 78 conditions³² are relevant and must be imposed on the lease-licence concession under clause 9 of Schedule 6 to the FTAA in the place of draft Conditions 12.3 to 12.6.

What structures are required to be removed at the end of the concession term should be a matter for the Minister of Conservation to decide

67. DOC's approach throughout this fast-track process has been that it is the Minister of Conservation's role to decide what structures must be removed from the public conservation land at the end of the concession term.
68. This appears to have also been the earlier position of Westpower, including in its conditions set of 27 November 2025,³³ which included proposed Conditions 10.4 to 10.7:

³¹ if the Minister gives at least 12 months written notice

³² At [25-B-0187 SIGNED Briefing Fast Track Approvals - Mandatory Section 78 conditions - Redacted.pdf](#), page 14.

³³ See proposed Conditions [*Waitaha-Draft-concession-conditions-lease-licence-long-term-27-November-Final71548694.1.pdf](#).

Removal of structures or other improvements

- 10.4 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 [x] months] written notice, remove any specified structures and other improvements on the Land.
- 10.5 Removal under this clause must occur within a reasonable time, as specified by the Minister.
- 10.6 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.
- 10.7 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.

69. These conditions were accepted by DOC in its s 51 report, with the only recommended change to them being a minor "tweak" in removing the words "and left" in the last line of the proposed conditions.³⁴

Inconsistent approach by Westpower and rationale for listed exemptions is unclear

70. In Westpower's 21 January 2026 response to DOC's s 51 report and s 53 comments,³⁵ Westpower proposed amendments to the conditions relating to the removal of structures. This included the amendment to proposed Condition 10.4 by introducing the list of exemptions to structures that could otherwise be required to be removed, as below.

Removal of structures or other improvements

10.4 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 [x] 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

~~10.4(f) Granite Creek bridge piers].~~

- 10.5 Removal under this clause must occur within a reasonable time, as specified by the Minister.
- 10.6 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.
- 10.7 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.

Commented [WP20]: The Department's proposed change not accepted - it is not possible to return the state of the land to the 'pre-project' state.

Commented [W21]: Change suggested by the Department (deletion) not made.

³⁴ See [Appendix-C4-Waitaha-Draft-concession-conditions-lease-licence-long-term-27Nov25-with-DOC-commentary.pdf](#), recommended track changes and comments on proposed conditions 11.4 to 11.7.

³⁵ See [Attachment-3-Concession-conditions-lease-licence-long-term-21-January-2026.pdf](#).

71. This amendment introduced a significant change in approach compared to Westpower’s earlier proposed conditions. This change was not accompanied by comments or any explanation in Westpower’s Memorandum #7 for the proposed exemptions. Nor was the reasoning for this change explained in any of the expert statements lodged with the updated proposed conditions.
72. As Westpower’s further amended conditions lodged on 13 February 2026 record, the changes including the exemptions were not discussed with DOC – the note on page one describing “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.”³⁶

Removal of structures or other improvements

~~7.2~~ 15.6 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.

73. The list of exemptions was also included in Westpower’s amended proposed conditions for the short term lease/licence. That approach makes sense for the short-term approval, as it would defeat the purpose of the long-term concession if the structures were required to be removed.
74. It also needs to be acknowledged that there is no right of renewal for the concession. Nearing the end of the concession term, Westpower will need to reapply for relevant authorisations under the statutory framework applying at that time. DOC’s usual current process is that if the concessionaire makes a further application for a new concession for

³⁶ See [Memorandum-11-Appendix-D-Long-term-concession-conditions-13-February-2026 Redacted.pdf](#). Page 1 records that “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.”

the activity prior to expiry, the removal notice would not be issued unless that new application is declined.

75. To further clarify this standard process, DOC has suggested an additional condition (12.7A) to be included that provides certainty to the concessionaire of the process that would apply.
76. DOC considers the amendment to the proposed conditions to include the list of exempted structures is a significant departure from the approach taken in Westpower's application documents and in the assessments undertaken by Westpower's technical experts.
77. For example, Westpower's application³⁷ treats the weir as a "non-permanent structure", noting in the assessment Table 16 on page 128 under the heading "Diversion Weir Structure" that:

"The weir and Alpha Creek groyne structures are considered non permanent diversion structures (i.e. they can be physically removed as part of future scheme decommissioning)."

78. Mr Greenaway's recreation report forming part of the application also refers several times to the removability of the weir structure, including in his comment on the effects of the scheme on kayakers, noting:

*"Importantly, the key components of the Scheme (weir, diversion structure and powerhouse) are removable if the generation capacity is no longer required."*³⁸

79. The importance of this factor in Mr Greenaway's assessment is reinforced by the final statement at the end of his report. This statement is reproduced in the Panel's draft decision at paragraph 648:

*Importantly, the relatively small scale of the head-works structure, the lack of impoundment at Kiwi Flat, and the scale of the Power Station means that the key components of the Scheme are removable if the generation capacity was ever to be no longer required."*³⁹

³⁷ See Substantive application at [Waitaha-Hydro-project-substantive-application-documents.pdf](#), page 128

³⁸ See [*Waitaha Hydro Westpower - recreation assessment](#) (Appendix 28 to the substantive application) at paragraphs F.58 and 5.11.

³⁹ Mr Greenaway's recreation report as above, paragraph 5.11.

The list of exemptions is not supported by evidence before the Panel, nor does the draft decision provide any rationale for exempting structures from being required to be removed

80. None of Westpower's experts appear to have addressed either the significant shift in the proposed conditions or the reasons for it in their statements forming part of Westpower's 21 January 2026 response which included the revised conditions.⁴⁰
81. Removal of structures is raised obliquely in Mr Kennedy's 21 January 2026 statement in the context of responding to comments in DOC's section 51 concessions report on consistency issues with DOC's Conservation General Policy (CGP). Mr Kennedy specifically noted that DOC had assessed the project as being consistent with Policy 11.3(e) of the CGP.⁴¹ This Policy, which is set out in the draft decision at paragraph 993(m), is:
- “(e) Utilities that are redundant should be removed from public conservation lands and waters and the site restored as far as practicable to a natural state to minimise effects on the landscape.”*
82. In commenting on Mr Kennedy's CGP/CMS assessment (Appendix 52 to Westpower's application) regarding consistency with Policy 11.3(e) of the CGP, DOC's section 51 concessions report noted:
- 6.4.23 Policy 11.3(e) requires redundant utilities to be removed, and sites restored as far as possible. Westpower have indicated that the life of the Scheme will be longer than the initial 49-year term sought but it is considered that conditions should be placed to ensure the site is 'made good' should the Scheme reach end of life or become inoperable for any reason.
- 6.4.24 In conclusion, DOC considers that the application **is consistent** with policies 11.3(a), (c), (d) and (e) but **is not consistent** with policy 11.3(b).
83. Put simply, had the proposal at the time DOC prepared its section 51 report been for Westpower to be able to leave the listed exempted structures in place at the end of the concession term, DOC would not, and in fact could not, have found the project to be consistent with Policy 11.3(e) of the CGP.
84. Mr Kennedy's 21 January 2026 statement did not comment on Westpower's changed approach to the conditions regarding the removal of structures, and he did not provide

⁴⁰ Westpower's Response to DOC's section 51 report and section 53 comments.

⁴¹ See [Attachment-13-Statement-Martin-Kennedy_Redacted.pdf](#), page 2 of Appendix C (electronic page 13).

any comment on the effect this would make to his assessment of consistency with the CGP Utilities Policy 11.3.

85. Mr Kennedy assessed the project as being consistent with Policy 11.3 in his Appendix 52 assessment report, noting that:⁴²

Overall, it is considered that the Scheme and concession, subject to the suggested conditions, is consistent with the CGP in regard to Utilities.

86. There also does not appear to be any discussion or reasons for the change in approach in any of the other 21 January 2026 statements (including Mr Jackson, Mr Griffiths, and Mr Greenaway). Nor was it covered at all in Westpower's Memorandum #7.
87. There does not therefore appear to be any evidence at all before the Panel supporting the wording of draft Condition 12.3 which includes the list of structures exempted from the removal requirements.
88. There also does not appear to be any discussion in the Panel's draft decision as to why it would be appropriate to exempt Westpower in this way.

Section 78 conditions relating to the removal of structures are available and the Director-General can require they be imposed by the Panel on the concession

89. DOC considers that there are obvious potential risks and liabilities to the Crown if Westpower is authorised through its concession conditions to leave key components of the scheme infrastructure in situ after the concession comes to an end. DOC's expectation is therefore that the concession conditions require Westpower to remove all the structures that the Minister of Conservation considers should be removed, upon reasonable notice, prior to the end of the concession term.
90. The form of draft Condition 12.3 recommended by DOC in its section 51 concessions report and as set out in the track-changed table of comments on conditions forming part of that report, mirrors the "Removal of structures or other improvements" conditions in the Minister of Conservation's approved suite of conditions under s 78 (Section 78

⁴² See [Appendix 52 management strategy and conservation general policy statutory assessment](#), page

conditions). The Section 78 conditions were appended to DOC's 5 March Memorandum and have been uploaded onto the EPA's Waitaha project webpage.⁴³

91. Clause 9 of Schedule 6 to the FTAA provides:

“9 Relevant conditions specified by appropriate Minister must be imposed by panel

If the panel grants the concession, the panel must impose any conditions that the Director-General of Conservation (in accordance with clause 4(2) or otherwise) indicates are relevant from those specified in accordance with section 78.”

92. The Director-General has not exercised her power to require the Section 78 conditions relating to the removal of structures under clause 4(2) (i.e. via her section 51 report). However, the wording of clause 9 indicates that the Director-General's power to require Section 78 conditions be imposed by the Panel is not limited to clause 4(2). This is indicated by the inclusion of the words “clause 4(2) or otherwise” in clause 9. The Director-General therefore has the power to require further Section 78 conditions to be imposed by other means in the fast-track approval process.

93. DOC has not had an opportunity prior to this one to comment on Westpower's updated proposed conditions as reflected in Panel's draft Conditions 12.3 to 12.6. DOC therefore considers it appropriate that it notify the Panel through its comments on the draft conditions under section 70 of the FTAA, that the Director-General requires it to impose the Section 78 conditions which relate to the removal of structures as set out in Section 6 of the Section 78 conditions below. The Director General requires that these conditions be imposed on the lease-licence concession in the place of draft Conditions 12.3 to 12.6:

⁴³ At [25-B-0187 SIGNED Briefing Fast Track Approvals - Mandatory Section 78 conditions - Redacted.pdf](#)

6. Removal of structures or other improvements

- 6.1. 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 written notice, remove any specified structures and other improvements on the Land.
- 6.2. Removal under this clause must occur within a time specified by the Minister.
- 6.3. 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.
- 6.4. 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.

94. Requiring these Section 78 conditions is consistent with the policy rationale for them, which is as follows:⁴⁴

Structures, Building Act, and restoration

Policy Rationale for Structures, Building Act, Restoration
These conditions ensure that the Crown’s financial risks and legal liabilities are managed relating to structures on the land. They both ensure that structures on the land do not create safety hazards during the duration or after the permitted operation, and allow the Crown to set clear requirements around the removal of structures once an operation has ceased. They also require that damage a fast-track operator does to Crown structures (e.g. tracks or bridges) is to be repaired by the operator. These provisions around removal/rehabilitation are supported by the ability to set bonds and guarantees discussed above.

95. DOC acknowledges that the draft conditions provide for a bond.⁴⁵ However, the rationale for a bond is different from the rationale for placing the decision on what structures must be removed at the end of the concession term conditions in the hands of the Minister. A bond allows the Crown to mitigate potential risks and liabilities where it would be responsible for significant costs if a concessionaire’s contractual obligations are not met. The intention of a bond is thus not to pay for the removal of the redundant structures themselves – that must be the responsibility of the concessionaire.⁴⁶

The Director-General requires that conditions be imposed in accordance with clause 9 of Schedule 6 that the Minister decides what structures are to be removed at the end of the concession term. DOC considers that it is inappropriate that the Crown should be left with the ongoing risks and liabilities that would flow from scheme structures such as the weir and headworks being left in place after the operation of the scheme has

⁴⁴ Section 78 condition, page 14.

⁴⁵ Draft Conditions 32.1 to 32.7 imposed in accordance with s 78 of the FTAA.

⁴⁶ See Policy Rationale for Bonds and Guarantees, Section 78 condition, page 12.

come to an end. Requiring the Section 78 conditions relating to removal of structures to be imposed as conditions in the place of the counterpart draft conditions is warranted.

96. The Director-General accordingly gives notice that Conditions 6.1 to 6.4 in Attachment A of the Section 78 conditions are relevant and must be imposed on the lease-licence concession under clause 9 of Schedule 6 to the FTAA in the place of draft Conditions 12.3 to 12.6.

G. Conditions relating to instream works

97. With respect to the Panel's draft decision at paragraph 687, and the later instream works that are required, DOC considers that there is a line that must be drawn between providing flexibility and accepting a certain level of adverse effects, and authorising an activity which may have adverse effects beyond those upon which the approval was granted. This relates in particular to the draft resource consent conditions applying to instream works (RC111 and RC112).
98. The instream works are recognised as being a significant ongoing impact to the use and enjoyment of the Waitaha Valley and Kiwi Flat. The Panel has made the finding that instream works undertaken periodically by a 20-tonne excavator will, combined with the other effects, result in a significant adverse effect on recreation.⁴⁷ In light of this finding by the Panel, logically it is reasonable to assume that if the impact were significantly higher, it could impact on whether approval should be granted.
99. We understand the Panel in granting these approvals is placing weight on the evidence from the Westpower that there will be at most 15 days spent each year requiring instream works. Given the centrality of this consideration, it is not appropriate for Westpower to later increase this under a relevant management plan as per draft Resource Consent Condition RC112.
100. DOC therefore seeks that the condition be amended to make clear that consent is being granted on the basis that there will not be more than 15 days per year where excavating the stream occurs, and with a duration of no longer than four hours. If that limit is not complied with, then there would be room to review the consent condition. The review of the consent conditions would be at the discretion of the Council, but it is not fanciful to envisage a need to consider the consent conditions if there is a material increase in

⁴⁷ Draft decision paragraph 7 16.

activity given the likely significant adverse effects that would cause. This is in addition to the reporting required under Condition RC111 on the applicant.

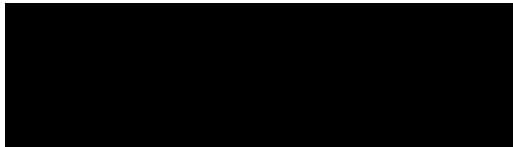
H. Other matters

Typographical error in the draft decision

101. DOC wishes to draw to the Panel's attention to a typographical error in paragraph 920 of the draft decision, incorrectly stating that DOC submitted Westpower sought s 78 be amended so rents, fees and royalties can be the subject of a s 78 condition.
102. The last line should record that DOC's memorandum stated Westpower sought that s 78 be amended to specify that the setting of a rent, fee, or royalty for a concession cannot be the subject of a s.78 condition.

Conclusion

103. DOC requires that the Section 78 conditions identified above be imposed and also requests that the additional draft conditions be amended to address the concerns discussed above and as explained in the expert memoranda accompanying this memorandum. Specific changes to the draft conditions are also provided in track changes, and DOC requests that the draft conditions be amended to reflect those changes.



Counsel for the Director-General of Conservation

27 March 2026