

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

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**EXPERT PANEL: WESTPOWER LTD MEMORANDUM #11  
MEMORANDUM OF COUNSEL IN RESPONSE TO RFI #5**

Dated: 13 February 2026

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**BUDDLE FINDLAY**  
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**MAY IT PLEASE THE PANEL:**

1. This memorandum is filed on behalf of the Applicant, Westpower Limited (**Westpower**).
2. The Panel issued a further Request for Further Information on 4 February 2026 which is responded to in full below.

**Question 1: Morgan Gorge - Landscape Effects of Reduced Flow**

3. Mr Bentley has responded in **Appendix A**. There is no change in his assessment.

**Question 2 – Sirens**

*The Panel requests that the Applicant clarify:*

**a) The number of sirens proposed;**

4. There are two sirens, located at the:
  - (a) power station; and
  - (b) headworks/intake.<sup>1</sup>

**b) Whether any siren(s) will be able to be heard within the full abstraction reach.**

5. No. The noise emitted from the sirens was modelled in the noise assessment and the results of that are included in the Application, Appendix 29: Noise Report, Appendix F Emergency siren noise levels.<sup>2</sup> The Noise report addresses that

*"The directional sirens have been modelled to minimise effects for people and wildlife...".<sup>3</sup>*

6. The public river safety report considers the hot pools:

*Mitigation to address the extremely small risk someone is on the hot pool ledge during an emergency shutdown is considered below.*

*The risk at the hotpools if a sudden rise in water arrived from an emergency shutdown can be mitigated as part of a safety plan for the operation of the Scheme. Consideration includes signage and education of the hot pool*

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<sup>1</sup> [Appendix-29-noise-report.pdf](#), para 1.2.

<sup>2</sup> [Appendix-29-noise-report.pdf](#)

<sup>3</sup> At para 3.21.

*community via websites (e.g. Westpower, DoC, and NZHotPools.co.nz). There are a number of natural points for signs that can be considered such as on the rough track just before the hot pools, the start of the track to Kiwi Flat, at Kiwi Flat hut, at the natural choke point created by the Power Station, and the track from the swing bridge to the hot pools. While a siren will be utilised at the Power Station, it's unlikely to be heard at the hot pools.<sup>4</sup>*

7. Mr Doyle concludes:

*The joint probability of an emergency stop considered in conjunction with a person being in a critical section of river is exceedingly small. The hot pools in Morgan Gorge also have an extremely low joint probability for harm to occur from sudden shutdown.*

..

*All access points to the river from the intake to the coast should be identified and appropriate signage installed. Education of neighbouring landowners, and the fishing and hot pooling communities can further reduce the risk. The fishing community are usually highly attuned to the river environment, and are considered lower risk.*

8. The recommended effects management is included in the Noise Report:

*g) Emergency sirens must only be located near the Headworks and Power Station and shall be designed and directed in a way to ensure they are audible in areas where staff and recreational users need to be alerted of sudden river level changes, but no louder than necessary to limit potential noise exposure to wildlife.*

9. As explained above, the sirens located at the power station and the headworks do not reach the "full abstraction reach". Accordingly, Westpower has proposed in the resource consent conditions, Part C, Conditions 50 and 51 include:<sup>5</sup>

- (a) that a Public River Safety Risk Report (**PRSRR**) by a suitably qualified and experienced person is prepared to identify any public river safety risks that may arise from the exercise of Westpower's consents and recommend methods to appropriately minimise these risks;
- (b) the consent holder must implement the methods to address public river safety risks in accordance with the PRSRR, including the installation

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<sup>4</sup> [Appendix-32-public-river-safety-report.pdf](#)

<sup>5</sup> [Attachment-11A-Proposed-Conditions-Resource-Consents-10.2.26.pdf](#)

and maintenance of any required signs and/or sirens to warn the general public of any hazard; and

- (c) the use of emergency sirens must be limited to near the Headworks and Power Station and each siren must be designed and directed in a way to ensure they are audible in areas where staff and recreational users need to be alerted of sudden river level changes.

### **Question 3: Concession term**

***In relation to the short-term concession for construction, an explanation of why both a 10 year lapse date and a 15 year term is required, when construction is expected to take less than four years.***

- 10. For the short-term (construction) concession, Westpower is seeking to achieve:
  - (a) a 10-year lapse period so that there is flexibility in terms of when to commence construction; and
  - (b) a 5-year period for construction (which is slightly longer than the anticipated construction period but is intended to provide for unforeseen circumstances during construction in a challenging environment).
- 11. On that basis, Westpower proposed a 15-year concession term with a 10-year lapse period. In Westpower's view that is both enabled by the legislation and is the most appropriate formulation.
- 12. However, if the panel considers it more appropriate, another formulation for the short-term concession would be:
  - (a) a 10-year lapse period; and
  - (b) a 5-year concession term, commencing on the date that construction commences (with the term to be triggered by advance written notice from Westpower as specified in the concession document).
- 13. One advantage of that second formulation is that it would address the Department's concern in relation to exceeding the 60-year maximum concession term under section 17Z(1) of the Conservation Act. To be clear, Westpower has explained its position in Memorandum #7 that these are two separate concessions authorising two distinct activities (construction of operation) and that the 60-year limit in the Conservation Act is not triggered

by granting a 15-year concession for construction and then a 49-year concession for operation.

**a) How the short-term and long-term lease/licence sought for occupation differ – for example do they apply to different areas, involve exclusive/non-exclusive possession. etc?**

14. The areas covered by the short-term and long-term concessions are similar, which is expected as the construction activities will be in the areas where the final infrastructure will sit.
15. However, it is important to note that:
  - (a) the activities authorised under the short-term (construction) concession and the long-term (operational) concession are very different – the former authorises the construction activities and the latter authorises occupation for the infrastructure and operation of the scheme;
  - (b) the areas occupied and used will not be the same – for example, in the case of the construction staging areas, around the power station, weir and tunnels, the constructions activities will occur over wider areas than those occupied by the final infrastructure (see updated Table 4 of the Application);<sup>6</sup>
  - (c) some activities (for example, in relation to access and transmission) will be authorised under a licence in the short-term but an easement in the longer term; and
  - (d) while the core lease areas provide for exclusive possession, the licence and easement areas do not provide for exclusive possession.

**b) In terms of issuing long-term concessions (lease/licence/easement) for operation with delayed commencement dates (of 20 years) whether:**

- (i) there is any restriction in the Conservation Act on issuing a concession with a delayed commencement date
16. The short-term (construction) concession is proposed to have a lapse date of 10 years. That concession would commence either on execution of the concession document and would run for 15 years (or alternatively it would

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<sup>6</sup> [Westpower-Memorandum-2-Attachment-1A-updated.pdf](#).

commence on the commencement of construction (following advance written notice from Westpower) and would run for a term of 5 years).

17. The long-term (operational) concession is proposed to have a lapse period of 20 years. That concession would commence when the generation of electricity from the scheme starts and would run for a term of 49 years.
18. That means that the long-term (operational) concession could commence as early as say 5 years (if construction were to commence immediately), or as late as 15 years.
19. There is no restriction in the Conservation Act for the issuing of a concession with a delayed commencement. Section 17Z of the Conservation Act states:
  - (1) A lease or a licence may be granted for a term (which term shall include all renewals of the lease or licence) not exceeding 30 years or, where the Minister is satisfied that there are exceptional circumstances, for a term not exceeding 60 years.
  - ...
  - (3) An easement may be granted for a term not exceeding 30 years, but –
    - (a) in exceptional circumstances, the Minister may grant a term not exceeding 60 years:
    - ...
20. The Minister may impose conditions (including in relation to term) as he or she considers appropriate (section 17X).
21. Section 17ZD(2) of the Conservation Act states:
  - (2) A concession lapses on the expiry of 2 years after the date of commencement of the concession, or after the expiry of such longer period as the Minister may allow, unless the concession is exercised before the end of that period.
22. There is no impediment in the Conservation Act for a delayed concession commencement date.
23. In any case, the FTAA expressly provides that the panel may set a commencement date that is later than the date of the decision. Section 97(1)(b) states:

## 97 Commencement of approval<sup>7</sup>

(1) Subject to subsection (2), an approval granted under this Act commences—

(a) on the date on which the panel's decision document for the approval is issued under section 88; or

(b) **on any later date specified by the panel in the decision document.**

(2) For the purposes of subsection (1), the following apply:

...

(c) for an approval described in section 42(4)(e) (concession), clause 12 of Schedule 6: ...

24. Clause 12 of schedule 6 of the FTAA states:

### 12 Commencement of concession

A concession commences only after it is given effect in accordance with clause 11 and in accordance with the terms of the concession document.

25. Consequently, the setting of a delayed commencement for these concessions is expressly enabled in the FTAA and there is no impediment to doing so in the Conservation Act.

*ii) **Whether there are any relevant examples of concessions being granted with delayed commencement dates like what is sought (the Panel would encourage liaison with DOC on this point).***

26. Westpower has identified the following examples of delayed commencement dates for concessions:

(a) the Pure Tūroa Limited concession to operate Tūroa Ski Area on Mt Ruapehu ([link](#)) specifies the commencement date as follows:<sup>8</sup>

The period commencing on the later of:

(a) The final execution of this Concession; or

(b) The date on which concession 48601-SKI is surrendered

and expiring on 4 April 2034.

(b) the Whakapapa concession to operate Whakapapa ski field ([link](#)) specifies the commencement date as follows:<sup>9</sup>

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<sup>7</sup> Emphasis added.

<sup>8</sup> Schedule 1, Item 3.

<sup>9</sup> Schedule 1, Item 3.

The period commencing on the later of:

- a) The final execution date of this Concession; or
- b) The date on which concession 40011-SKI and concession TT-236-EAS are surrendered

and expiring on 30 April 2035.

- 27. These concessions were not granted under the FTAA, which as noted above expressly enables the panel to set a delayed concession commencement date. While the context is different, these concessions do illustrate that the Minister has granted concessions with a commencement date that is later than the execution of the concession document.
- 28. Westpower has liaised with the Department who have indicated that they have not identified any concessions with delayed commencement dates.

#### **Question 4: Compensation - CPI adjustments**

- 29. In relation to the resource consent conditions, Westpower agrees to propose an annual CPI adjustment for the compensation proffered to address residual adverse effects. That is included in Part D, Condition 60 of the proposed consent conditions appended to Mr Jackson's, 10 February 2026 statement.<sup>10</sup>
- 30. The Panel's questions are addressed as relevant to the long-term concessions below.

#### ***Accordingly, the Applicant is requested to:***

- a) advise whether it considers the Panel has the power to impose a CPI adjustment condition for both the relevant resource consents and the long term concessions;***
- 31. Westpower considers that the Panel can impose a CPI adjustment condition for the long-term concessions.
- b) Advise whether it is relevant for us to take into account the approach other panels have taken to CPI adjustment conditions;***
- 32. To the extent the Panel considers the fact scenarios and law align, there is no barrier to the Panel taking the approach of other panels into account, but it

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<sup>10</sup> [Attachment-11A-Proposed-Conditions-Resource-Consents-10.2.26.pdf](#)

should do so as directed by the purpose of the Fast-track Approvals Act 2024 (FTAA), and sections 10 and 83 of the FTAA.

**c) confirm the reasons it considers CPI adjustments are not required;**

33. In respect of the long-term concessions, there is no requirement for an annual CPI adjustment because s 17Y(3) of the Conservation Act 1987 requires rental reviews no more than every three years. The long-term concession conditions include a three yearly rental review and normal practice is that CPI adjustment forms part of that review. There is therefore no 'gap' in the regime that the Panel needs to consider filling.

**d) Confirm when annual compensation payments would be required to start under the various approvals – i.e., up to 15 or 20 years post the grant of consent.**

34. In respect of the RMA approvals an updated Summary of Proposed Compensation Measures table (at 6.24 of the AEE<sup>11</sup>) is included as **Appendix B** and identifies commencement and end point.
35. In respect of other relevant conditions, the ecological compensation payments are also referred to in the Wildlife Approval conditions (and the annual CPI adjustment condition has been included).

**Question 5: Conditions**

*Proposed resource consent conditions*

36. Memorandum #10<sup>12</sup> stated the response of Mr Mason Jackson provided to the panel on 10 February 2026 included the proposed resource consent conditions that also respond to Question 5 of RFI #5 and the detailed requests in a) and b).<sup>13</sup> Mr Jackson details the relevant updates to conditions in that statement.<sup>14</sup>

*Proposed concession conditions*

37. Given the timeframes, Westpower and the Department have been unable to discuss again areas of disagreement (since Westpower's last updated set of conditions filed on 21 January 2026). Westpower, however, has included the reasons for the Department's disagreement in comment bubbles in the sets

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<sup>11</sup> [Waitaha-Hydro-project-substantive-application-documents.pdf](#).

<sup>12</sup> [Westpower-Memorandum-10-in-response-to-Minute-7,-10-February-2026\\_Redacted.pdf](#)

<sup>13</sup> [Attachment-11A-Proposed-Conditions-Resource-Consents-10.2.26.pdf](#)

<sup>14</sup> [Memorandum-10-Attachment-11-Mr-Jackson-10-February-2026\\_Redacted.pdf](#)

attached where the reasons were clear in Appendices C3 to C5 of the Department's s 51 report appendices. In a few instances, where the Department tracked a change in Appendices C3 to C5 of the s 51 report but did not leave a comment, Westpower has not provided the Department's reasons.

38. Westpower's view is these issues are now for the Panel to determine and the Department (and Westpower) is afforded an opportunity to comment on the draft conditions.
39. The three sets of concession conditions are **attached** as:
  - (a) **Appendix C: Short term concession conditions**
  - (b) **Appendix D: Long term concession conditions**
  - (c) **Appendix E: Easement conditions**
40. These versions of the concession conditions incorporate the following:
  - (a) Text with no tracking and no highlighting where there is agreement with the Department.
  - (b) Tracked text with **yellow highlighting** for Westpower's preferred wording where not agreed by the Department;
  - (c) Tracked text with **grey highlighting** for the Department's preferred wording where not agreed with Westpower;
  - (d) Text with no tracking and **blue highlighting**, for changes in the 21 January version, or made since then, that Department has not commented on; and
  - (e) In the short-term concession, tracked text with **green highlighting** for alternative wording the panel may choose on term based on Westpower's position earlier in this memorandum.

*Concession activity fee*

41. In Memorandum #7 responding to comments, Westpower noted it would inform the Panel of the discussions with the Department about the

concession activity fee on 15 February 2026.<sup>15</sup> Westpower provides the following update:

- (a) The Department and Westpower have completed their independent valuation reports.
- (b) The parties' valuers disagree on the percentage of annual gross annual revenue that Westpower should pay under the long-term concession.
- (c) The valuers have exchanged valuation reports to consider if the gap between the valuations can be narrowed or resolved.
- (d) The parties will consider the outcome of this process and will continue discussions.
- (e) Westpower will provide a final update to the Panel by **5pm, on Monday 23 February 2026** with the outcome of negotiations and whether agreement has been reached over what long term concession activity fee should be.

42. As set out in Westpower's Memorandums #1 (7 November 2024) and #7 (21 January 2026), the parties' positions differ on who should set the concession activity fee:

- (a) Westpower considers that:
  - i. it is the Panel's role to set the concession activity fee; and
  - ii. a s78 condition (providing for the Minister to impose the concession fee) is ultra vires.
- (b) The Department considers that the concession fee can be imposed by the Minister by way of a s 78 condition and have included a condition to that effect. In Appendix C to the s 51 Report,<sup>16</sup> the Department clarifies that the s 78 condition can be withdrawn if agreement is reached.

43. Westpower and the Department have agreed a concession fee for the short-term lease/licence concession and this is shown as agreed text in **Appendix C**.

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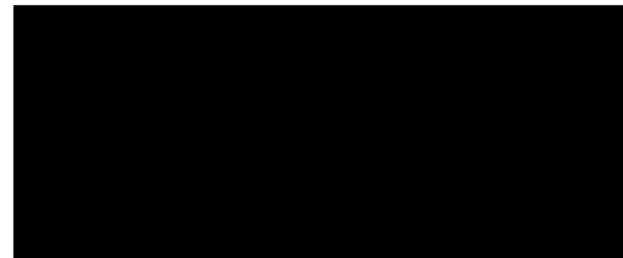
<sup>15</sup> [Memorandum-7,-Response-to-Comments-and-RFI-3.-21-January-2026.pdf](#), at para [2.30].

<sup>16</sup> [Appendix-C-Waitaha-Hydro-s512a-concessions-report.pdf](#) at [14.3.6].

*Proposed wildlife approval conditions*

44. As with the concessions, Westpower has included in the proposed wildlife approval conditions the reasons for the Department's disagreement in comment bubbles where the reasons were clear in Appendix D to the Department's s 51 report. This set is attached as **Appendix F**.
45. Westpower has not provided the Department's reasons, where the Department tracked a change in the s 51 report attachments but did not leave a comment.
46. These versions of the wildlife approval conditions incorporate the following:
  - (a) Text with no tracking and no highlighting where there is agreement with the Department.
  - (b) Tracked text with **yellow highlighting** for Westpower's preferred wording where not agreed by the Department;
  - (c) Tracked text with **grey highlighting** for the Department's preferred wording where not agreed with Westpower; and
  - (d) Text with no tracking and **blue highlighting**, for changes in the 21 January version, or made since then, that Department has not commented on.

**Dated:** 13 February 2026



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