

BEFORE THE WAITAHA HYDRO SCHEME EXPERT PANEL FTAA-2505-1069
I MUA I TE PAEWHIRI WHAKAWĀ WAITAHA HIKO-Ā-AWA

In the matter of of the Fast-Track Approvals Act 2024 (**FTAA**)
I te take o

And | Me approvals sought to:

- a) construct, operate and maintain a run-of-river Hydro-Electric Power Scheme on the Waitaha River in Westland District;
- b) create an access road between Anderson Road and the Power Station site; and
- c) establish a new 66kV transmission line and additional switching gear to connect the Power Station to the local network via the existing Waitaha Substation on Bold Head Road.

Decisions of the Expert Panel
Ngā Whakataunga a Te Paewhiri Whakawā
(under s.87 of the FTAA | i raro i tekiona 87 o te FTAA)

Decision 1: Resource consent approvals relating to the Resource Management Act 1991 (**RMA**) granted subject to conditions

Decision 2: Concessions approvals relating to the Conservation Act 1987 (**Conservation Act**) granted subject to conditions

Decision 3: Wildlife approvals relating to the Wildlife Act 1953 (**Wildlife Act**) granted subject to conditions

Decision 4: Freshwater fisheries approvals relating to the Freshwater Fisheries Regulations 1983 (**Fisheries Regulations**) granted subject to conditions

Date of Decisions | Te Rā Whakataunga 17 April 2026] | Te 17 o Āpereira 2026

Date of Issue | Te Rā Whakaputa 17 April 2026 | Te 17 o Āpereira 2026

Expert Panel | Paewhiri Whakawā

Vicki Morrison-Shaw (Chair)
Dean Chrystal (Member)
Tony Cussins (Member)
Nick Eldred (Member)
Josh Markham (Member)

Date comments received under s.53 of the FTAA | Ko te rā i whiwhia ai ngā kōrero i raro i te tekiona 53 o te FTAA:

14 January 2026 | Te 14 o Hānuere 2026

Details of any hearing under s.57 of the FTAA | Ngā taipitopito o te nohoanga i raro i te tekiona 57 o te FTAA:

Joint Empanelment Hearing 13 February 2026 | Nohoanga Pūkenga Te 13 o Pēpuere 2026

Comments received under s.70 of the FTAA | Ko ngā kōrero i whiwhia ai i raro i te tekiona 70 o te FTAA

27 March 2026 | Te 27 o Māehe 2026

Comments received under s.72 of the FTAA | Ko ngā kōrero i whiwhia ai i raro i te tekiona 72 o te FTAA

27 March 2026 | Te 27 o Māehe 2026

HE MIHI ACKNOWLEDGEMENTS	I
PART A: EXECUTIVE SUMMARY WĀHI A: WHAKARĀPOPOTOTANGA II	
PART B: APPLICATION CONTEXT AND APPROVALS SOUGHT WĀHI	
B: TĀ TONO HOROPAKI ME NGĀ WHAKAAETANGA E TONOA ANA.....	1
B1: Application context.....	1
B2: Approvals sought	7
PART C: PROCEDURAL MATTERS WĀHI C: NGĀ MEA TUKANGA....	10
C1: Panel convenor steps.....	10
C2: Initial Panel briefing and site visit.....	10
C3: Panel hui	10
C4: Statutory reports	11
C5: Persons invited to comment	11
C6: Appointment of technical advisers and Peer Review Reports	16
C7: Further information, joint empanelment, further statements	
and conference with Poutini Ngāi Tahu	17
C8: Unsolicited information	20
C9: Conditions and draft decision	22
C10: Evidence and legal submissions in response to comments on	
conditions.....	23
C11: Confidential information	29
C12: No hearing other than joint empanelment.....	30
C13: Timing of the Decision	30
C14: Approach to Decision	31
C15: Acknowledgements.....	31
PART D: LEGAL CONTEXT WĀHI D: ANGA TURE	32
D1: What this Part covers	32
D2: Purpose of the FTAA.....	32
D3: Decision-making provisions	32
D4: Mandatory and discretionary grounds to decline	33
D5: Relevant assessment criteria	35
D6: Content of Panel decisions	36
PART E: IWI AND TREATY SETTLEMENT MATTERS WĀHI E: IWI ME	
NGĀ MEA WHAKATAUNGA TIRITI	36
E1: Relevant FTAA provisions	36
E2: Evaluation and findings.....	39
PART F: EVALUATION OF EFFECTS WĀHI F: TE MĀTAI I NGĀ	
ĀHUATANGA	40
F1: Effects to be assessed.....	40
F2: Positive.....	41

F3: Cultural	44
F4: Hydrology and flow regime	47
F5: Water quality	61
F6: Gravel extraction activities	64
F7: Sediment transport and river morphology	68
F8: Vegetation	83
F9: Bats	86
F10: Avifauna	90
F11: Powelliphanta land snails	96
F12: Lizards	97
F13: Terrestrial invertebrates	101
F14: Construction surface water takes	104
F15: Aquatic/freshwater ecology	105
F16: Traffic	111
F17: Noise	113
F18: Geotechnical and natural hazards	117
F19: Landscape, natural character and visual amenity	120
F20: Recreation	133
F21: Public safety	152
PART G: REGIONAL OR NATIONAL BENEFITS WĀHI G: NGĀ PAINGA Ā-ROHE, Ā-MOTU RAINI	155
G1: Approach to determining regional or national benefits	155
G2: Regional or national benefits of the Scheme	156
G3: DOC s.51 Report	157
G4: Comments received	158
G5: Applicant’s response	159
G6: Evaluation and findings	160
PART H: EVALUATION OF RMA RESOURCE CONSENTS WĀHI H: TE AROTAKE O NGĀ WHAKAAETANGA-Ā-RAWA	161
H1: Introduction	161
H2: Assessment criteria	161
H3: Purpose of the FTAA	162
H4: Relevant RMA provisions	163
H5: RMA statutory instruments	165
H6: Iwi planning documents	176
H7: Other relevant documents	177
H8: Decision as to RMA resource consents	178
PART I: EVALUATION OF CONCESSIONS WĀHI I: TE MĀTAI I NGĀ ĀHUATANGA O NGĀ WHAKAAETANGA-Ā-ATAWHAI	178

I1: Introduction.....	178
I2: Overview of criteria.....	179
I3: Purpose of the FTAA.....	179
I4: Conservation Act - Part 3B.....	179
I5: Conservation Act – Parts 3, 4, 4A, 5, and 5B	205
I6: Purpose for which land is held, status, ownership and administration	205
I7: Conservation management strategies or plans	208
I8: Existing arrangements.....	209
I9: Legal and financial liabilities	210
I10: Other policy statements or management plans.....	210
I11: Grounds to decline	216
I12: Decision as to concessions	217
PART J: EVALUATION OF WILDLIFE APPROVALS WĀHI J: TE MĀTAI I NGĀ ĀHUATANGA O NGĀ WHAKAAETANGA-Ā-MEA PUIHI	217
J1: Introduction.....	217
J2: Overview of criteria.....	217
J3: Purpose of the FTAA.....	218
J4: Purpose of the Wildlife Act and effects on wildlife	218
J5: Information and requirements relating to protected wildlife	221
J6: Decision as to wildlife approvals.....	223
PART K: EVALUATION OF FRESHWATER FISHERIES APPROVALS WĀHI K: TE MĀTAI I NGĀ ĀHUATANGA O NGĀ WHAKAAETANGA-Ā- MAHINGA WAI MĀORI	223
K1: Introduction	223
K2: Assessment criteria	224
K3: Purpose of the FTAA	224
K4: Alignment with best practice and Fish Passage Guidelines .	224
K5: Risks to freshwater values or habitat	225
K6: Availability and quality of habitat upstream or downstream	226
K7: Presence of threatened, data deficient or at risk species ...	227
K8: Fish passage	227
K9: Decision as to freshwater fisheries approvals	228
PART L: CONDITIONS WĀHI L: NGĀ HERENGA.....	228
L1: Introduction and approach.....	228
L2: General statutory requirements for all conditions	229
L3: Changes relevant to all conditions.....	229
L4: Resource consent conditions	230
L5: Concession conditions	246

L6: Wildlife approval conditions.....	259
L7: Complex freshwater fisheries	264
PART M: OVERALL APPROACH WĀHI M: TIKANGA WHĀNUI.....	267
M1: Principal issues in contention.....	267
M2: Main findings on these issues	268
M3: Greatest weight to the purpose of the FTAA.....	269
M4: Section 85 “sufficiently significant” test.....	269
PART N: FINAL DECISION WĀHI N: TE WHAKATAUNGA.....	270

APPENDIX A: LIST OF RESOURCE CONSENTS | ĀPITIHINGA A: TE RĀRANGI O NGĀ WHAKAAETANGA-Ā-RAWA

APPENDIX B: RESOURCE CONSENT CONDITIONS | ĀPITIHINGA B: NGĀ HERENGA O NGĀ WHAKAAETANGA-Ā-RAWA

APPENDIX C: LIST OF CONCESSIONS | ĀPITIHINGA C: TE RĀRANGI O NGĀ WHAKAAETANGA

APPENDIX D1: CONCESSION (LEASE AND LICENCE) | ĀPITIHINGA D1:TE WHAKAAETANGA (RĪHI ME TE RAIHANA)

APPENDIX D2: CONCESSION (EASEMENT) | ĀPITIHINGA D2: TE WHAKAAETANGA (MŌTIKA WHAKAWHITI WHENUA)

APPENDIX E: WILDLIFE ACT PERMIT | ĀPITIHINGA E1: TE WHAKAAETANGA-Ā-TURE KARAREHE KŌWAO

APPENDIX F: FRESHWATER FISHERIES APPROVAL | ĀPITIHINGA F: TE WHAKAAETANGA-Ā-MAHINGA WAI MĀORI

APPENDIX G1: SUMMARY OF COMMENTS ON APPLICATION | ĀPITIHINGA G1: WHAKARĀPOPOTOTANGA O NGĀ TĀKUPU MŌ TE PUKA TONO

APPENDIX G2: SUMMARY OF COMMENTS ON CONDITIONS | ĀPITIHINGA G2: WHAKARĀPOPOTOTANGA O NGĀ TĀKUPU MŌ NGĀ HERENGA

APPENDIX H: GLOSSARY | ĀPITIHINGA H: KUPUTAKA

**DECISION MADE BY THE PANEL: WAITAHA HYDRO SCHEME
TE WHAKATAUNGA A TE PAEWHIRI WHAKAWĀ WAITAHA HIKO-Ā-AWA**

He Mihi | Acknowledgements

E kau ki te tai ē, e kau ki te tai ē

E pāpaki atu nei te tai o mihi ki te awa o Waitaha e rere atu rā, ki ngā maunga whakahī e tū tonu rā, ki ngā tangata whenua e kīia nei ko Ngāi Tahu, ko Ngāti Waewae me Ngāti Māhaki, ki ngā tāngata katoa kua noho mai rā, kua torotoro atu rā raini ki te takiwā o Waitaha.

Ka tukuna te aroha ki a rātou mā, ki ngā raukura kua maunu atu ki te moana uriuri, haere, haere, whakangaro atu rā.

Ka pari te tai moana, ka timu te tai tāngata.

Ko ngā tai e whā, i whai wāhi ai, i hāpai ai i tēnei kaupapa whakahirahira, horekau e ārikarika ana te aumihi ki a koutou katoa.

Kia ora mai tātou.

Tihei wā mauri ora!

These are our acknowledgements to the flowing waters of Waitaha, to the many mountains that stand proud, to the people of the land Ngāi Tahu, Ngāti Waewae and Ngāti Māhaki and to all those who have settled in or are frequent visitors to Waitaha.

We give a heartfelt acknowledgement to the loved ones who have been passed beyond the depths of the ocean and farewell them as they pass from sight.

To everyone who has participated in and shouldered this kaupapa, no matter where you are from, we thank you unreservedly.

We wish everyone health and wellbeing.

PART A: EXECUTIVE SUMMARY | WĀHI A: WHAKARĀPOPOTOTANGA

- 1) This is an application by Westpower Limited (**Applicant** or **Westpower**) for approvals (**Application**) to authorise the development of a run-of-river Hydro Scheme on the Waitaha River on the West Coast, in Westland District (**Project** or **Scheme**).
- 2) The Application was included as a listed project in Schedule (**Sch.**) 2 of the FTAA.
- 3) An expert panel was appointed to determine the Application (**Panel**) on 30 October 2025.
- 4) The Panel has assessed the Application applying the relevant statutory criteria within the purpose and context of the FTAA.¹
- 5) The Application was supported by a detailed assessment of environmental effects (**AEE**) and 52 appendices containing site and Project information; correspondence from key stakeholders; technical reports, drawings, and assessments; proposed conditions; and draft management plans.
- 6) The Panel received comments from 18 invited parties, a response to those comments from the Applicant, technical review reports from the Panel’s three appointed peer reviewers, a report and technical reviews from the Department of Conservation (**DOC**) as required by s.51 of the FTAA (**DOC s.51 Report** or **s.51 Report**), further information from the Applicant in response to our requests for further information (**RFIs**), oral evidence from expert conferencing, statements and information following conferencing, as well as comments on conditions. The Panel has carefully considered all of this information in evaluating the Application.
- 7) This Decision is made in accordance with s.87 of the FTAA and covers all the approvals sought under the Substantive Application, namely:
 - a) resource consents (district and regional) that would otherwise be applied for under the RMA (section (**s.**) 42(4)(a)) including any consents required by a National Environmental Standard (**NES**);
 - b) concessions that would otherwise be applied for under the Conservation Act (s.42(4)(e));
 - c) wildlife approvals that would otherwise be applied for under the Wildlife Act (s.42(4)(h)); and
 - d) complex freshwater fisheries approvals that would otherwise be applied for under regulation 42 or 43 of the Fisheries Regulations (s42(4)(j)).
- 8) For the reasons given in this Decision, the Panel has determined that:
 - a) the Project will have at least significant regional benefits;

¹ Legislation Act 2019, s.10; and FTAA, ss.10 and Schs.5, 6, 7 and 9.

- b) with the exception of recreation effects, the Project is able to avoid, remedy, mitigate, offset or compensate adverse effects to an acceptable level;
 - c) the residual recreation effects, while significant, are localised, and do not warrant the refusal of approvals under the FTAA;
 - d) overall, the Project is consistent with the relevant planning framework;
 - e) any adverse effects of the Project are not “sufficiently significant” so as to be out of proportion with the significant regional benefits provided; and
 - f) the Project meets the purpose of the FTAA.
- 9) The Panel therefore grants the approvals sought, as set out in **Appendices A, B, C, D1, D2, E and F** to this Decision. A summary of comments received is set out in **Appendices G1 and G2**, with **Appendix H** containing a glossary of terms.

PART B: APPLICATION CONTEXT AND APPROVALS SOUGHT | WĀHI B: TĀ TONO HOROPAKI ME NGĀ WHAKAAETANGA E TONOA ANA

B1: Application context

- 1) The Application contained a detailed description of the existing environment in Section 5 of the AEE.² We adopt that description. However, to provide context for our Decision, in this section we provide a brief summary of the following:
 - a) Scheme setting and Site;³
 - b) Project history;
 - c) current Application;
 - d) the relevant RMA planning controls; and
 - e) the relevant conservation strategy.
- 2) Further details on these matters are also canvassed in later Parts of this Decision when we evaluate the relevant effects of the Scheme (Part F), the regional or national benefits (Part G), the relevant criteria for each of the approvals (Parts H to K) and conditions (Part L).

Scheme setting and Site

- 3) The Site is located in the Waitaha River catchment in Westland District.
- 4) Waitaha River is located 60 kilometres (**kms**) southwest of Hokitika and extends from the Main Divide of the Southern Alps to the Tasman Sea on the West Coast. The extent of the Waitaha catchment is defined by Smyth Range to the south, Bromfield Range to the west, and Lange Range to the north-west. The upper Waitaha catchment receives some of the world's highest annual rainfall.
- 5) The Alpine Fault runs through the catchment near the confluence of the Waitaha River and Macgregor Creek just to the north-west of the Project. The dominant geology is a mix of fissile schist and glacial outwash gravels in the valley floors and terraces. Signs of recent erosion and aggradation are common in the catchment and landslips are a characteristic feature of the area.

² AEE, Section 5 covers the general setting, cultural context and values, social and economic setting, land details, existing land use, adjacent neighbours, public access, district plan zoning and overlays, conservation management, existing authorisations, geology and geologic features, topography, ground conditions, soil productivity, surface water, hydrology, wetlands, water quality, river sediment and sediment transport, terrestrial ecology, freshwater ecology, natural character and landscape values, heritage and archaeological values, roading and traffic environment and existing noise environment.

³ Part Reserve 1672 shown on Survey Office Plan 11209 as areas 16, 35, and 76 (pp.134 and J34) New Zealand Gazette 8 May 1919 p.1287; Part Reserve 1672 shown on Survey Office Plan 11209 as areas 16, 35, and 76 (pp.134 and J34) New Zealand Gazette 3 May 1934 p.1386 (and Record of Title 318036); Part Reserve 1672 described as Section 1 Survey Office Plan 12094 New Zealand Gazette 1 July 2001 p.1560; Crown land, being the bed of Allen Creek, shown on Survey Office Plan 11859, Westland Registration District; Crown land being the bed of the Waitaha River (also described as Area A on Survey Office Plan 12697); Rural Section 933 and Rural Section 4047, Section 1-4 Survey Office Plan 11859 and Lot 2 Deposited Plan 376096; Local Road (Waitaha Road), State Highway 6 (Harihari Highway), Lot 1 Deposited Plan 3059.

6) The Scheme Site is shown on **Figure 1** below.⁴

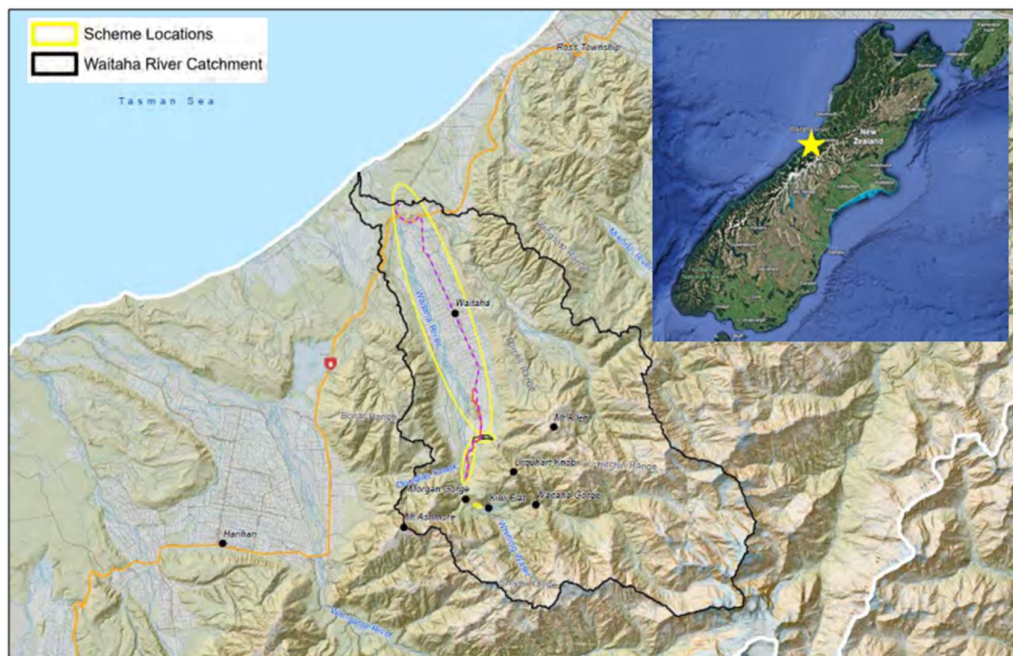


Figure 1 – Scheme location

- 7) The Waitaha River is predominantly a single thread channel above Kiwi Flat and has a slightly braided nature once it reaches Kiwi Flat. The River flows swiftly through Morgan Gorge as a confined channel, with a substrate dominated by bedrock, large boulders and shifting gravels, and downstream of Morgan Gorge it flows in less steep braided channel sections. Several tributaries flow into the River across the Site including Anson and Glamour (within Morgan Gorge) and the Alpha, Douglas and Macgregor Creeks entering further downstream.
- 8) The Scheme sits in the transition zone between rural production activities to the north and more natural recreation areas to the south. The Project Site itself is a highly natural landscape with the edges of the River covered by predominantly indigenous vegetation which changes abruptly to precipitous rocky sides as the river enters Morgan Gorge. Indigenous native forest occupies most of the lower and mid-slopes of the surrounding land with podocarp forests on lower elevations and rātā/kāmahi forests, tussocks and subalpine shrubs on the upper steeper slopes. The lower managed alluvial plains contain a mix of uses including areas of well-developed farmland, particularly on the true right bank of the Waitaha River, downstream of Macgregor Creek.
- 9) There is a DOC hut located about midway along Kiwi Flat Reach⁵ (outside the footprint of the Scheme). A public walking track runs along the true right side of the Waitaha River with a publicly accessible swing-bridge located near the downstream extent of Kiwi Flat and the top of Morgan Gorge. The swing-bridge is the only apparent artificial structure at this location.
- 10) There is a geothermal hot pool located towards the bottom reach of Morgan Gorge.

⁴ AEE, Figure 1, p.9.

⁵ The Kiwi Flat Reach is from the top of Morgan Gorge to the bottom of Waitaha Gorge.

- 11) The Scheme Site covers four areas and extends from the top of Morgan Gorge on the Waitaha River to the Waitaha Substation on Bold Head Road in Westland District, as shown in **Figure 2** below.

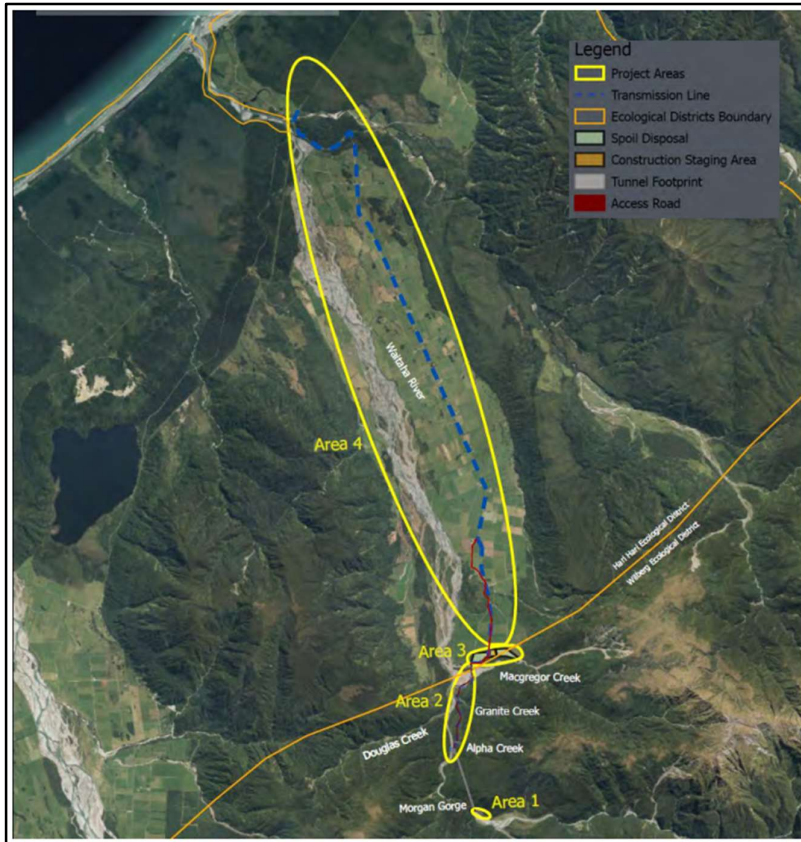


Figure 2: Plan showing Scheme areas

Project history

- 12) Investigations into the Waitaha Scheme commenced in 2005, with an initial meeting occurring with DOC in 2012.
- 13) In 2014, Westpower applied to DOC under the Conservation Act for concessions to construct and operate an earlier version of the Scheme. Following a publicly notified process and hearing in 2016, and the final hearing recommendations being issued by a commissioner in 2017, the Minister for the Environment declined the application in 2019. In 2022, Westpower applied to DOC under s.17ZJ of the Conservation Act seeking that the 2019 decision be reconsidered. That reconsideration process was suspended when the Scheme obtained a listing in the FTAA,⁶ and was subsequently withdrawn by Westpower on 5 September 2025.⁷

⁶ AEE, Sections 2.4.2 and 2.4.3.

⁷ DOC s.51 Report, at [3.1]; and 5 September 2025 email of Jon Bright to the EPA.

Current Application

- 14) Westpower's current FTAA Application seeks resource consents, concessions, wildlife approvals, and freshwater fisheries approvals for a run-of-river hydro Scheme with no in-stream or off-stream storage.
- 15) The Headworks and intake are proposed to be located at the entrance to Morgan Gorge at the lower end of the Kiwi Flat Reach in the Upper Waitaha Catchment (Area 1 of Figure 2). The proposed Headworks includes a low-profile weir and intake structure situated at the top of Morgan Gorge which will divert up to 23m³/s of the Waitaha River water into a 1.5km long pressurised water tunnel designed to convey the water into a desander where sediment material is removed, and then down to a Power Station located below Morgan Gorge (Area 2 of Figure 2). Once the diverted water has passed through the Power Station, it is returned to the Waitaha River via a tailrace near the confluence with Alpha Creek.
- 16) Construction and maintenance access to the Headworks will be via an access tunnel running parallel to the pressurised water tunnel. Spoil disposal areas (up to 100,000m³) and a Construction Staging Area (to store equipment and materials) are proposed in pastureland on an elevated plateau on the north side of Macgregor Creek on the McLean Farm (Area 3 of Figure 2).
- 17) The Power Station site is proposed to be located below Morgan Gorge on a raised river gravel bank (some 0.7 hectares (**ha**)), which is currently partially covered with indigenous shrub hardwoods, tree ferns, monocots, introduced grasses and broadleaved herbaceous species. The Power Station will include two turbines and generation equipment with an installed peak output of 23MW. It is anticipated the Scheme will generate between 120 and 140 GWh per year – providing sufficient renewable electricity to power approximately 12,000 New Zealand homes.
- 18) To the rear of the Power Station is a rocky cliff face. Natural bush extends around the eastern extent of the Power Station site, and on the opposite side of the river.
- 19) An access road and new 66 kV transmission line is to be constructed from the Power Station through an area of indigenous vegetation (4ha) to Macgregor Creek (Area 2 of Figure 2) and then across farmland to Anderson Road. The 66 kV transmission line will continue along Waitaha Road and then head west via State Highway 6 (**SH6**) and Beach Road to Bold Head Road where it will connect into the existing Waitaha Substation -which is part of the Westpower network (Area 4 of Figure 2). Existing transmission and connection infrastructure, from near the northern end of Waitaha Road (at SH6) through to, and including the Waitaha Substation, will be upgraded as part of the Project.⁸
- 20) The Scheme is proposed to be operated so that no less than 3.5m³/s of flow is retained in the Waitaha River between the Headworks and the Power Station tailrace (**abstraction reach**). The abstraction reach will be approximately 2.5km long, including Morgan Gorge at its upstream end.
- 21) Overall, the permanent operational footprint of the Scheme would encompass 5ha of DOC land in the Upper Waitaha Valley catchment, with the Scheme as a whole (encompassing the Headworks, Power Station, access tracks, and road/transmission

⁸ AEE, pp.10-11.

line from the Power Station to the Waitaha Substation) having an approximately 22.3ha footprint.⁹ North of Macgregor Creek, the Site access road and transmission line traverses private land (the McLean Farm) to connect with Anderson Road.¹⁰

- 22) **Figure 3** below shows the location of the Scheme area and components as well as the key features within and surrounding the Project Site. This includes the location of the tributaries, the extent of the Downstream, Douglas Creek, Morgan Gorge and Kiwi Flat Reaches, the Hot Pools, the existing walking track and Kiwi Flat Hut.

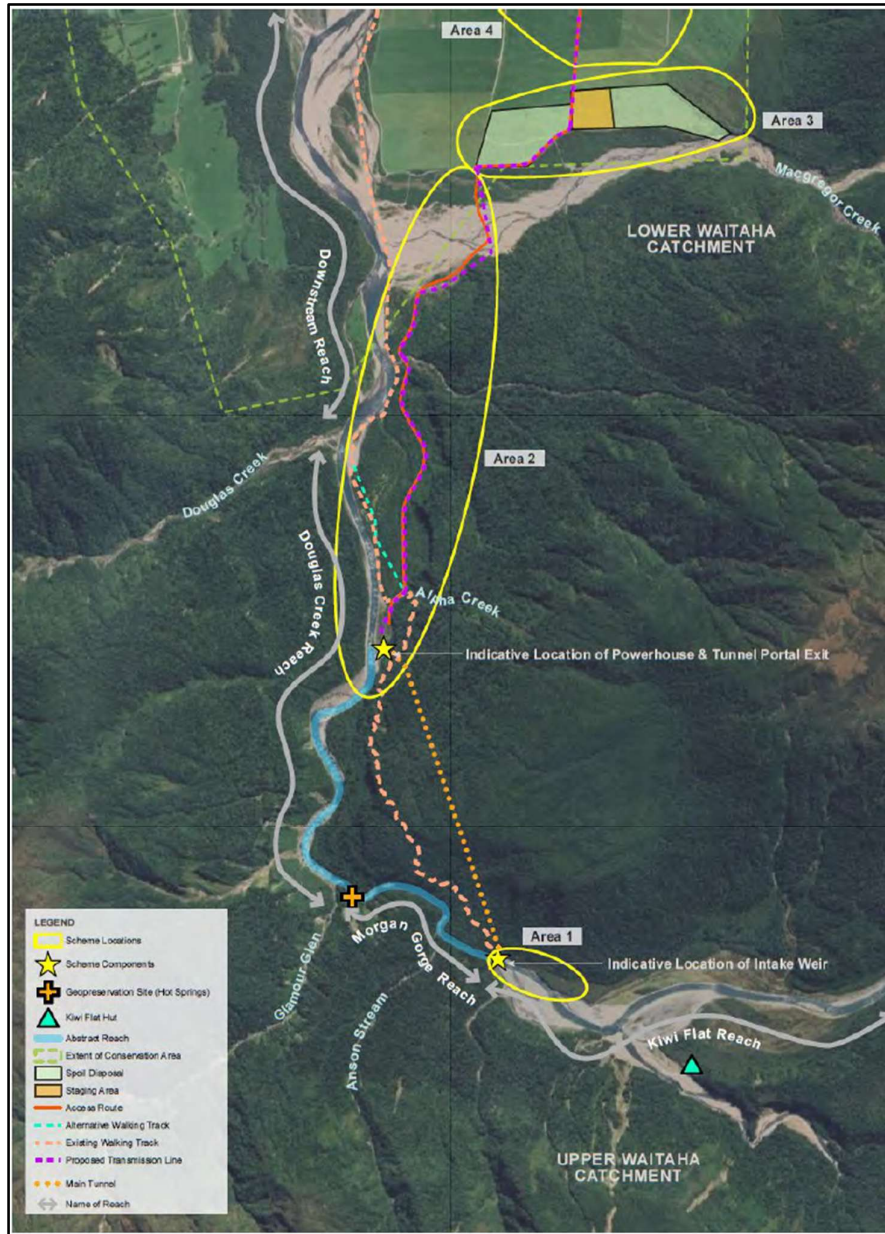


Figure 3: Key features within and surrounding Site

⁹ Westpower Memorandum #7, 21 January 2026, Attachment 9 – Statement of Rodger Griffiths, Appendix B.

¹⁰ AEE, p.10.

RMA planning controls

- 23) The Project is located entirely within the Rural Zone of the Operative Westland District Plan (**WDP**). The WDP overlays and features of relevance to the Site are:
- a) the Alpine Fault which crosses the Project Site downstream of the proposed Power Station;
 - b) an area of designated land towards the east of the Site on Mt. Bonar which is designated for telecommunication, radio communication and ancillary purposes;
 - c) the Waitaha Substation which is designated as an Electricity Substation on Bold Head Road;
 - d) a conservation covenant area comprising a bush clad hill known as the "Sugarloaf" or the "Doughboy"; and
 - e) a listed copse of trees Lot 1 DP 3644 Blk XVI Totara SD, on the corner of Waitaha and Douglas Roads.¹¹
- 24) The proposed Te Tai o Poutini Plan (**TTPP**) is a combined district plan for the Buller, Grey and Westland District Councils which will replace the current individual district plans. In terms of its status, while the decisions version was notified in October 2025, we were informed that over 30 appeals had been lodged, with most if not all aspects of the plan being subject to appeals.¹²
- 25) In terms of TTPP zoning, the Site is split between Open Space Zone where the Headworks, Power Station and part of the access road are located, and General Rural Zone north of Macgregor Creek. The overlays and features within TTPP of relevance to the Site are:
- a) Outstanding Natural Landscapes:
 - i) 18 Mt Elie De Beaumont – Mt Whitcome (Headworks and associated access);
 - ii) 22 Bonar, Rangitoto & Bald Hill Ranges (Power Station and access road, including part of Macgregor Creek); and
 - iii) 20 Wakanui/Wanganui Bluff to Waitaha River (Transmission line).
 - b) Designation WESTP2: Waitaha Substation on Bolt Head Road, which is designated as an electricity substation.
 - c) Designation CNZ 15: Mt. Bonar Mobile Station, which is designated for telecommunications, radio communications and ancillary purposes.
 - d) Pounamu Management Area: Whole Site.

¹¹ The AEE did not include reference to the copse of trees, perhaps because at that time the transmission line activities which are Proposed along Waitaha Road were assessed by the Applicant as permitted activities.

¹² Westpower Memorandum #5, 10 December 2025, at [56]-[57].

- e) Notable Trees: TREE57 Lot 1 DP 3644 Bld XVI Totara SD, Copse of trees botanic, on the corner of Waitaha and Douglas Roads.
- f) Earthquake Hazard: Susceptibility associated with the Alpine Fault for the access road north of the Power Station.

Conservation matters

- 26) The core parts of the Scheme (other than the parts of the transmission corridor traversing private land and public roads) are located on DOC stewardship land with a small area traversing marginal strips. The West Coast Te Tai Poutini Conservation Management Strategy 2010-2020 (**CMS**) therefore has some relevance, and we address this in later parts of this Decision.

B2: Approvals sought

- 27) In this section, we summarise the four different types of approvals sought by the Applicant together with the respective durations and lapse periods sought for those approvals. We also list the management plans which the Applicant has requested that the Panel certify.

RMA resource consents

- 28) Several resource consents are required under the relevant RMA regulations and plans. These comprise consents under:⁸
 - a) the Resource Management (National Environmental Standards for Freshwater) Regulations 2020, as amended in 2025 (**NES-F**) as a discretionary (**DIS**) activity;
 - b) the West Coast Regional Land and Water Plan (**RLWP**), which overall are a DIS activity.
 - c) the West Coast Regional Air Quality Plan (**RAQP**), which overall are a DIS activity;
 - d) the WDP, which overall are a non-complying (**NC**) activity; and
 - e) TTPP, which overall are a DIS activity.
- 29) Under the “bundling” principle the overall activity status for the Waitaha Hydro Scheme resource consents is “NC”. A full list of the resource consents is set out in **Appendix A** to this Decision.
- 30) In terms of consent duration, the Applicant requests an unlimited duration for any s.9 land use consents granted and a 35-year duration for any construction activities and any other resource consents granted under ss.13, 14 and 15.¹³

¹³ AEE, p.iv, at [4]; and as updated in the Westpower Memorandum #2, 17 November 2025. While a 15-year term was originally sought for construction activities, the Westpower Memorandum #2, 17 November 2025, noted that was now out of date given the changes made to s.123B of the RMA which provided a duration of 35 years for any renewable energy related consents.

- 31) A 10-year lapse period is sought for any resource consent granted (noting that a 10-year lapse period is now the statutory default period under the RMA for renewable energy activities).¹⁴

Conservation Act concessions

- 32) DOC concessions in the form of leases, licenses and easements are required for the Scheme's structures and for all activities associated with the Scheme's construction and ongoing operation and maintenance activities.
- 33) A full list of the concessions sought as part of this Application are set out in **Appendix C** to this Decision.
- 34) For clarity we note that while pre-construction geotechnical investigations were originally sought as part of this Application, these were withdrawn partway through the process, and we were informed that Westpower will rely on separate approvals for these activities.¹⁵ Accordingly, these activities do not form part of the Application as assessed in this Decision.
- 35) In terms of the duration and term of the concessions, the Applicant originally requested:
- a) a 15-year duration for any short-term construction related concessions, and a 49-year duration for any long-term concessions (including easements);¹⁶ and
 - b) a 10-year lapse period for any short-term construction concession,¹⁷ and a 20-year lapse for any easement and long-term operational concessions.¹⁸
- 36) As noted later in this Decision, this request was subsequently modified to request one concession covering both construction and operation with a 49-year term and a 10-year lapse period.¹⁹

Wildlife Act approvals

- 37) Wildlife Approvals are sought to authorise the following activities (associated with vegetation clearance, noise, disturbance and vibration from construction activities):²⁰
- a) to catch, handle, salvage, and relocate native lizards from the Scheme footprint;
 - b) to gently guide whio / blue duck away from blasting and helicopter use areas;

¹⁴ As a result of changes made to s.125(1)(c) made by the Resource Management (Consenting and Other System Changes) Amendment Act 2025).

¹⁵ Westpower Memorandum #9, 3 February 2026, at [3].

¹⁶ AEE, p.iv, at [4]; and as updated in the Westpower Memorandum #2, 17 November 2025.

¹⁷ Memorandum #7, 21 January 2026, Attachment 2 – Concession conditions lease licence short-term operational, cl.3.

¹⁸ Memorandum #7, 21 January 2026, Attachment 3 – Concession conditions lease licence long-term operational, cl.3 and Attachment 4 - Concession conditions easement, cl.5.

¹⁹ Westpower Email to EPA, 6 March 2026.

²⁰ AEE, p.128; and Westpower Memorandum #2, 17 November 2025, Attachment 1B.

- c) to capture, handle and relocate avifauna and long-tailed bats (if required) in accordance with the Avifauna Management Plan (**AMP**) and Bat Management Plan (**BMP**); and
 - d) to incidentally harm or kill wildlife if the harm or death is not directly intended but is unavoidable and foreseeable and all reasonable effort has been made to meet the conditions in the approval.
- 38) In terms of duration, the Applicant requests a 15-year duration for any wildlife approval granted.²¹ No express lapse period is sought for the wildlife approvals.

Freshwater fisheries approvals

- 39) The following complex freshwater fisheries approvals are sought:²²
- a) approval for the Headworks diversion weir and Alpha Creek groyne structures and associated in-stream construction and ongoing maintenance activities; and
 - b) approval for ongoing in-stream maintenance activities on the Macgregor Creek crossing structure, all culvert structures, the Granite Creek bridge and Power Station tailrace.
- 40) In terms of duration and lapse, the Applicant requests an unlimited duration for any freshwater fisheries approvals granted,²³ and a 10-year lapse period.²⁴

Management plans

- 41) The Applicant proposes a range of management plans to manage the effects of the Project. It seeks that the following management plans be certified by the Panel to manage the key ecological, landscape and amenity effects of the Project:²⁵
- a) Vegetation Management Plan (**VMP**);
 - b) AMP;
 - c) BMP;
 - d) Lizard Management Plan (**LizMP**);
 - e) Freshwater Ecology Management Plan (**FEMP**); and
 - f) Landscape Management Plan (**LMP**).

²¹ AEE, p.iv, at [4]; and as updated in the Westpower Memorandum #2, 17 November 2025.

²² AEE, p.144.

²³ AEE, p.iv, at [4]; and as updated in the Westpower Memorandum #2, 17 November 2025.

²⁴ Memorandum #7, 21 January 2026, Attachment 5A – Complex Freshwater Fishery Conditions, Part B, Table.

²⁵ AEE, p.37, at [2.6]; and AEE, p.51, Table 2.

- 42) Other draft management plans (provided to the Panel for context) are proposed to be finalised and then certified by the relevant council with the requisite detailed construction information.²⁶

PART C: PROCEDURAL MATTERS | WĀHI C: NGĀ MEA TUKANGA

- 43) The following matters of procedure are relevant for this Decision.

C1: Panel convenor steps

- 44) Minute #4 of the Panel Convenor confirmed the appointment of this Panel in accordance with Sch.3 of the FTAA, and specified the date for commencement as being 5 November 2025. The decision timeframe was recorded as being 60 working days (**wd**) from the date that invited comments on the Application close. This was double the default decision timeframe,²⁷ and was considered necessary given the scale, nature and complexity of the Application. The decision due date was subsequently amended as a result of the Applicant's request for suspension (as noted later in this Part).

C2: Initial Panel briefing and site visit

- 45) On 14 November 2025, the Panel held an online Project overview conference where the Panel had an opportunity to ask questions of the Applicant, its legal advisors, planning advisers, recreational adviser and a representative of its Project partner, Poutini Ngāi Tahu.²⁸ The purpose of the conference was to familiarise the Panel with the content of the Application and provide clarification on aspects of the Application. Other participants were invited to attend in an observer capacity, with representatives of DOC and WCRC attending. The Panel found the briefing useful and expresses its thanks to the conference organisers and participants.
- 46) On 17 November 2025, the Panel undertook a site visit. This involved viewing and walking around the area of the Headworks intake at the top of Morgan Gorge and the lower Kiwi Flat area, flying the length of Morgan Gorge, visiting the proposed Power Station site, the transmission corridor and the Waitaha substation.
- 47) The Panel was accompanied by Jon Bright from Electronet, Silvie Saskova from Westpower, and Kara Edwards and Kahurangi Mahuika from Poutini Ngāi Tahu. The Panel acknowledges all those involved in organising, flying, driving and chaperoning us on the Site visit.

C3: Panel hui

- 48) Much of the Panel's correspondence, deliberations and decision-making occurred over email following the receipt of comments and the Panel's review of available information. Notwithstanding this, the Panel met on the following occasions (with all meetings held virtually via Microsoft teams unless otherwise indicated):

²⁶ AEE, p.37, at [2.6] comprising the Draft Construction and Environmental Management Plan (Appendix 33), the Draft Erosion Sediment and Control Plan (Appendix 34), and the Draft Construction Noise Management Plan (Appendix 41).

²⁷ The default timeframe as specified in s.79 of the FTAA is 30 wd from the date invited comments close.

²⁸ Poutini Ngāi Tahu being the joint representative entity for Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio.

- a) 11, 14 and 17 November 2025 (the latter being in person);
- b) 3 and 19 December 2025;
- c) 16 and 30 January 2026;
- d) 13 and 27 February 2026;
- e) 3 and 13 March 2026 (the earlier being in person); and
- f) 7, 10 and 17 April 2026.

C4: Statutory reports

- 49) We received the following reports from the relevant agencies:
- a) a s.18 Report from the Ministry for the Environment (**MfE**) relating to Treaty settlements and other obligations; and
 - b) a s.51 Report from DOC and technical reviews relating to the concessions, wildlife approvals, and freshwater fisheries approvals sought.

C5: Persons invited to comment

- 50) Section 53 of the FTAA requires the Panel to invite comments on the Application from certain persons. The persons relevant to this Application comprise the relevant local authorities, iwi authorities, Treaty settlement entities, the owners and occupiers of the Project Site and any adjacent land, relevant Ministers and administering agencies, the New Zealand Conservation Authority (**NZCA**), the West Coast Tai Poutini Conservation Board (**Conservation Board**), New Zealand Fish and Game Council (**Fish and Game**) and the Game Animal Council NZ (**Game Animal Council**).²⁹
- 51) In addition to these mandatory invitees, s.53(2) empowers a panel to invite comments from “any other person the panel considers appropriate”. We exercised this discretion to invite comments from:
- a) New Zealand Transport Agency Waka Kotahi (NZTA): given the transmission line would, after exiting Waitaha Road, run along SH6 until it reached the road to the Waitaha Substation; and
 - b) the owners and occupiers of the properties along Waitaha Road: given the transmission line would run along Waitaha Road and may require consents under the TTPP.³⁰
- 52) These matters were recorded in our Minute #3 on 26 November 2025.

²⁹ The EPA provided a memorandum on 5 November 2025 advising of the mandatory invitees.

³⁰ Noting that the Application as lodged considered the transmission line aspects a permitted activity with the potential need for consents under the TTPP not being identified until the Applicant filed additional information on 17 November 2025.

DOC request for invitations to be extended to recreational users

- 53) A short time after the release of our Minute #3 confirming the parties who were invited to comment, the Panel received a memorandum from DOC requesting that the Federated Mountain Clubs of New Zealand (**FMC**) and other (non-identified) recreational users be extended an invitation to comment. The reasons DOC cited in support of its request were that:³¹
- a) inviting comments from FMC would be of assistance and is necessary for the Panel to make an informed decision on the facts;
 - b) while the matters that DOC would cover off in its s.51 Report are substantial, DOC would not be able to speak to the user experience of recreational visitors to the Waitaha Valley first-hand;
 - c) recreational user group organisations hold visitor information beyond that held by DOC, such as recreational user numbers beyond those recorded in DOC hut book entries; and
 - d) inviting such comments would be consistent with the factors considered by the expert panel in the *Bledisloe North Wharf* fast track project,³² including exceptional factors. Here, those factors include that most of the land needed for the Project is Crown land held for conservation purposes, and that given the extent to which recreational users would be affected, natural justice would warrant inviting their comments.
- 54) On 27 November 2025, counsel for Westpower provided a memorandum opposing DOC's request on the following bases:³³
- a) the Panel's determination is a statutory decision involving the exercise of a statutory discretion;
 - b) the FTAA does not provide a process for submissions to be made in response to Panel's decision on invitations to comment;
 - c) DOC has defined statutory roles under the FTAA which do not include advocating for other parties to be invited to comment; and
 - d) the Panel has (or will have) access to a range of information on recreation matters, including expert reports and from other parties who have been invited to comment.
- 55) On 1 December 2025, we issued Minute #4 noting that Minute #3 had briefly summarised the matters we had considered when determining who to invite and confirming that we would not be issuing further invitations to comment. We also noted that we would address this matter in our substantive decision.

³¹ DOC Memorandum, 26 November 2025.

³² *Bledisloe North Wharf and Fergusson North Berth Extension*, Expert Panel, Minute 3, 26 May 2025, at [16]-[18].

³³ Westpower Memorandum #3, 27 November 2025.

Evaluation and findings

56) In terms of this issue, we note that while the FTAA provides us with a discretion to invite “any other person” we consider appropriate, it contains no express guidance as to how we ought to exercise our discretion. We are however cognisant of the need to exercise our discretion in a principled manner consistent with the purpose of the relevant legislation, here the FTAA.³⁴ We are also charged under the FTAA with regulating our procedures in a manner that “best promotes the just and timely determination of the approvals sought.”³⁵ Accordingly, and as we noted in our Minute #3, in determining whether to exercise our discretion to invite additional parties we considered:

- a) The list of mandatory invitees which included local councils, relevant iwi authorities and Treaty settlement entities, various Ministers (including those for Hunting and Fishing, Sport and Recreation, and Conservation), DOC, NZCA, Fish and Game as well as the Game Animal Council.
- b) The adjacent properties, which as noted above, we extended to include all of the properties located directly adjacent to the proposed Waitaha Road transmission line route.
- c) The purpose, text and context of the Act:³⁶
 - i) The purpose being to facilitate the delivery of infrastructure and development projects with significant regional or national benefits, in an efficient, timely manner (the latter arising from the procedural principles in s.10).
 - ii) The text of s.53(3) being limited to those persons the Panel considers “appropriate”.
 - iii) The statutory context including the lack of a requirement to publicly notify an application, the more limited list of mandatory invitees under the FTAA than former fast track processes,³⁷ the lack of a requirement to hold a hearing, the lack of a right to be heard by a panel, the tight timeframes for decision-making, and the very limited rights of appeal.³⁸
- d) The Applicant’s submissions which:³⁹
 - i) canvassed the Parliamentary intent, the FTAA’s purpose and procedural principles, the extent of consultation undertaken by the Applicant and the

³⁴ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Minister of Conservation* [2016] NZCA 411, at [53] per Harrison J for the majority.

³⁵ FTAA, Sch.3, cl.10.

³⁶ As is required by s.10 of the Legislation Act 2019.

³⁷ Such as under the former: COVID-19 Recovery (Fast-track Consenting) Act 2020, Sch.6, cl.17; and Natural and Built Environment Act 2023, Sch.10, cl.26.

³⁸ FTAA, ss.27, 56 and 99.

³⁹ Westpower Memorandum #3, 27 November 2025.

- agreements reached (including with Whitewater NZ Incorporated (**WWNZ**)); and
- ii) stated that the Project is not prohibited under the RMA and that there are no novel or contentious legal issues – other than perhaps the issue of who sets the concession fee – which is not a matter that recreation user groups could assist with.
- e) The three unsolicited requests from persons seeking to be invited to comment comprising two individuals (one offering drone footage and another an experienced recreationist wishing to provide feedback) and FMC. FMC's primary concerns appeared to relate to:⁴⁰
- i) the limited engagement undertaken with it and that engagement being presented as consultation;
 - ii) the limited consideration given to its feedback; and
 - iii) how their experience of not being able to liaise directly with the recreation expert in this process differed from other processes – leading them to a view that the Application contained factual inaccuracies, and questioning the independence of the Applicant's recreation expert's advice.
- 57) In making our determination on DOC's request, and following on from the above, we also considered:
- a) whether if such invitations were extended to FMC or other (unidentified) recreational user groups, we were likely to obtain information which was relevant, material, would go beyond what we already had/were likely to receive from invitees and would be of assistance to us in making our Decision;
 - b) whether we were able to identify all potentially relevant groups given no groups other than FMC were specifically named in DOC's request;
 - c) whether a broadening of the invitation to comment to encompass potentially relevant groups was consistent with the purpose, text and context of the FTAA;
 - d) whether there were other means to test the accuracy and robustness of the recreation evidence (such as via further information requests, peer reviews or expert conferencing); and
 - e) whether natural justice would warrant such invitations being issued.
- 58) In relation to the last point, we acknowledge that natural justice is an important principle. However, we are also cognisant that exactly what that principle requires will differ depending on the specific circumstances of a case. Where, as here:

⁴⁰ Noting there were other matters mentioned in this request but here we have sought to summarise what we consider to be the main matters.

- a) there has been an intentional statutory shift to restrict invitees to those "genuinely and most impacted by the decision";⁴¹
- b) engagement with recreational user groups has been undertaken and reported on by the Applicant - despite there being no statutory requirement for such engagement or consultation to be undertaken by the Applicant and/or its experts;⁴²
- c) expert recreational evidence was provided by the Applicant which:
 - i) assessed all construction and operational effects on recreation values and opportunities;
 - ii) included conclusions that:
 - (1) all construction activity effects, while temporary, would be "very high" (i.e., significant) even post mitigation; and
 - (2) operational effects on recreation values in Morgan Gorge and Kiwi Flat would remain "high" (significant) post mitigation;
- d) invitations were issued to those with statutory recreation-related responsibilities/portfolios as well as adjacent property owners and occupiers;
- e) FMC's unsolicited comments had earlier been provided to DOC, NZCA and the Conservation Board,⁴³ enabling those parties to incorporate that feedback into their comments if they considered it material and relevant (some of which NZCA subsequently did include in its s.53 comments); and
- f) the Panel determined the accuracy and robustness of that expert recreation evidence could be (and subsequently was) tested through obtaining a peer review;⁴⁴

we determined the interests of natural justice did not require an extension of invitations to FMC or other (unidentified) recreational user groups.

Comments received

- 59) Responses to the invitation to comment were due on 14 January 2026. Comments were received on time from 18 individuals and organisations. The persons providing

⁴¹ Minister for Regional Development, the Hon Shane Jones, (10 December 2024) 780 NZPD 7944, as noted in Westpower Memorandum #1, 7 November 2025, at [84].

⁴² Section 29 of the FTAA only requires that the persons listed in s.11 be consulted which comprise relevant local authorities; relevant iwi authorities, hapū and Treaty settlement entities; tangata whenua where there is a taiāpure, mātaītai reserve or area subject to bylaws or regulations under the Fisheries Act, applicant groups for customary marine title, ngā hapū o Ngāti Porou if the Site is within their rohe; the relevant administering agencies; and holder of an interest in land to exchanged (where relevant).

⁴³ As evidenced by the document referring to a copy having been sent to those bodies.

⁴⁴ Noting that formal engagement of the recreation expert did not occur until some weeks following the issue of our [Minute #4](#) given the time required to find and formally engage an appropriate expert.

comment and a summary of their comments are contained in **Appendix G1**. No late comments were received.

- 60) We note that while not all comments may be expressly referred to in the body of this Decision, we have carefully considered all comments, where relevant, in the various parts of our Decision.

Applicant’s response to in DOC s.51 Report and invited party comments

- 61) On 21 January 2025, the Applicant provided a response to the DOC s.51 Report and the comments received on the Application. This response included, amongst other matters, an updated set of draft conditions for each of the approvals sought.

C6: Appointment of technical advisers and Peer Review Reports

- 62) On 26 November 2025, the Panel confirmed the appointment of Ms Megan Couture from Beca as a technical planning adviser to assist the Panel primarily with the drafting of conditions.⁴⁵
- 63) On 15 December 2025, the Panel issued Minute #5 confirming the appointment of the following three additional technical advisers:

Name	Specialist Area	Mahi
Mr Paul Morgan	Hydraulics Engineer and Fish Screen Specialist	Review and advice re intake structure, desander, and fish pass
Associate Professor Jon Tunnicliffe (Dr Tunnicliffe)	Fluvial Geomorphologist	Review and advise re river geomorphology, sediment fluvial dynamics associated with weir
Mr Paul Wilson	Recreation Specialist	Peer review and advice re Applicant Recreation Report ⁴⁶

Table 1: Panel peer reviewers

- 64) These appointments were made under cl.10(3) of Sch.3 of the FTAA.
- 65) The Peer Review experts produced the following reports/evidence:
- a) Waitaha Hydro Power Review of Intake Engineering and Fish Passage, by Paul Morgan of River & Fish Engineering Solutions Ltd, 26 January 2026;
 - b) Statement of Evidence of Dr Jon Tunnicliffe on River Geomorphology, 23 January 2026; and

⁴⁵ As recorded in Minute #3, 26 November 2025.

⁴⁶ AEE, Appendix 28 - Assessment of Environmental Effects Recreation, Rob Greenaway of R&R Consulting, June 2025.

- c) Recreation Assessment Peer Review: Appendix 28, Waitaha Hydro, by Paul Wilson of Xyst Ltd, 27 January 2026;

(collectively, “**Peer Review Reports**”).

- 66) These Peer Review Reports were circulated to the Applicant for comment on 27 January 2026, with comments subsequently received on 10 February 2026.

C7: Further information, joint empanelment, further statements and conference with Poutini Ngāi Tahu

- 67) In the course of our decision-making process we instructed the Environmental Protection Authority (**EPA**) to issue nine⁴⁷ RFIs under s.67(1) of the FTAA, we held a joint empanelment of expert witnesses, we directed the provision of further expert statements, and we also conferred directly with representatives of Poutini Ngāi Tahu. We provide further details of each of these matters in the paragraphs that follow, and note the outcomes of each of these steps, where relevant, in other Parts of this Decision.

RFIs

RFI#1

- 68) The first RFI was issued on 19 November 2025 to the Applicant and related to the following:
- a) Waitaha River flow rate;
 - b) intended use of the top access road at the weir site;
 - c) whether rock needs to be removed at the intake location;
 - d) further landscape visualisations and impacts on evidence;
 - e) confirmation from recreation expert regarding impacts of TTPP and further landscape visualisations;
 - f) clarification from economics expert regarding assessment under the FTAA;
 - g) confirmation of scope for the additional TTPP consents and amendments proposed to concessions; and
 - h) an update on any appeals on TTPP.

- 69) The Applicant responded to RFI#1 on 10 December 2025.

RFI#2

- 70) The second RFI was issued on 15 December 2025 to the Applicant and requested information in relation to the following matters:

⁴⁷ Note we have numbered all RFI’s consecutively in this decision irrespective of the recipient of the request – i.e., the Applicant, DOC or the relevant councils.

- a) hydraulic engineering;
 - b) hydraulic stability and absence of a surge chamber;
 - c) groundwater inflow to the tunnel;
 - d) ramping rates;
 - e) spoil disposal;
 - f) intake construction – temporary gravel bund;
 - g) natural hazards;
 - h) desander;
 - i) residual flow state;
 - j) climate change effects;
 - k) flow statistics;
 - l) effect of constriction of Morgan Gorge; and
 - m) the Fast Track Amendment Bill.
- 71) The Applicant responded to RFI#2 on 16 January 2026.
- RFI#3
- 72) The third RFI was issued to the Applicant on 22 December 2025 regarding the impact that the new national direction instruments released by the Government will have on the Application.
- 73) The Applicant responded to RFI#3 on 21 January 2026 as part of its response to the DOC s.51 Report and invited party comments.
- RFI#4
- 74) The fourth RFI was issued to the Applicant on 20 January 2026 requesting confirmation that the geotechnical drilling applications which were being sought concurrently through a separate process had been withdrawn, and the implications of s.94 of the FTAA for the Panel’s decision-making process.
- 75) The Applicant responded to RFI#4 on 3 February 2026 confirming that it was withdrawing those applications from this process, and that it would instead rely on separate approvals for these activities.⁴⁸

⁴⁸ Westpower Memorandum #9, 3 February 2026, at [3].

RFI#5 and RFI#6

- 76) The fifth and sixth RFIs⁴⁹ were issued to WCRC and WDC respectively on 23 January 2026 regarding the changes in the national direction instruments.
- 77) WCRC and WDC both responded to these RFIs on 9 February 2026 confirming that they each agreed with the Applicant’s assessment of the relevant instruments and changes.

RFI#7

- 78) The seventh RFI was issued to the Applicant on 4 February 2026 regarding:
 - a) Morgan Gorge – landscape effects of reduced flow;
 - b) sirens;
 - c) concession Term;
 - d) compensation – CPI adjustments; and
 - e) conditions.
- 79) The Applicant responded to the RMA conditions aspect of RFI#7 on 10 February 2026, and the remainder of the RFI on 13 February 2026.

RFI#8 and RFI#9

- 80) The eighth and ninth RFIs related to the long-term concession fee and were issued to DOC and the Applicant respectively. Responses to these RFIs were received on 5 March 2026.⁵⁰ The Applicant provided a further clarifying email on 6 March 2026,⁵¹ and a response to DOC’s Memorandum on 10 March 2026.⁵²
- 81) The responses to these RFIs are addressed, where relevant, in other parts of this Decision.

Joint empanelment of experts

- 82) As recorded in Minutes #8 and #9, on 13 February 2026 we held a joint empanelment of expert witnesses in the areas of hydraulic engineering, fish passage, fluvial geomorphology, and related aspects of freshwater ecology and whio.
- 83) This joint empanelment provided an opportunity for the Panel to explore issues identified in the Peer Review Reports and the Applicant’s responses to those reports directly with the experts. The joint empanelment was recorded and an AI generated

⁴⁹ Note while the EPA referred to each of these as RFI#1 since they were issued to different parties, to avoid confusion, and as already noted, we have simply continued the numbering to reflect the total number of RFIs irrespective of the party to whom the RFI was issued.

⁵⁰ DOC Memorandum, 5 March 2026 and Attachments 1 to 3; Westpower Memorandum #16, 5 March 2026 and Appendix 1.

⁵¹ A further email clarifying a point made in in Westpower’s Memorandum #16 was subsequently received by the EPA on 16 March 2026.

⁵² Westpower Memorandum #17, 10 March 2026, and Attachment 1.

transcript produced. We discuss the outcomes of this joint empanelment, where relevant, in other Parts of this Decision.

Further statements

- 84) Also as recorded in Minute #8 and Minute #10, we directed the filing of statements from the Applicant and DOC’s landscape and recreation experts following the joint empanelment to confirm whether any of their conclusions were affected.
- 85) On 19 February 2026, we received statements from Ms Sidley (Recreation) and Mr Head (Landscape) regarding the impacts of the excavator once the Scheme is operational.
- 86) On 23 February 2026, the Applicant filed a response to DOC which incorporated statements from the following persons:
 - a) Rob Greenaway (Recreation);
 - b) James Bentley (Landscape);
 - c) Rodger Griffiths (Project details);
 - d) Aaron Staples (Noise); and
 - e) Mason Jackson (AEE and conditions).
- 87) The Applicant noted that additional statements (i.e., beyond recreation and noise) were necessary given DOC’s statements also raised those issues.

Conference with Poutini Ngāi Tahu

- 88) On 27 February 2026, we held a separate conference with Poutini Ngāi Tahu to discuss their feedback and views.

C8: Unsolicited information

- 89) We received several pieces of unsolicited information from non-parties during the fast-track process. This comprised:
 - a) an email dated 16 October 2025 from tramper/recreationist/rower Bronwyn Judd requesting to be invited to comment;
 - b) letters dated 10 November 2025 and 17 December 2025 from the FMC critiquing the Applicant’s Recreation Report and seeking to be invited to comment;
 - c) an email dated 10 November 2025 from Eli Johnson offering to provide a copy of a film he and others had produced about the Waitaha River and the Hydro Scheme;
 - d) a letter dated 26 December 2025 from West Coast photojournalist Neil Silverwood expressing concerns about the Scheme;
 - e) a cover email, media release and report from Dr Shayne Galloway on 7 January 2026 critiquing the Applicant’s Recreation Report;

- f) an email dated 21 March 2026 from Stephen Price, Chair of the Organising Committee of the Republic of Zealandia regarding archaeological evidence and a stay request; and
 - g) an open letter dated 14 April 2026 addressed to various Ministers and copied to us regarding the effects of the Project signed by FMC, Forest and Bird, Greenpeace Aotearoa New Zealand, the NZ Canyoning Association, the Buller Tramping Club, and the Past President of WWNZ.
- 90) Our Minute #3 confirmed, as part of our decision on invitations to comment, that we considered whether to invite comments from the three persons/organisations who had provided unsolicited information as at that time (paragraphs 89(a) to (c) above), and determined not to.
- 91) The later correspondence noted in paragraph 89 above was variously received:
- a) after invitations to comment had been issued ((d) and (e));
 - b) after the draft Decision and conditions had been issued for comment ((f)); and
 - c) less than three days before our Decision was issued ((g)).
- 92) As we noted in our Minute #6, the FTAA regime restricts the persons who are able to become a party to this process to the Applicant, those with a relevant regulatory role, and those invited by the Panel to comment. None of the people who provided the unsolicited information fall into these categories.
- 93) While we have a discretion to regulate our own procedures⁵³ and to accept late/unsolicited information from *parties* to the process,⁵⁴ that discretion does not extend to empowering us to accept information from non-parties. The only way we are able to consider such information is if it is provided by a party to the proceedings (either on their own initiative or in response to a request from us), or if we appoint a technical advisor and they provide that information in the course of their mahi for us.⁵⁵
- 94) Where, as here, some of the unsolicited information was also directly provided to parties to the proceedings, had those parties wished to incorporate that information into their comments they could have done so. The only party that did so was NZCA who incorporated FMC’s comments on what FMC categorised as “factual inaccuracies” in the Applicant’s Recreation Report. Accordingly, to the extent that the FMC information was incorporated into NZCA’s comments, we have had regard to it. While we note the Applicant’s position that giving weight to the advice received by FMC would undermine the intent and purpose of the FTAA by allowing a person to comment via the “back-door”,⁵⁶ the issue of weight is a matter for the Panel to determine in the usual way. Part F of this Decision addresses recreational effects and indicates the evidence we have given weight to in reaching our findings on those matters.

⁵³ FTAA, Sch.3, cl.10.

⁵⁴ FTAA, s.81(6).

⁵⁵ FTAA, s.67(1) and Sch.3, cl.10.

⁵⁶ Westpower Memorandum #7, 21 January 2026, at [3.44].

- 95) In relation to Dr Galloway’s report specifically, by the time Dr Galloway sent his report to us we had already appointed an independent recreation expert (Paul Wilson) to undertake a technical review of the Applicant’s Recreation Report and provide us with advice on any recreational information received from the parties. While Dr Galloway also emailed his report directly to Mr Wilson, we instructed Mr Wilson not to review it unless or until we determined we had scope to consider it. As Dr Galloway’s report was not incorporated into invited party comments, was not reasonably publicly discoverable (despite indications from Dr Galloway that it would be) and was not raised with us by the Applicant, we reached the view that we could not accept it, and it therefore was not appropriate for Mr Wilson to consider it.
- 96) Accordingly, except to the extent the FMC comments have been incorporated into the NZCA comments, we have not otherwise considered the other unsolicited information, and nor did we provide it to the parties for comment.

C9: Conditions and draft decision

Earlier versions of conditions and comments on those

- 97) The Application included a draft set of conditions for each of the approvals sought together with six management plans proposed for our approval and three draft management plans for our information.⁵⁷ These documents were subsequently updated to varying extents by the Applicant throughout the process in response to comments and further discussions with relevant regulatory authorities.
- 98) DOC in its regulatory capacity for the concessions, wildlife approvals and freshwater fisheries approvals provided an updated set of conditions both with its s.51 Report and with its s.53 comments. WCRC and Westland District Council (**WDC**) in their capacity as regulatory authorities also provided discrete feedback on certain conditions as part of their s.53 invited party comments.
- 99) Some of the other invitees also addressed conditions in their initial comments, as noted in the summary of comments on the Application in **Appendix G1**.
- 100) On 21 January 2025, the Applicant provided an updated version of conditions for all of the approvals sought in response to the feedback received from the regulatory agencies and parties invited to comment. A further updated version of the resource consent conditions was provided on 10 February 2026 as part of the Applicant’s response to the Peer Review Reports. Subsequent updates were also provided by the Applicant on 17 February 2026, to address comments made at the joint empanelment,⁵⁸ and on 23 February 2026 to address matters arising out of responses to the DOC recreation and landscape statements.⁵⁹

Comments on Panel draft conditions and draft decision

- 101) We reviewed and amended these conditions, and, as required by s.70, provided draft conditions to the Applicant and persons invited to comment on 13 March 2026. The Minister for Māori Crown Relations and Māori Development was also provided with an

⁵⁷ The latter being ones proposed to be certified by the relevant local authority following the grant of approvals.

⁵⁸ Westpower Memorandum #12, 17 February 2026, Appendices A to E.

⁵⁹ Westpower Memorandum #13, 23 February 2026, Attachment E – Mr Jackson, at [2.4]-[2.7].

opportunity to comment on the conditions and the draft decision at this time (as is required under s.72). All comments were due by 27 March 2026.

102) The Panel received responses from the following nine parties:

- a) Granite Developments Ltd;
- b) The Minister for the South Island and the Minister for Hunting and Fishing;
- c) Tāwhiri-Mātea Ltd;
- d) Conservation Board;
- e) WCRC;
- f) WDC;
- g) The Minister for Rural Communities;
- h) DOC;
- i) The Minister for Māori Crown Relations and Māori Development; and
- j) The Applicant.

103) A summary of those comments is set out in **Appendix G2**.⁶⁰

Consideration of comments

104) The Panel has considered all comments received on the draft conditions as is required under s.70 FTAA and amended the conditions where appropriate. The Panel has addressed these comments, where relevant, in other Parts of our Decision. The comments received from DOC give rise to a procedural issue which is addressed in the next subsection.

C10: Evidence and legal submissions in response to comments on conditions

105) On 27 March 2026, in response to the invitation to comment on the Panel’s draft conditions, DOC provided the following material:⁶¹

- a) A table outlining its requested changes together with a short explanation of its reasons.
- b) Legal submissions outlining DOC’s key areas of concern with the Panel’s draft conditions relating to:

⁶⁰ We note that some of the comments did not directly engage with conditions but instead reiterated points made in original comments.

⁶¹ DOC Comments on Draft Conditions, 27 March 2026; Appendix A – DOC Memorandum 27 March 2026; and Appendix B – Statement of Evidence of Steven Kerr, 27 March 2026.

- i) which approves the various compensation conditions should sit in;
 - ii) who receives the compensation for the various adverse effects of the Scheme;
 - iii) 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;
 - iv) which approves the conditions dealing with management plan certification should sit in;
 - v) who certifies the management plans required to be prepared under the conditions;
 - vi) s.78 requirements for the removal of structures at the expiry of the concession term; and
 - vii) conditions dealing with in-stream maintenance work.
- c) A statement of evidence from Steven Kerr, a Principal Commercial and Revenue Advisor with DOC, which:
- i) responded to evidence referred to in the Panel's draft decision and the Panel's conclusions regarding the methodology for and amount of the recreation compensation; and
 - ii) disagreed with the Panel's conclusion about biodiversity compensation enhancing to some extent the experience of recreational users and attached a statement from Ms Sidley who espoused a similar view.
- 106) The Applicant provided its response to comments on conditions on 7 April 2026. This response comprised:
- a) a cover legal memorandum which responded to comments from DOC and WCRC;
 - b) a marked up set of resource consent conditions (Appendix 1);
 - c) a table responding to DOC's comments on the concession and wildlife approval conditions (Appendix 2);
 - d) a table responding to DOC's comments on the freshwater fisheries conditions;
 - e) a brief statement from Mr Michael Copeland its economic expert responding to Mr Kerr (Appendix 5); and
 - f) a similarly brief statement from Mr Rob Greenaway its recreation expert also responding to Mr Kerr (Appendix 6).

- 107) In its legal memorandum, counsel for the Applicant submitted that Mr Kerr’s evidence should be disregarded by the Panel on the basis that:⁶²
- (a) The Department is an experienced user of the Fast-track process, legally represented, and understands the tight timeframes involved. It also fully understands the role of the s 51 FTAA comments.
 - (b) There is nothing in Mr Kerr's statement, nor the Department's legal memorandum, explaining why this statement was not provided with the Department's s 51 FTAA comments.
 - (c) It is inappropriate to use this procedural step of responding to the Panel's draft conditions for substantive evidence to bolster the Department's previous evidence.
 - (d) The Panel has made its findings. Providing technical evidence at such a late stage of the process on substantive decisions already made by the Panel does not assist it to make its Final Decision.
- 108) Counsel for the Applicant also noted that while Mr Kerr’s statement referred to Ms Sidley’s appendix as being ‘his workings’, there was no acknowledgement of this in Ms Sidley’s s.51 Report on Recreation.
- 109) While the Applicant’s primary position was that the evidence should be disregarded, in the event that the Panel considered it appropriate to take Mr Kerr’s evidence into account, Westpower also briefly addressed the points made in that evidence via short statements from its relevant witnesses (Mr Greenaway and Mr Copeland). These statements confirmed that their positions remained unchanged.
- 110) Given the challenge raised by the Applicant, we therefore need to determine as a preliminary matter, whether we can and should consider Mr Kerr’s evidence in making our Decision.

Evaluation and findings

- 111) The starting point for our evaluation is s.70(1) of the FTAA which states:

70 Panel seeks comment on draft conditions before granting approval

- (1) Before a panel decides to grant an approval under section 81, the panel must direct the EPA to provide a copy of its draft conditions to the following, inviting comments on the draft conditions:
- (a) the applicant; and
 - (b) every person or group that provided comments under section 35 or 53; and
 - (c) any local authority or other body with a statutory responsibility to enforce or monitor compliance with the conditions.

[Our underlining emphasis]

⁶² Westpower Memorandum #19, 7 April 2026, at [16].

112) Of note, is that the opportunity to comment for the parties referred in this section (which includes DOC),⁶³ is on the 'draft conditions'. This contrasts with the broader opportunity provided under s.72(1) to certain Ministers as follows:

72 Panel seeks comments from Minister for Māori Crown Relations: Te Arawhiti and Minister for Māori Development

(1) Before a panel decides to grant or decline an approval under section 81, the panel must direct the EPA to invite comments from the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development on the draft decision, including any draft conditions.

[Our underlining emphasis]

113) We consider that, taken together, these sections make it clear there is no statutory right for DOC, the Applicant, or any other person who provided comment under s.53 of the FTAA to comment on the draft decision itself. However, we accept, as did the expert consenting panel in *Ashbourne*, that a commenter may provide "background reasoning for a condition to be added, modified or removed pursuant to section 70."⁶⁴

114) We consider that DOC's table of comments on conditions largely falls within these parameters as it is limited to providing the amended condition wording sought as well as brief supporting reasoning. We say 'largely' as the reasoning does seek to contest the Panel's finding on the appropriate certification body. However, given the reference is brief, raises no new information and could be described as explanatory in nature, we take no issue with its inclusion.

115) In contrast, we consider that Mr Kerr's evidence and parts of the legal submissions attached to DOC's table go beyond the type of comment envisaged by s.70. This is because:

- a) Mr Kerr's evidence:
 - i) seeks to provide further explanation, reasoning and support for DOC's proposed recreation compensation methodology;
 - ii) is the first statement Mr Kerr has filed in this FTAA process despite the methodology being based on his workings;
 - iii) responds to evidence provided by the Applicant as part of its response to comments over two months earlier in January 2026;
 - iv) responds to the Panel's draft decision and in particular the reasoning in the draft decision for rejecting the DOC methodology; and

⁶³ DOC falls within this section given it is a body with a statutory responsibility to enforce or monitor compliance with the conditions.

⁶⁴ *Ashbourne* FTAA-2507-1087, Minute 26 of the Expert Panel, 18 March 2026, at [13].

- v) expressly challenges the Panel’s finding regarding whether biodiversity compensation can have a recreational benefit and attaches a statement from Ms Sidley which does similar.
 - b) The legal submissions:⁶⁵
 - i) directly challenge the Panel’s findings on recreation compensation, expressing the view that the Panel “has erred in several respects in its approach to establishing the \$25,000 figure”, and make specific reference to Mr Kerr’s evidence to support that position (at paragraphs [4(c)] and [15]-[41]); and
 - ii) seek to relitigate the Panel’s conclusions regarding a council (not DOC) being the appropriate certification body (at paragraphs [4(e)] and [51]-[63]).⁶⁶
- 116) Further, none of the material filed by DOC explains why the information from Mr Kerr and the relevant parts of the supporting legal submissions could not have been filed with the s.51 Report or with DOC’s s.53 comments. As noted above, the information largely comprises further supporting technical details about the DOC methodology and views on compensation, which it appears was known to DOC at the time. Despite this, Mr Kerr was not listed as a technical expert in the s.51 Report material nor mentioned in that Report or in DOC’s subsequent s.53 comments. Indeed, it was not until two weeks after the close of the s.53 comment period that DOC, as part of its response to the proposed process for the joint empanelment, advised the Panel, somewhat as an aside, that Mr Kerr was the author of the methodology and provided a summary of his credentials.⁶⁷ While we acknowledge that there is some material that could not have been included in the s.51 Report or s.53 comments, (namely responses to evidence filed by the Applicant from Mr Greenaway and Mr Copeland in its response to s.53 comments), the FTAA provides no right for a commentator to reply to an applicant’s response.
- 117) Notwithstanding these matters, we have considered whether we can accept the information as “late” advice or information. In that regard we note that s.81(6) of the FTAA states:

Despite subsection (2)(a), the panel—

- (a) is not required to consider any advice, report, comment, or other information it receives under section 51, 53, 55, 67, 69, 70, or 72 after the applicable time frame; but
- (b) may, in its discretion, consider the information as long as the panel has not made its decision under this section on the approval.

[Our underlining emphasis]

⁶⁵ DOC Memorandum, 27 March 2026.

⁶⁶ We have not included paragraph [64] here as that paragraph generally just summarises the changes sought.

⁶⁷ DOC Memorandum, 30 January 2026, at [11].

- 118) We consider this section makes it clear that we are *not required* to consider any “late” information, but that we have a *discretion* to do so - provided we have not made our “decision”.
- 119) In this regard, we consider that the “decision” being referred to in s.81(6)(b) is the ‘final’ decision rather than the ‘draft’ decision. This is because:
- a) the legislation has expressly used the term “draft decision” in other provisions where that meaning is intended (i.e., ss.69, 70, and 72); and
 - b) s.81(2) requires the Panel to take into account comments on conditions under s.70 when making its “decision” – a task that could clearly not occur post the final decision.
- 120) Applying this to the current situation, we consider that Mr Kerr’s evidence and the relevant paragraphs of the legal submissions, could be categorised as “late” advice or information such that we have discretion to consider it under s.81(6)(b).
- 121) In terms of whether and how we should exercise that discretion, cl.10(1) of Sch.3 of the FTAA is relevant. It states:

10 Procedures of panel

- (1) A panel must regulate its own procedure as it thinks appropriate, without procedural formality, and in a manner that best promotes the just and timely determination of the approvals sought in a substantive application.

[Our underlining emphasis]

- 122) Applying that test, we consider that accepting Mr Kerr’s evidence and paragraphs [4(c)], [4(e)], [15]-[41], and [51]-[63] of the DOC legal submissions at this stage of the process poses issues for the just and timely determination of the Application, as:
- a) The information has been received at a very late stage of the process.
 - b) The information goes beyond commenting on conditions and challenges the draft decision itself.
 - c) DOC had the opportunity to, and did, provide some information, legal submissions and technical comments on its proposed methodology and views regarding compensation in its s.51 Report.
 - d) DOC provided no explanation as to why the information, evidence and legal submissions could not have been provided earlier, and given the nature of the material, at least some, if not most of it could have been provided with the s.51 Report.
 - e) Had the additional material been provided as part of DOC’s s.51 Report:
 - i) other parties invited to comment would have had the opportunity to provide their views on the material through their s.53 comments; and
 - ii) the Panel’s recreation peer reviewer would likewise have been able to consider and comment on the material.

- f) The Panel has an obligation, within the confines of the FTAA, to ensure a fair process.
 - g) The late stage at which the information, and in particular the methodology information was received, meant that there is insufficient time available in the process to seek comments from invited parties, from the Panel's peer reviewer, and from the Applicant in reply.
 - h) In the absence of a request from the Applicant, the Panel has no power to suspend the process to enable those further procedural steps (or any other procedural steps) to be worked through. Nor does it have a power to extend statutory deadlines.
 - i) The Panel is also required under s.10 of the FTAA to take all practicable steps to use timely, efficient and cost effective processes that are proportionate to the functions, duties or powers being performed. Here the duty is to consider comments on the 'conditions'.
 - j) Reopening the process to allow re-litigation of methodological and compensation issues that could and should have been raised earlier:
 - i) is not timely, efficient, or cost effective – even if there was time in the process to accommodate it (which there is not); and
 - ii) creates prejudice to those parties who ordinarily would have had an opportunity to comment on the information.
 - k) Further, and while we place no reliance on it for determining this issue, we note that enabling a party to file evidence and submissions of this nature in their response to comments on conditions, may in practice be pointed to as an example of why it should be enabled in other fast track processes (even though FTAA decisions have no strict precedent effect).
- 123) Accordingly, after balancing the interests of all parties and after taking into account the relevant FTAA provisions, we find that it is not appropriate to take into account Mr Kerr's evidence and paragraphs [4(c)], [4(e)], [15]-[41], and [51]-[63] of the DOC 27 March 2026 legal submissions in reaching our final decision. The corollary of this is that we also find it is not appropriate to take into account the related paragraphs of the Applicant's response submissions (paragraphs [14]-[20] and [22]) and the response evidence of Mr Greenaway and Mr Copeland.⁶⁸ We therefore do not refer to those documents/parts of those documents further in this Decision.

C11: Confidential information

- 124) On 23 February 2026, Westpower filed material with the Panel in support of its request that the Panel determine the level of the long-term concession fee. This material included information which the Applicant indicated was commercially sensitive and confidential relating to the long-term concession fee percentage, the Applicant's proposed compensation amounts, its proposed generation and revenue estimates, and the royalty percentages for other similar concessions. The Applicant requested that we

⁶⁸ Westpower Memorandum #19, 7 April 2026, at [14]-[20] and [22] and Appendices 5 and 6.

make an order pursuant to s.58(4) of the FTAA to protect the information from public disclosure.

- 125) On 27 February 2026, Westpower filed a further memorandum addressing the statutory basis for a decision around confidentiality.⁶⁹ It acknowledged the power in s.58(4) applied during the course of a hearing and clarified that the EPA had the power to withhold information generally (under s.93(3)), in draft conditions (under s.70(2)(c)), and in the final decision (under s.88(4)). It also noted the Panel was required to take into account any information which may be withheld from any person.⁷⁰
- 126) On 2 March 2026, we issued Minute #11 confirming that we considered the issue of withholding information was a matter for the EPA to consider under those sections, but that in accordance with our obligations, we would, where relevant, take that information into account in making our Decision.

C12: No hearing other than joint empanelment

- 127) The Panel exercised its discretion under s.56 not to require a hearing on any issue other than the joint empanelment of expert witnesses (in the areas of hydraulic engineering, fish passage, fluvial geomorphology, and related aspects of freshwater ecology and whio), as noted in Subpart C7 above.
- 128) The Panel was able to adequately consider all issues based on the information available including the Application, comments received, responses to comments, further information, joint empanelment and conferences held. The material issues involved were comprehensively addressed in the documentation and advice provided, and any residual issues were sufficiently clear for the Panel to consider and determine.
- 129) In deciding not to hold a hearing (other than the joint empanelment) we were also mindful of:
- a) the emphasis on time limited decision-making in the present process; and
 - b) the procedural principles in s.10 FTAA that require the Panel to take all practicable steps to use timely, efficient, consistent, and cost effective processes that are proportionate to the Panel’s functions, duties or powers to give effect to the FTAA purpose.

C13: Timing of the Decision

- 130) As noted above, the original time frame for the Panel to issue its Decision under ss.79 and 88 was 13 April 2026.
- 131) However, on 18 November 2025, the Applicant requested that the processing of its Application be suspended for 5wd to allow the Panel time to consider the additional information it had provided before the Panel invited parties to comment and the

⁶⁹ Westpower Memorandum #15, 27 February 2026.

⁷⁰ Requirement arises under s.17U(1)(g) of the Conservation Act, which is applied in Sch.6, cl.7(1)(a)(ii) of the FTAA.

“process began in earnest”.⁷¹ The Applicant considered that taking additional time at that point would make the whole process going forward more efficient and effective.

132) In accordance with ss.60 and 64 of the FTAA, the Panel granted the request to suspend, effective from 11:59pm on Tuesday 18 November 2025.⁷² Processing of the Application resumed on 26 November 2025.

133) As a result of the above suspension the amended timeframe for the Panel to issue its decision documents under ss.79 and 88 was 20 April 2026.

C14: Approach to Decision

134) We have carefully considered all matters raised and/or provided to us by the parties to this process in reaching our Decision. We discuss these further, where relevant, in other parts of our Decision.

135) In terms of approach, we have sought to address all relevant and material issues in this Decision, however, the degree of discussion varies depending on the significance of the issue and the degree to which it was contested. Generally, the key issues in contention are covered in more detail. As noted above, we have not taken into account any information provided by non-parties, except to the extent it has been incorporated into information provided by parties.

136) While we have divided the Decision into various parts (and Appendices), these parts are interconnected, and the Decision should be read as a whole to discern the rationale for any particular issue.

137) To the extent we have not specifically commented on a matter raised, it can be taken as not being material to our Decision, and we rely on and adopt the Applicant’s assessment and conclusions in relation to any such matter.

C15: Acknowledgements

138) Finally, in this section we want to thank all of the parties for their contributions throughout the process.

139) We also want to thank:

- a) June Cahill and the EPA support team that provided administrative assistance;
- b) our technical advisers:
 - i) Paul Morgan and Dr Jon Tunnicliffe for their peer review reports, advice, and participation in the joint empanelment;
 - ii) Paul Wilson for his peer review report and advice; and
- c) our planning advisor Megan Couture for her advice and assistance with conditions.

⁷¹ FTAA, s.64 enables an applicant to request such a suspension.

⁷² Minute #2, 18 November 2026.

PART D: LEGAL CONTEXT | WĀHI D: ANGA TURE

D1: What this Part covers

140) In this section, we set out a general overview of the legal context covering the purpose of the FTAA, the specific decision-making provisions, the grounds when approvals must or may be declined, the relevant criteria, and the content of panel decision documents. We undertake the substantive evaluation and assessment of these provisions and record our decision on each of the approvals sought in later Parts of this Decision.

D2: Purpose of the FTAA

141) The purpose of the FTAA is to “facilitate the delivery of infrastructure and development projects with significant regional or national benefits”.

142) The FTAA provides a “one-stop shop” for seeking a range of approvals that would otherwise have been sought under different statutes and different processes. These include all of the approvals sought for the Waitaha Hydro Scheme which would otherwise have been applied for under the RMA, the Conservation Act, the Wildlife Act, and the Freshwater Fisheries Regulations respectively.

D3: Decision-making provisions

143) Sections 81 to 85 set out the key provisions relevant to our decision-making on the approvals sought.

144) Section 81 FTAA relates to the decisions on approvals, the relevant parts of which are set out below:

81 Decisions on approvals sought in substantive application

- (1) A panel must, for each approval sought in a substantive application, decide whether to -
 - (a) grant the approval and set any conditions to be imposed on the approval;
or
 - (b) decline the approval.
- (2) For the purpose of making the decision, the panel—
 - (a) must consider the substantive application and any advice, report, comment, or other information received by the panel under section 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90:
 - (b) must apply the applicable clauses set out in subsection (3) (see those clauses in relation to the weight to be given to the purpose of this Act when making the decision):
 - (c) must comply with section 82, if applicable:
 - (d) must comply with section 83 in setting conditions:
 - (e) may impose conditions under section 84:
 - (f) may decline the approval only in accordance with section 85.
- (3) For the purposes of subsection (2)(b), the clauses are as follows:
 - (a) for an approval described in section 42(4)(a) (resource consent), clauses 17 to 22 of Schedule 5:
 - (f) for an approval described in section 42(4)(e) (concession), clauses 7 to 9 of Schedule 6:
 - (i) for an approval described in section 42(4)(h) (wildlife approval), clauses 5 and 6 of Schedule 7:

- (k) for an approval described in section 42(4)(j) (complex freshwater fisheries activity approval), clauses 5 and 6 of Schedule 9:
 - (4) When taking the purpose of this Act into account under a clause referred to in subsection (3), the panel must consider the extent of the project's regional or national benefits.
 - (6) Despite subsection (2)(a), the panel—
 - (a) is not required to consider any advice, report, comment, or other information it receives under section 51, 53, 55, 67, 69, 70, or 72 after the applicable time frame; but
 - (b) may, in its discretion, consider the information as long as the panel has not made its decision under this section on the approval.
 - (7) To avoid doubt, nothing in this section or section 82 or 85 limits section 7.
- 145) Section 82 relates to the effect of Treaty settlements and other obligations in relation to decision-making. We detail the requirements of this section in Part E of our decision where we address iwi and Treaty settlement matters.
- 146) Sections 83 and 84 relate to conditions.
- a) Section 83 requires that:
 - 83 Conditions must be no more onerous than necessary**
 - When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion.
 - b) Section 84 provides the Panel with a power to set conditions to recognise or protect a relevant Treaty settlement and/or a recognised customary right. These matters are discussed in Part E below.

D4: Mandatory and discretionary grounds to decline

- 147) Section 85 FTAA sets out the limited circumstances when approvals must or may be declined.
- 148) Section 85(1) and (2) set out when an approval *must* be declined:

When approval must be declined

- (1) The panel must decline an approval if 1 or more of the following apply:
 - (a) the approval is for an ineligible activity:
 - (b) the panel considers that granting the approval would breach section 7:
 - (c) in the case of an approval described in section 42(4)(b) (change or cancellation of resource consent condition), the approval must be declined under clause 23 of Schedule 5:
 - (d) in the case of an approval described in section 42(4)(c) (certificate of compliance), the approval must be declined under clause 27 of Schedule 5:
 - (e) in the case of an approval described in section 42(4)(e) (concession), the approval must be declined under clause 7(3) of Schedule 6:
 - (f) in the case of an approval described in section 42(4)(f) (land exchange), the approval must be declined under clause 29(2) or (3) of Schedule 6:
 - (g) in the case of an approval described in section 42(4)(l) or (m) (access arrangement), the approval must be declined under clause 7(2) or 8(2) of Schedule 11, as the case may be:
 - (h) in the case of an approval described in section 42(4)(n) (mining permit), the approval must be declined under clause 20 of Schedule 11.

- (2) A panel must decline an approval described in section 42(4)(a) (resource consent) for any area for which the approval must not be granted under clause 17(5) of Schedule 5.

149) There are also further mandatory grounds for the decline of concessions in Sch.6 cl.7(3), the relevant parts of which state as follows:

- (3) The panel must decline the approval if,— ...
 - (b) giving effect to the approval would result in the conferral of an interest in land that is incompatible with an existing interest in land; or
 - (c) the granting of the proposed concession would involve a lease for a term (including any renewals) that will, or is likely to, be more than 50 years; and
 - (i) the granting of the lease would trigger a right of first refusal or a right of offer or return; and
 - (ii) the panel is not satisfied that the holder of the right of first refusal or right of offer or return has provided written agreement to waive that right for the purpose of the granting of the lease.

150) Sections 85(3)-(5) set out when an approval *may* be declined – that is the panel has a discretion as to whether to decline an approval:

Approval may be declined if adverse impacts out of proportion to regional or national benefits

- (3) A panel may decline an approval if, in complying with section 81(2), the panel forms the view that—
 - (a) there are 1 or more adverse impacts in relation to the approval sought; and
 - (b) those adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits that the panel has considered under section 81(4), even after taking into account—
 - (i) any conditions that the panel may set in relation to those adverse impacts; and
 - (ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.
- (4) To avoid doubt, a panel may not form the view that an adverse impact meets the threshold in subsection (3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2).
- (5) In subsections (3) and (4), **adverse impact** means any matter considered by the panel in complying with section 81(2) that weighs against granting the approval.

151) The AEE stated that none of the mandatory grounds to decline were relevant.⁷³ That was not contested – except in relation to the term of concession sought – an issue which we address in Part I below.

152) The AEE similarly stated that there was no basis for a finding that the adverse impacts are out of proportion to the regional or national benefits.⁷⁴ We address this issue further in Part M below.

⁷³ AEE, Sections 2.5.1.2, 7.2.1.8, and 7.2.2.4.

⁷⁴ AEE, Section 2.5.1.2.

D5: Relevant assessment criteria

- 153) In addition to the above, there are specific assessment criteria set out in the Schedules to the FTAA for each of the different approvals sought.
- a) Sch.5 relates to RMA resource consents, with the relevant assessment criteria for this Project specified in cl.17;
 - b) Sch.6 relates to concessions, with the relevant assessment criteria for this Project specified in cl.7;
 - c) Sch.7 relates to wildlife approvals, with the relevant assessment criteria set out in cl.5; and
 - d) Sch.9, cl.5 relates to freshwater fisheries approvals, with cl.5 setting out the relevant assessment criteria.
- 154) All of the Schedules include the purpose of the FTAA as the first criterion, and we are required to give the greatest weight to this purpose. This does not however mean that the purpose automatically outweighs all other considerations. Other relevant criteria must receive genuine consideration where relevant – noting there is no inherent hierarchy between those other matters.
- 155) Further, and in terms of the approach to weighing those other factors against the purpose, we agree with and adopt the approach of the expert panels in *Waihi North*⁷⁵ and *Bledisloe North Wharf*.⁷⁶ This is that all relevant matters should first be individually assessed uninfluenced by the purpose of the FTAA, before standing back and conducting an overall balancing where the purpose of the FTAA is to be given greatest weight. We note that DOC also submitted in support of such an approach in its s.51 Report.⁷⁷
- 156) In relation to the criteria, we do however note, as the expert panel did in *Waihi North*, that the decision-making criteria in the Schedules, “are never more stringent than ‘take into account’ the various matters specified”.⁷⁸ In other words, there is no requirement that a proposal be consistent with or give effect to the various listed criteria.
- 157) In terms of the meaning of “take into account” we accept the Applicant’s submission that:⁷⁹

The direction to ‘take into account’ requires the Panel to consider the matter (i.e., give it genuine attention and thought) and weigh it against other relevant matters. The weighting of that matter is at the panel’s discretion.

⁷⁵ *Waihi North Decision*, 18 December 2025, Part G, at [4].

⁷⁶ *Bledisloe North Wharf and Fergusson North Berth Extension Decision*, 21 August 2025, at [121].

⁷⁷ DOC s.51 Report - Cover Report, Appendix A, at [14].

⁷⁸ *Waihi North Decision*, 18 December 2025, Part M, at [10].

⁷⁹ Westpower Memorandum #1, 7 November 2025, at [36], citing *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC) at [72]; and *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2024] NZCA 134, (2024) 25 ELRNZ 1047 at [15].

158) We discuss and evaluate the various criteria using that approach in later sections where we address the particular approvals that are sought.

D6: Content of Panel decisions

159) Section 87 of the FTAA requires that for each approval sought we must prepare a decision document which states our decision, our reasons for that decision, a statement of the principal issues in contention and our main findings on those issues.

160) We have done this by including separate Parts in this Decision report for each of the four approval types sought (Parts H to K). The principal issues in contention and our main findings on these issues are addressed in Part M (Overall Approach).

161) Matters which are common to one or more Part such as our evaluation of effects and our discussion on conditions are collated into separate parts with cross-referencing where appropriate. Accordingly, and as noted in our Approach to Decision section in Part C above, this Decision (including its Appendices) should be read as a whole.

PART E: IWI AND TREATY SETTLEMENT MATTERS | WĀHI E: IWI ME NGĀ MEA WHAKATAUNGA TIRITI

He mahi kai takata, he mahi kai hōaka

[It is work that consumes people as greenstone consumes sandstone]⁸⁰

E1: Relevant FTAA provisions

162) The FTAA contains a number of provisions which address iwi and Treaty settlement matters. These include both matters of procedure as well as substantive considerations. The relevant FTAA provisions include ss.7, 18 (and 49), 82, 84 and cl.5 of Sch.3. We outline those here and indicate how they have been addressed, before setting out our overall evaluation and findings on the compliance of the process and Application with the FTAA obligations.

163) We address the particular effects and benefits raised by Poutini Ngāi Tahu in subsequent parts of this Decision when we evaluate effects and benefits of the Scheme.

Section 7

164) Section 7 requires all persons performing functions and exercising powers under the FTAA to act in a manner that is consistent with (among other matters) the obligations arising under existing Treaty settlements and recognised customary rights. "Treaty settlements" are defined as meaning "Treaty settlement Acts or Deeds".⁸¹

165) The Ngāi Tahu Claims Settlement Act 1998 (**Ngāi Tahu Settlement Act**) is the relevant Treaty settlement Act for this Project and there are no relevant recognised customary rights. The letter of support and comments provided by Poutini Ngāi Tahu confirmed that in their view the Project is consistent with the relevant principles and provisions of that Treaty settlement.⁸²

⁸⁰ A task to consume generations/anything worthwhile requires considerable effort.

⁸¹ FTAA, s.4.

⁸² AEE, Appendix 8, at [9]; and Poutini Ngāi Tahu Letter, 12 January 2026.

Section 18

166) Section(s.)18(2) (and 49) require the preparation of a report by MfE which addresses Treaty settlements and other obligations. The relevant parts of s.18 for this Application are listed below:

18 Report on Treaty settlements and other obligations

- (a) any relevant iwi authorities and relevant Treaty settlement entities:
- (b) any Treaty settlements that relate to land, species of plants or animals, or other resources within the project area:
- (c) the relevant principles and provisions in those Treaty settlements, including those that relate to the composition of a decision-making body for the purposes of the Resource Management Act 1991: ...
- (j) if the proposed approvals include an approval described in any of section 42(4)(a) to (d) (resource consent, change or cancellation of resource consent condition, certificate of compliance, or designation),—
 - (i) iwi authorities and groups that represent hapū that are parties to any relevant Mana Whakahono ā Rohe or joint management agreements; and
 - (ii) the relevant principles and provisions in those Mana Whakahono ā Rohe and joint management agreements:
- (k) any other Māori groups with relevant interests:

167) MfE's s.18 Report for this Application identified the following:

- a) the relevant Māori groups are Te Rūnanga o Ngāi Tahu (**TRONT**) which represents Ngāi Tahu as a whole, Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio and Pokeka Poutini Ngāi Tahu Ltd;
- b) the Ngāi Tahu Settlement Act is the relevant settlement, and it does not contain any specific procedural obligations;
- c) there is a Mana Whakahono ā Rohe between WCRC, TRONT and Poutini Ngāi Tahu which contains procedural requirements relating to notification, the appointment of hearing commissioners, and protocols for hearings at marae and cultural evidence; and
- d) Poutini Ngāi Tahu are Project partners and will have a financial interest in the Project if the necessary approvals are granted and the Scheme is built.

168) In relation to these matters, we note the following:

- a) The Application included a letter from Poutini Ngāi Tahu indicating that they exercise rangatiratanga for the Project site, they support the Project, and their stance is supported by TRONT.⁸³ We were also informed that Pokeka Poutini Ngāi Tahu is a subsidiary of TRONT.⁸⁴ Poutini Ngāi Tahu's comments on the Application also reinforced these points.⁸⁵

⁸³ AEE, Appendix 8.

⁸⁴ Oral Comment at Project Overview Briefing, 14 November 2025.

⁸⁵ Poutini Ngāi Tahu Letter, 12 January 2026.

- b) In terms of procedural matters, and in recognition of their status as tangata whenua and Project partner, Poutini Ngāi Tahu were:
 - i) consulted by the Panel Convenor about potential Panel appointees and invited to (and subsequently did attend) the Convenor’s conference;
 - ii) invited to the Project overview briefing (with one representative attending) and the subsequent site visit (with two representatives attending);
 - iii) issued an invitation to comment (with comments subsequently provided);⁸⁶ and
 - iv) invited to a conference with the Panel to discuss their feedback (with a hui subsequently occurring on 27 February 2026).
- c) One key point that was emphasised to us by Poutini Ngāi Tahu through our comments and engagement with them, and which we discuss further in later Parts of this decision, is that Poutini Ngāi Tahu interests are not limited simply to cultural and environmental matters but also include the social and economic effects of the Project. In particular, the opportunities that the Project offers for their people and the wider community in terms of increased electricity resilience, security of supply, jobs and training, regional investment and other benefits.⁸⁷

169) We also note that while the s.18 Report did not identify the TRONT right of first refusal (**RFR**) as a procedural obligation, we have considered it in relation to the term sought. Subpart I4 contains our discussion and findings on the RFR issue.

Section 82

170) Section 82 relates to the effect of Treaty settlements and other obligations on decision-making. The relevant parts of this section state:

82 Effect of Treaty settlements and other obligations on decision making

- (1) This section applies if a Treaty settlement ... is relevant to an approval.
- (2) If the settlement or Act provides for the consideration of any document, the panel must give the document the same or equivalent effect through the panel’s decision making as it would have under any relevant specified Act.
- (3) The panel must also consider whether granting the approval would comply with section 7.
- (4) In this section, **document**—
 - (a) means any document, arrangement, or other matter; and
 - (b) includes any statutory planning document amended as a result of the settlement or Act referred to in subsection (1).

171) Poutini Ngāi Tahu in its letter of support for the Project confirmed that there were no documents of relevance that cover the Project Site.⁸⁸

⁸⁶ Poutini Ngāi Tahu Letter, 12 January 2026.

⁸⁷ AEE, Appendix 8, at [3]-[8]; and Poutini Ngāi Tahu Letter, 12 January 2026.

⁸⁸ Application, Appendix 8, at [9].

Section 84

172) Section 84 relates to conditions; the relevant parts of which state as follows:

84 Conditions relating to Treaty settlements ...

- (1) For the purposes of section 7, the panel may set conditions to recognise or protect a relevant Treaty settlement ...
- (2) This section applies in addition to, and does not limit, any other powers to set conditions under this Act.

173) Poutini Ngāi Tahu, in its letter in support, noted that the Project is consistent with the relevant principles and provisions of the Ngāi Tahu Treaty settlement. In its comments on the Application, Poutini Ngāi Tahu reinforced this position, and did not seek any specific conditions to protect the Treaty settlement.⁸⁹

174) While we subsequently received a letter from TRONT in relation to the RFR and the potential for the concession term originally sought by the Applicant to trigger that right,⁹⁰ this issue was resolved by the Applicant amending its request to bundle its construction and operational concessions into one concession with a term of 49 years. We discuss this issue further in Subpart I4 below.

Schedule 3 clause 5

175) The conduct of hearings and other procedural matters in the context of Treaty settlements and other arrangements is addressed in Sch.3 cl.5 of the FTAA. It requires the panel convenor or panel to comply with the procedural arrangements in the Treaty settlement legislation, Mana Whakahono ā Rohe or joint management agreement or obtain the agreement of the relevant party to a variation to those arrangements (such consent not to be unreasonably withheld).

176) As noted above, the panel convenor consulted with Poutini Ngāi Tahu about the composition of the Panel. While this Panel understands that none of the persons suggested by Ngāi Tahu were ultimately available to accept appointment to the Panel, the panel convenor satisfied herself that the Panel collectively understands te ao Māori and Māori development.⁹¹ Also, and as noted above, Poutini Ngāi Tahu expressly confirmed that the Project is consistent with both their Treaty settlement and their Mana Whakahono ā Rohe with WCRC.⁹²

E2: Evaluation and findings

177) We accept that with the change made to the concession term, the Project is consistent with the Ngāi Tahu Treaty settlement and Mana Whakahono ā Rohe including any procedural requirements therein. We also acknowledge, as we do in later Parts of this decision, the strong support Poutini Ngāi Tahu has provided for the Project, and the partnership role it will have in this Project if it proceeds.

178) Accordingly, we find that the relevant FTAA requirements relating to Treaty settlements and other matters (as summarised above) will be achieved by the Project, and there

⁸⁹ Poutini Ngāi Tahu Letter, 12 January 2026.

⁹⁰ TRONT Letter, 5 March 2026. Poutini Ngāi Tahu confirmed by email to the EPA that TRONT responded on their behalf/at their request in relation to the clarification sought by the Panel.

⁹¹ s of the Panel Convenor, 30 October 2025, at [29].

⁹² Application, Appendix 8, at [9] and [11].

are no conditions beyond those that we are imposing that are necessary to appropriately recognise or protect the Ngāi Tahu Treaty settlement.

Mō tātou, ā, mō kā uri ā muri ake nei
[For us and our children after us]

PART F: EVALUATION OF EFFECTS | WĀHI F: TE MĀTAI I NGĀ ĀHUATANGA

F1: Effects to be assessed

- 179) Schedule 5, cl.5(4) requires a consent application to include an assessment of an activity's effects on the environment covering the information in cls.6 and 7. These clauses detail a range of considerations including actual or potential effects, mitigation measures, affected person views, affected iwi/hapū views, discharges, monitoring, and natural hazards (amongst others).
- 180) Part B of the AEE provided an assessment of these matters. Participants who commented also raised a range of actual and potential effects.
- 181) We have evaluated the effects thematically and for convenience have largely adopted the same groupings/categories used in the AEE (with minor changes to nomenclature and order) as follows:
- a) positive;
 - b) cultural;
 - c) hydrology and flow regime;
 - d) water quality;
 - e) gravel extraction activities;
 - f) sediment transport and river morphology;
 - g) vegetation;
 - h) bats;
 - i) avifauna;
 - j) Powelliphanta land snails;
 - k) lizards;
 - l) terrestrial invertebrates;
 - m) construction surface water takes;
 - n) aquatic/freshwater ecology;
 - o) traffic;

- p) noise;
- q) geotechnical and natural hazards;
- r) landscape, natural character and visual amenity;
- s) recreation; and
- t) public safety.

F2: Positive

Introduction

182) The AEE and its supporting reports identify the positive effects of the Application as comprising the following:⁹³

- a) Electricity resilience, security of supply and reduction of electricity prices: The Scheme, once operational, will:
 - i) improve resilience of the West Coast power system in the face of climate change or following an event that impacts the power supply to the region;
 - ii) provide greater security of supply, noting that there have been 30 instances where transmission supply to Hokitika grid has been disrupted over the past 10 years, and 197 instances in the past 26 years;
 - iii) support disaster response by providing renewable energy to hospitals, medical centres, police and fire stations, and emergency management services;
 - iv) reduce transmission losses given the current transmission corridor is some 550kms in length;
 - v) help reduce electricity prices on the West Coast – which are currently some of the highest in New Zealand due to the length of the transmission corridor (prices increase with distance from the generation location); and
 - vi) help mitigate dry-year energy supply risks for other hydro generation across New Zealand given rainfall on the West Coast tends to be close to average or above average in years when there are low inflows in the Waitaki river catchment (New Zealand’s major hydro storage area).
- b) Economic benefits during construction: which comprise:
 - i) estimated construction costs of \$160-\$200 million, 50% of which would be spent in Westland, and 69% on the West Coast;
 - ii) approximately 71 full time equivalent jobs over the three-year construction period; and

⁹³ AEE, Section 6.2.

- iii) indirect impacts on suppliers of goods and services to firms and people contracted to work on the construction.
- c) Economic benefits during Scheme operation: which, in addition to the electricity resilience and security of supply benefits noted above, comprise:
 - i) assistance in meeting forecasted increases in electricity demand – nationally, regionally and locally;
 - ii) a contribution towards New Zealand meeting its emission reduction targets and climate change goals;
 - iii) displacement of existing thermal electricity generation equivalent to an annual reduction of 129,000 tonnes of CO₂ emissions;
 - iv) provision of additional income for Westpower and their development partners Poutini Ngāi Tahu;
 - v) one additional full-time equivalent position; and
 - vi) an increase in competition and reduction in the under-deployment of resources.
- d) Other positive effects during Scheme operation: which comprise positive ecological benefits to whio, bats and general biodiversity as a result of contributions to ecosystem programmes; a marginal improvement in water clarity downstream (due to fine sediment settling in the abstraction reach); and a mechanism to better manage “no-take” days for whitewater kayakers (as a result of the proposed bypass valve).
- e) Overall positive cultural effects: which are discussed separately in Subpart F3 below.

Comments received from invited parties

- 183) Poutini Ngāi Tahu emphasised most of the above positive effects in their comments.⁹⁴
- 184) McLean Company Ltd noted that the Scheme is a renewable green source of power, and considered it would have positive effects in terms of a large reduction in transmission losses from the east to west coasts, power resilience, potential for cheaper power, and job opportunities during construction. The Scheme would also have long-term benefits in terms of development of some of their rough paddocks.
- 185) Various Ministers for the Crown also provided comments which highlighted one or more of the positive effects noted in the AEE (and summarised above). In terms of the scale of the generation produced, there were differing views as between the Ministers:
 - a) the Minister for Regional Development stated that the Scheme’s generation output “appears modest” in comparison to other large hydro schemes, such as the Clyde Dam;

⁹⁴ Poutini Ngāi Tahu Letter, 12 January 2026.

- b) the Minister for RMA Reform and Infrastructure stated that the Scheme “represents a relatively small amount of additional electricity generation”; and
 - c) the Minister for Energy and Climate Change considered the Project would have “significant national and regional benefits in terms of climate adaptation”, and “significant regional benefits” through providing sufficient power to meet approximately half of the West Coast’s annual electricity needs.
- 186) DOC while acknowledging that the Scheme would make a positive contribution to renewable energy, categorised the contribution as “small and regional in scale” and “a small fraction” of the increased generation required to meet increasing demand.⁹⁵
- 187) No other invited party contested that the Project would have positive effects or the scale of those effects.

Applicant response to comments

- 188) In its response, Westpower noted that overall the comments supported the benefits and positive effects listed in the AEE. In relation to the scale of the generation, Westpower submitted that:⁹⁶
- a) the Scheme has a high efficiency factor;
 - b) providing energy for 12,000 homes on the West Coast and energy security for the entire West Coast is demonstrably significant; and
 - c) as the Clyde Dam is the largest concrete gravity dam in New Zealand, almost any renewable energy project will be “modest” in comparison.

Evaluation and findings

- 189) We accept that the Scheme will have a range of positive effects, generally as described above, and note that this was not contested by any party. Many of these effects (but not all) were also referred to by the Applicant as constituting the ‘benefits’ of the Project, which we address in Part G when we discuss the issue of significant national or regional benefits. We have taken the degree of overlap into account.
- 190) While two of the Ministers appeared to discount the significance of the Scheme based purely on the size of the generation output, we consider it is important to consider the Scheme in context. We agree with the Applicant and the Minister for Energy and Climate Change, that providing energy for 12,000 homes on the West Coast – approximately half of the region’s annual energy needs - and providing improved energy security is a significant positive effect/benefit of the Project.
- 191) Overall, we find the Scheme will result in a range of positive effects (and some significant benefits) which weigh in favour of grant of the approvals. We revisit the issue of the scale of the benefits of the Project in Part G below.

⁹⁵ DOC Comments on Substantive Application, 14 January 2026, at [62].

⁹⁶ Westpower Memorandum #7, 21 January 2026, at [3.15] and [3.22].

F3: Cultural

Introduction

- 192) The cultural effects that are relevant here are those that affect Poutini Ngāi Tahu and their members recognising:
- a) the whakapapa relationship they have with their whenua, waterways and taonga;
 - b) the importance of these relationships to their identity and wellbeing;
 - c) the important mātauranga they hold; and
 - d) that cultural effects are not just limited to environmental, conservation and protection matters, but also include social, economic and other positive effects which enable them to provide for their own people and fulfil their manaakitanga responsibilities to manuhiri and all those who choose to visit or live within their rohe.
- 193) The Application included a letter of support from Poutini Ngāi Tahu which provided an “unequivocal confirmation” of their position and explained that:⁹⁷
- a) Poutini Ngāi Tahu represent Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio and exercise tino rangatiratanga within their respective takiwā and are the kaitiaki of the natural and physical resources of the West Coast including the Project area.
 - b) Poutini Ngāi Tahu strongly support the Project and have a partnership agreement with Westpower providing them a financial interest in the Project if it proceeds.
 - c) The Project will be of significant benefit to Poutini Ngāi Tahu as it will provide an opportunity to reconnect with their whenua and benefit economically.
 - d) The Project will also benefit the wider West Coast community as it will:
 - i) provide electrical resilience via green-renewable energy, reduce transmission charges (through reducing the amount of energy being transmitted to the region) and provide comparatively cheaper power and line charges for the West Coast;
 - ii) create much needed employment and training opportunities; and
 - iii) provide significant investment for the region supporting existing and new industry to grow.
 - e) These benefits are important to Poutini Ngāi Tahu as it enables them to provide for their iwi and to manaaki manuhiri and the community.
 - f) Climate change and conservation of taonga are hugely significant issues and renewable energy is part of the solution.

⁹⁷ AEE, Appendix 8.

- g) Security of supply is an important consideration in the Ngāi Tahu Climate Change Strategy.
 - h) The Project is consistent with the relevant principles and provisions of their Treaty settlement as well as their Mana Whakahono ā Rohe with WCRC.
 - i) The adverse effects on the environment, their takiwā, and taonga (including species and fish species) have been carefully and appropriately addressed to their satisfaction.
 - j) Te Rūnanga o Ngāi Tahu supports Poutini Ngāi Tahu’s position.
- 194) In addition, the AEE included a Partnership Report which summarised some of the above matters and in addition noted that:⁹⁸
- a) consultation had taken place with Poutini Ngāi Tahu over many years (including more recently during the preparation of the Application) and this had helped shape the design of the Scheme;
 - b) given their long involvement with the Project’s development, Poutini Ngāi Tahu had chosen not to prepare a cultural impact assessment but instead contributed through the development of the AEE;
 - c) to facilitate that assessment Westpower commissioned a technical report detailing the Scheme’s design and environmental effects focused on the whenua, awa ngahere and wildlife – including taonga species and held hui with Poutini Ngāi Tahu; and
 - d) the Project partnership between Poutini Ngāi Tahu and Westpower shows the successful outcome of past and ongoing consultation.

DOC s.51 Report

- 195) On the basis of the information provided by Westpower and Poutini Ngāi Tahu, DOC agreed that potential adverse effects on cultural values are no more than minor, such effects could be adequately avoided, remedied or mitigated by adherence to the conditions and management plans, and that once operational the cultural effects would be positive.⁹⁹

Comments received from invited parties

- 196) TRONT, Te Rūnanga o Ngāti Waewae, and Te Rūnanga o Makaawhio were invited to comment on the Application.
- 197) TRONT did not provide any comments in response to the invitation to comment, but later (in response to clarification sought by the Panel through Poutini Ngāi Tahu) provided a letter regarding its RFR and the implications that had for the term of the concession.¹⁰⁰ This is addressed in Subpart I4 below.

⁹⁸ AEE, Appendix 14, Section 4.

⁹⁹ DOC s.51 Report, at [6.3.11.1]-[6.3.11.10].

¹⁰⁰ TRONT Letter, 5 March 2026.

- 198) Poutini Ngāi Tahu provided comments on behalf of Te Rūnanga o Ngāti Waewae, and Te Rūnanga o Makaawhio. These comments emphasised the matters noted in their letter of support (summarised above), and added other matters relating to other effects (such as landscape and recreation) and concessions (such as improved access to the Waitaha Valley) which we discuss later in this Decision.
- 199) Te Minita Whanaketanga Māori encouraged consideration be given to comments by relevant Māori groups, the association of Ngāi Tahu with taonga species, the provisions of the relevant Mana Whakahono ā Rohe, and for engagement with Ngāi Tahu regarding managing any effects on pounamu.

Applicant response to comments

- 200) The Applicant noted its appreciation for the continuing support of Poutini Ngāi Tahu. In relation to Te Minita’s comments, Westpower noted that these matters will be addressed through its partnership with Poutini Ngāi Tahu and through the proposed conditions of consent – which include (amongst other matters) a requirement to comply with the Pounamu Accidental Discovery Protocol during stream works and gravel extraction activities.¹⁰¹

Conference with Poutini Ngāi Tahu

- 201) Following the filing of the Applicant’s response (which included some revisions to conditions and proposed management plans), and the release of the Peer Review Reports, we met (virtually) with Poutini Ngāi Tahu to discuss their feedback and to confirm whether any of the comments/information/responses subsequently received changed their views in any respect.
- 202) At this conference Poutini Ngāi Tahu representatives confirmed that:¹⁰²
- a) Nothing in the comments from other parties or in the information provided since they made their comments had changed the views expressed in their submission.
 - b) They continued to support the Project and had been supporters of the Project since well before their involvement as Project partners.
 - c) While kōaro is a taonga species for Poutini Ngāi Tahu they were comfortable with the work Westpower had done to address effects on kōaro.
 - d) They were very familiar with fish passage structures (given the number of awa in the rohe) and had faith in the workability of one here.
 - e) West Coast green gecko was not a taonga species. Should such gecko be found in the Project area there were ways of managing effects on them (as demonstrated by earlier releases of other lizards back in Te Wai Pounamu). They did not have any concerns with how the Applicant was proposing to manage effects on West Coast green gecko.
 - f) They continued to support the interpretation that the short and long-term concessions were separate concessions such that the RFR was not triggered, but

¹⁰¹ Westpower Memorandum #7, 21 January 2026, at [3.1] and [3.7].

¹⁰² Conference with tangata whenua, 27 February 2026.

would discuss the issue with TRONT and confirm whether a waiver might be required/provided.¹⁰³

Evaluation and findings

- 203) At the outset, we acknowledge that it is for tangata whenua, here, Poutini Ngāi Tahu, to identify the cultural values relevant to a proposal, and the ways in which they consider effects on those values can be appropriately addressed. We also acknowledge and accept that cultural effects include a range of matters from environmental effects through to social, employment and economic effects. We have approached our assessment on this basis.
- 204) Poutini Ngāi Tahu identified a range of positive effects that the Project would have for them and for the community which they have the responsibility to manaaki. They also provided “unequivocal confirmation” that all potential adverse effects have been addressed to their satisfaction, and that what was proposed was consistent with their Treaty settlement, Mana Whakahono ā Rohe, and Climate Change Strategy. Other than the RFR issue regarding the concession term which was subsequently resolved via an amendment to the Application (refer Subpart I4 below), this position was not contested. We therefore have no basis to determine otherwise.
- 205) We also acknowledge the strong positive relationship that has developed between Poutini Ngāi Tahu and Westpower following years of engagement and that this has given rise more recently to Poutini Ngāi Tahu having a partnership and financial stake in the Project. We consider such a partnership approach is best practice and aligns with the assessment criteria specified under cl.17 of the FTAA which include ss.5, 6 and 7 of the RMA. In particular, we find that Scheme will provide for Poutini Ngāi Tahu’s economic, social and cultural wellbeing (s.5), appropriately recognises and provides for Poutini Ngāi Tahu’s relationship with its whenua, wai, pounamu and other taonga (s.6(e)); and provides for kaitiakitanga (s.7(a)). Further, and while there may not be requirement under the FTAA to consider Treaty principles,¹⁰⁴ we consider the Project aligns with Treaty principles – particularly those of partnership and participation, and also protection (albeit to a slightly lesser extent) given the Project will have some residual adverse effects (particularly on landscape and recreation values).¹⁰⁵
- 206) We therefore find that the Project will have significant positive cultural effects which support approvals being granted.

F4: Hydrology and flow regime

Introduction

- 207) The Waitaha River extends from the West Coast to just short of the Main Divide, with a total catchment area of 223km². The Scheme is situated 18km from the coast and utilises water from 117km² of the total catchment. The elevation at the proposed intake is 238m, and the catchment rises to around 2,200m at its headwaters.

¹⁰³ We discuss RFR matters further in the concessions part of this Decision (Subpart I4).

¹⁰⁴ Under the FTAA there is no express reference to Treaty principles, and the effect of cl.17(2)(a) is that any reference in cl.17(1)(b) to Part 2 of the RMA is to be read as referring to ss.5-7 only (i.e., omitting s.8).

¹⁰⁵ Noting the findings in the remainder of this section that some values, such as landscape and natural character, will be changed and therefore not be fully “protected” by the Scheme.

208) A detailed description of the hydrology of the Waitaha River and the expected changes to the hydrological regime resulting from the Scheme is set out in the Hydrology Report.¹⁰⁶

Existing hydrological environment (including the natural flow regime)

209) The hydrological characteristics of the Waitaha River are typical of South Westland rivers. The catchment experiences significant annual rainfall, from 5,500mm at the Kiwi Flat intake area to 12,000-14,000mm at the Main Divide.¹⁰⁷ The average annual total in this location is among the highest yearly rainfall in the world.

210) One small lake exists in the catchment and has little effect on flows at Kiwi Flat. There are 19 small glaciers in the upper reaches of the Waitaha River, and at the end of summer, snow exists only on these glaciers as snow patches, typically above 1,900m. During drier periods in summer, the melt water that is released on hot days can boost baseflow by more than 5m³/s, while during winter the reduction in flow is generally 1-2m³/s. Water released from snow or ice storage (summer meltwater) occurs during otherwise drier periods contributing to the overall water balance of the catchment.

211) The Hydrology Report emphasises that intermittent intense rainfall and the effect of snow and ice together exert considerable influence on the nature of flow conditions in the Waitaha River.¹⁰⁸ The river flows high in spring and early summer and is discoloured with snowmelt. Flows recede as the temperature cools over autumn into winter, when flows drop to very low levels, and the river runs clear during dry periods.

212) Seasonal effects are apparent in the monthly median flows at the top of Morgan Gorge:

- a) a peak of 31.8m³/s in December as rising temperatures melt the seasonal snowpack (along with some ice), and the river is continuously discoloured, either showing the milky colour of snowmelt, or the darker colour of flood flows;
- b) a mean monthly flow of 20.8m³/s in March, as much of the available snow is gone, but the river still has a milky appearance; and
- c) a low median flow of 10.3m³/s in July - at this time, with no snow or ice melt occurring, the river runs clear if no recent rain has fallen.

213) Low flows are a notable winter feature of the Waitaha River. In December the lowest flows on average reach 17.8m³/s, in March they are 16.0m³/s, while in July they are 8.2m³/s.

214) Floods occur throughout the year every 8.6 days on average, and it is typically around two days from flood onset before river levels drop back and the grey/brown flood discoloration reverts to the usual milky colour, although this depends on the nature of the heavy rainfall.

¹⁰⁶ AEE, Appendix 18 - Changes to the Natural Environment, Hydrology, July 2025 (**Hydrology Report**).

¹⁰⁷ AEE, Appendix 18 – Hydrology Report, Section 2.2.

¹⁰⁸ AEE, Appendix 18 – Hydrology Report, Section 2.3.

Long-term flow record derivation

- 215) Water level data was collected continuously over a period of six years commencing in 2006 on the Waitaha mainstem at the top of Kiwi Flat and converted to flow data. Water level data were also collected at the entrance to Morgan Gorge to describe the choking effect of the Gorge.
- 216) The Hydrology Report notes that analyses undertaken by Doyle in 2013¹⁰⁹ consisted of extending the flow record to derive the natural long-term hydrological statistics, modelling the Scheme's proposed water take and establishing the effects on flow below the intake, and transposing these statistics to locations of interest.
- 217) Further analyses were undertaken by the Applicant in 2024, which were designed to confirm that the 2012 statistics shown in Doyle (2013) remain valid.
- 218) A long-term flow record for the Waitaha River was created using correlations with neighbouring rivers.¹¹⁰ Relationships were derived using the Hokitika River ($r^2 = 0.82$) and the Whataroa River ($r^2 = 0.86$).¹¹¹
- 219) As part of the validation process, synthetic data were compared to actual data for the 2011 year. Plots of the actual Waitaha flow data for 2011 overplotted with the synthetic data are presented in Appendix E, Figure 4.¹¹² The Hydrology Report concluded that the data is appropriate for estimating flow for the Waitaha River at Kiwi Flat, and "can be used with confidence to derive long-term flow statistics".¹¹³
- 220) The Hydrology Report concluded that the synthesised data can be used with confidence for flows up to 100m³/s, but should not be used for flood flows. It confirmed that flood statistics were instead derived from regional relationships.¹¹⁴

Implications of climate change on the natural flow regime

- 221) The Hydrology Report provides a high-level assessment of effects of climate change on the natural flow regime, and utilises the MfE online tool to display the latest climate projections.¹¹⁵ These effects are summarised as follows:
- a) The changes most relevant to the hydrology of the Waitaha catchment are rainfall and temperature, the latter being relevant for snow accumulation, as well as the freeze/thaw processes that lock up water as ice in cold periods and release it in warmer periods.

¹⁰⁹ Doyle, 'The Hydrology of the Waitaha Catchment', Report for Electronet Services Ltd, September 2013.

¹¹⁰ AEE, Appendix 18 – Hydrology Report, Appendix E.

¹¹¹ R^2 is a coefficient representing the strength of the correlation between two datasets. An r^2 greater than 0.80 is considered to be a good correlation.

¹¹² AEE, Appendix 18 - Hydrology Report, Appendix E, Figure 4.

¹¹³ AEE, Appendix 18 - Hydrology Report, Appendix E.

¹¹⁴ AEE, Appendix 18 - Hydrology Report, Section 3.5.

¹¹⁵ The tool is based on work done by NIWA and was updated in mid-2024. It can be found at <https://environment.govt.nz/factsand-science/climate-change/climate-change-projections/>. The Hydrology Report compares predictions for three future periods (2021–2040; 2041–2060; and 2080–2099) to a base of 1995–2014.

- b) The rainfall indicators show that total rainfall, number of very rainy days, and heavy rainfall are predicted to continually increase into the future, with the greatest increase shown for spring and winter. Autumn is considered to become drier for South Westland. Predictions of the number of dry days (leading to drought) has a less pronounced signal, with variability across seasons and forecast periods.
- c) The number of hot days and average daily temperatures are predicted to increase overall, mainly for summer. Overall weather will be more unpredictable and hold greater extremes. The Waitaha River can expect average flow to increase, and larger and more frequent floods, particularly in spring and winter. Late summer flows may reach slightly lower levels than previously, due to snow being melted earlier in that period. Slightly warmer winter temperatures imply that less winter snow accumulation is likely, and winter runoff may increase during low flow periods, as well as floods.

Flow modelling, ramping rates and operating conditions

- 222) Downstream flow modelling was undertaken by AusHydro and presented in the Downstream Flow Modelling Report.¹¹⁶ The purpose of the 2D computational hydraulic modelling was to investigate the response of Waitaha River flows following rapid changes in discharge from the Power Station, including load rejection (i.e., sudden loss of power generation) and station startup and shutdown. The Report presents indicative transient changes in flow rate and depth at different locations along the river, to inform environmental effects and public safety risk assessments being undertaken by others. The modelling and results are 'indicative' as they are based on uncalibrated computational modelling, and the Report emphasises that appropriate conservatism should therefore be used when applying model outcomes.
- 223) Three river flow conditions were modelled, including the worst-case for flow change where the Power Station is at maximum discharge of 23m³/s whilst the Headworks are passing minimum residual discharge of 3.5m³/s. Higher and lower river conditions were also modelled, spanning some 40% of the expected river flow range. For each of the three river flow conditions, three scenarios were modelled for load rejection, including rapid shutdown of full flow, and rapid transition to a bypass valve discharge of 10 or 15m³/s.¹¹⁷ Scenarios for controlled full station shutdown (ramp-down times of 30, 45 and 60 minutes) and full station load acceptance (ramp-up times of 10 and 30 minutes) were also modelled.
- 224) The hydraulic effect of these scenarios was evaluated at the following locations:
 - a) Downstream of the Power Station, including braided reaches: The modelled reach extended some 7.5km downstream of the Power Station and was assessed to understand flow change and potential for adverse ecological impacts such as fish stranding.

¹¹⁶ AEE, Appendix 31 - Downstream Flow Modelling Report, 4 June 2025.

¹¹⁷ The bypass valve is designed to ensure that changes in flow through Morgan Gorge and downstream of the Power Station are kept to a minimum in the event of an emergency trip where the turbines have to shut off. A bypass valve discharge of 10m³/s was selected by the Applicant for preliminary design. Reducing these rapid flow changes will reduce effects on aquatic fauna and reduce potential safety risks for people on or near the river.

- b) Within Morgan Gorge particularly at the geothermal hot spring:¹¹⁸ The purpose being to assess water level change, travel times, and associated flood hazard, to aid in understanding the potential public safety impact, given the hot springs is an area known to be visited by members of the public. Modelling indicated that the hot spring becomes naturally inundated at river flows of around 50m³/s and above, which occur about 10% to 15% of the time.¹¹⁹ Following full station load rejection, the maximum river level rise (at lowest full-station river conditions, i.e., 26.5m³/s) at the hot spring is 0.75m, which is reduced to less than 0.50m if the 10m³/s bypass valve is operated at the Station. At the highest river conditions during which people could reasonably be expected to be at the hot spring (i.e., water just below the ledge, full station discharge of 42m³/s), load rejection without a bypass would lead to inundation of most of the rock ledge.
- 225) Ramping rates are presented in the Project Overview Report.¹²⁰ As a part of the assessment of effects from the operation of the Scheme, optimal flow ramping rates were determined to minimise public safety hazards for river users and freshwater ecology impacts for fish downstream of the Power Station, while maintaining operational capability.¹²¹
- 226) The final rates selected involved symmetrical ramp-up and ramp-down rates and are partially dependent on the flow in the river. The Project Overview Report notes that the selected ramping rates are similar to those experienced during natural flood conditions and information on the assessed impact of the proposed rates are contained in the Public Safety and Freshwater Ecology Reports.¹²²
- 227) Operating conditions of the Headworks (i.e., weir and intake) are presented in the Project Overview Report.¹²³ Four flow scenarios are presented, including normal operation, kayak usage, high flow, and extreme flood event scenarios. River flows, down-stream release, intake flow (diverted) and the range of headwater levels are also presented.
- Hydrological changes from the Scheme above and within the abstraction reach
- 228) The AEE states that no change will be evident to normal river flow patterns above the Scheme’s intake.
- 229) The AEE notes that the key change to the hydrological regime resulting from the Scheme is the removal of up to 23m³/s of Waitaha River flow from the abstraction reach. It states that:¹²⁴

¹¹⁸ The hot spring is located on a rock ledge above the River on the true left bank approximately 800m downstream of the proposed diversion weir.

¹¹⁹ AEE, Appendix 31 - Downstream Flow Modelling Report, p.v.

¹²⁰ AEE, Appendix 3 – Project Overview Report Part 1, July 2025; and Appendix 4 – Project Overview Report Part 2, July 2025.

¹²¹ AEE, Appendix 3 – Project Overview Report Part 1, Section 4.2.5.

¹²² AEE, Appendices 32 and 25 respectively.

¹²³ AEE, Appendix 3 - Project Overview Report Part 1, Appendix A - Summary of Project Description, Operation General, Table entitled 'Operating conditions of the Headworks, i.e., weir and intake'.

¹²⁴ AEE, Section 6.4.2.

- a) A flow of not less than 3.5m³/s will be maintained throughout the abstraction reach.
 - b) When the river is naturally above 26.5m³/s (being the sum of the maximum flow diverted into the Scheme and the minimum residual flow of 3.5m³/s), the flow through the abstraction reach will be at or greater than 3.5m³/s, and during higher natural flows it will increase to a point where it closely resembles the natural flow regime.
 - c) During large natural flows (i.e., 250m³/s and above), generation will stop and natural flow conditions will exist within the abstraction reach.
 - d) The natural 50-year low-flow at the top of the abstraction reach is approximately 5m³/s. Excluding Power Station maintenance shut-down periods, the natural flow regime within the abstraction reach will be reduced to 3.5m³/s for approximately 66% of the time or approximately 241 days per year. The Applicant concludes that from a hydrological regime perspective, these changes within the abstraction reach, statistically, are more than minor. However, the AEE also highlights the following mitigating factors:
 - i) the 241 days per annum of residual flow will not occur as consecutive days, but normally as small intervals of time before a fresh or flood occurs. The AEE notes that there are on average 42 floods or freshes per annum greater than 30m³/s. The average interval between these peaks is 8.6 days, and the average flood duration is 55 hrs; and
 - ii) Anson Creek and Glamour Glen, which flow into the abstraction reach, boost the residual flow below the Scheme intake considerably after rain, and for 50% of the time, they add at least 0.7m³/s. As a result, the residual flow below Glamour Glen will be at least 4.2m³/s for 50% of the time.
- 230) FRE3¹²⁵ analyses are presented in Appendix H of the Hydrology Report.¹²⁶ FRE3 values are provided for the natural flow at the top of Morgan Gorge, both above and below the intake. The Hydrology Report notes that a 5-day period was used as a 'stand down' before another flood was counted and concludes that the FRE3 values show a small variation between the natural flow condition (26.2 days) and with a take of 23m³/s (23.6 days). The Hydrology Report concludes that the proposed take will have little effect on the frequency of "even smaller floods flowing through the abstraction reach".¹²⁷

Hydrological changes downstream of the Power Station

- 231) The AEE and the Downstream Flow Modelling Report describe hydrological changes downstream of the Power Station during various operating conditions.¹²⁸

Hydrological changes downstream of the Power Station during normal operation

¹²⁵ FRE3 is a statistical indicator used in ecological studies.

¹²⁶ AEE, Appendix 18 - Hydrology Report, Appendix H – Verification of 2012 Statistics.

¹²⁷ AEE, Appendix 18 - Hydrology Report, Appendix G – FRE3 Analysis.

¹²⁸ AEE, Section 6.4.2 and Appendix 31.

232) When the Power Station is operating in steady-state mode there will be no impacts on the flow regime downstream of the Power Station as the Scheme is a “run of river” operation. Short-term changes to the flow regime will occur during Power Station startup and shutdown, for example, before and after routine maintenance work is conducted.

Hydrological changes during controlled Power Station startup¹²⁹

233) During a controlled Power Station startup, water flow entering the Headworks intake “ramps up” over time, resulting in an equal reduction in flow to the abstraction reach. During this startup process, discharges from the Power Station also ramp up. To minimise the quantum of these flow changes, when river flows are less than 40m³/sec, the Applicant has proposed a ramp-up rate of no more than 0.5m³/s per minute for Power Station startup. This means the Station will reach full operational flows in around 45 minutes. When river flows are greater than 40m³/s, ramping rates can be slightly higher (i.e., 1.3% of the Waitaha flow).

234) The other factor influencing flow changes at startup is the time lag between when a flow decrease is initiated at the top of Morgan Gorge and when it propagates down to the Power Station.

235) During Power Station startup,¹³⁰ the worst-case scenario occurs when the Power Station starts up from zero to full production when natural Waitaha River flows are 26.5m³/s since this scenario causes the maximum flow change as a percentage of ambient flow.¹³¹ For a 30-minute Power Station startup,¹³² the flow climbs until the corresponding flow reduction to Morgan Gorge propagates down to the Power Station. The modelling shows that these changes smooth out slightly with distance downstream.

Hydrological changes during controlled Power Station shut-down

236) During a controlled Power Station shut-down, water entering the Headworks intake “ramps down” over time resulting in an equal increase in flow to the abstraction reach. During this shutdown process, discharges from the Power Station also ramp down. As with the startup process, the Applicant proposes a 0.5m³/s per minute maximum ramp-down rate when river flows are less than 40m³/s. This means from full production the Station will reach an operational stop in around 45 minutes.

237) As with startup, during a controlled shutdown there is a time lag between when a flow increase is initiated at the top of Morgan Gorge and when it arrives at the Power Station. Hydrological modelling results indicate that these lag periods are between 30 and 40 minutes. The worst-case scenario occurs when the Power Station shuts down from full to zero production when natural flows in the Waitaha River are 26.5m³/s. It notes that this scenario also causes the maximum flow change as a percentage of ambient flow.¹³³

¹²⁹ AEE, Section 6.4.4.

¹³⁰ AEE, Section 6.4.1.1.

¹³¹ AEE, Figure 65.

¹³² AEE, Figure 66.

¹³³ AEE, Figure 67.

238) For the proposed 45-minute Power Station ramp down there is a steady drop in river flow followed by flow rate recovery commencing after around 40 minutes, once the increased river flows via Morgan Gorge arrive at the Power Station. As with the station startup, these changes smooth out with distance downstream.¹³⁴

Hydrological changes resulting from Power Station emergency trip events

239) The AEE states that the Power Station is anticipated to experience approximately four unplanned operational trip events per year that require emergency shutdowns, based on operational data collected from the Applicant's nearby Amethyst Hydro Scheme.¹³⁵

240) In an emergency shutdown scenario, a relatively sudden reduction in generation flow (staged over a 2-minute period) is achieved to protect the turbines. This results in discharges to the Waitaha River, via the tailrace, ceasing over this 2-minute period, and consequential river flow reductions below the Power Station.

241) Concurrently, an equal increase in flow will be observed into Morgan Gorge at the top end of the Scheme. To help smooth out these flow changes, both through Morgan Gorge and below the Power Station, a bypass valve located at the Power Station and sized to flow up to 10m³/s, will release water into the Waitaha River in the form of a coned spray upon a station trip.

242) The worst-case (i.e., maximum flow change) scenario occurs when the Power Station undergoes an emergency shutdown from full to zero production when natural Waitaha River flows are 26.5m³/s. Simulated flow changes show that the proposed 10m³/s bypass valve significantly reduces the quantum of flow reductions below the Power Station, and the arrival of increased flows released to Morgan Gorge at the Power Station achieves steady-state river flow after around 40 minutes.¹³⁶

Effects on flood flows

243) The AEE describes the Scheme's effects on flood flows, as follows:¹³⁷

- a) For large floods above 250m³/s, the Scheme has no effect on the catchment's flow regime because the diversion at the intake will shut and Station generation will stop. For small floods and freshes, there is a slight reduction in flow through the residual reach, becoming less significant as natural flow increases.
- b) For small freshes, the FRE3 value shows only a slight pre- and post-development reduction from 26.2 to 23.6 times per year. This demonstrates that the Scheme will have little effect on the frequency of even smaller floods flowing through the residual flow reach.

¹³⁴ AEE, Figure 68.

¹³⁵ AEE, Section 6.4.5.

¹³⁶ AEE, Figures 69 and 70.

¹³⁷ AEE, Section 6.4.6.

Overall hydrological effects

244) Overall hydrological effects are summarised in the AEE as follows: ¹³⁸

- a) Although the Scheme results in changes to the Waitaha River’s hydrological regime, these changes predominantly only affect the 2.5km long abstraction reach, which is a very small part of the catchment’s total river network. Notwithstanding, these changes will have, to some degree, consequential effects on cultural, ecological, landscape and amenity and recreational values of the Waitaha River and on public safety, which are addressed elsewhere in the AEE.
- b) From a purely hydrological regime perspective, when the hydraulic changes are considered in the context of the wider Waitaha River catchment and its wider flow regime, overall, any adverse hydrological effects on the Waitaha River and its tributaries are no more than minor given:
 - i) the Scheme is a “run-of river” operation;
 - ii) the catchment has very high natural rainfall and consequential high frequency of natural floods;
 - iii) the ramping rates proposed by Westpower; and
 - iv) the very low occurrences and very short durations of Power Station start-ups, shutdowns, trips and bypass valve operation.

DOC s.51 Report

245) Following its review of the Application materials, DOC agreed with the Applicant that any adverse effects on the river hydrology and flow regime can be adequately avoided, remedied and mitigated through the design of the Scheme and by following the operational methods outlined in the Application.¹³⁹

Comments received from invited parties

246) WCRC noted in its comments that while it did not have in-house expertise to undertake a full technical peer review, it had undertaken a high-level review which had not identified any issues.

Response to RFI#2

247) The Applicant provided the following information of relevance to hydrology and flows in its response to RFI#2:¹⁴⁰

- a) Hydraulic analyses used in the preliminary design were generally based on one-dimensional flow analysis and formulae/designs from recognised engineering practice. Flow patterns within the river were investigated using two-dimensional computational hydraulic modelling.

¹³⁸ AEE, Section 6.4.7.

¹³⁹ DOC s.51 Report, Appendix C – Concessions Report, at [6.3.12.8].

¹⁴⁰ Westpower Memorandum #6, 16 January 2026, at [4] and Attachment A.

- b) In detailed design stages, it is intended to utilise three-dimensional computational flow dynamic (**CFD**) modelling of flow and sediment transport to define the final arrangement/shaping of the Headworks in particular.
- c) The proposed weir is a concrete gravity structure, with a 1m crest width at EL 238.0m over a main span of approximately 16m width. A secondary side weir on the right-hand side with a slightly higher crest of EL 238.5 – 239.0m incorporates the sluice gate chamber.
- d) The sluice gate is sized to maximise discharge capacity for efficient sluicing while reducing the size of structure required to reduce visual effects. The gate has a discharge capacity of approximately 60m³/s.
- e) The expected operating regime of the gate will be further defined with CFD flow and sediment modelling during detailed design phases, and optimised with operational experience.
- f) The intake screens are proposed to have an open area of approximately 40m², limiting approach velocities. The sizing of the screen is such that it should not present an insurmountable velocity barrier, meaning that kōaro can swim out if they enter the intake.
- g) The desander will be pressurised when the Scheme is in operation. Within the desander, flow velocities will reduce to around 0.2m/s, encouraging the settling of sediments of sizes down to 0.3mm.
- h) The waterway is protected by a 4.0m vertical headgate at the downstream end of the desander, able to close against flow to provide safety isolation of the waterway to protect against seismic risk of tunnel damage and penstock rupture.
- i) Continuous environmental flows (residual flows) will be provided by the environmental flow gate and kōaro passage. The proposed environmental flow gate will continuously pass a residual flow of at least 3.5m³/s – even in abnormal operating conditions.
- j) The flow gate has a capacity of greater than 10m³/s at normal headwater levels, allowing larger flushing flows to clear settled sediment if needed. It will likely be placed inside the intake screens, to minimise the chance of blockage by larger sediments, while allowing the sluicing of finer sediments that settle inside the screens upstream of the intake portal.
- k) The kōaro passage is proposed to include a lowered section of the weir at its left abutment, just below the normal head pond control level, such that a small but continuous flow of water will provide a continuously wetted surface. The flow will trickle over a natural rock surface on the left bank of the Gorge.

Peer review

248) As noted earlier in this Decision, we engaged Paul Morgan to undertake a review of the Project information on hydraulics and fish passage matters. Of relevance to hydrology and flow effects, Mr Morgan concluded that:¹⁴¹

- a) There were information gaps that impacted on his review, including:
 - i) details of the hydraulic analysis, modelling and structures proposed at the river intake;
 - ii) hydraulic analysis for the design and different operating conditions regarding river flows, water levels and different generation flow conditions;
 - iii) drawings of the downstream parts of the main weir, overflow weir, sluice, and environmental flow (which were proposed to be developed by the Applicant in detailed design); and
 - iv) how the intake concept was developed, any alternative intake types that were assessed and the reasons why this particular intake option was selected.
- b) The Applicant's response to RFI#2 was limited and did not fully close the information gaps.
- c) The design of the intake and associated infrastructure is extremely challenging and complex in this location.

Applicant response to peer review

249) The Applicant provided a detailed response to the Peer Review comprising a legal memorandum, and statements by Mr Rodger Griffiths (General Manager Generation and Technology for Westpower), Mr Ian McCahon (Retired Civil and Geotechnical Engineer), Mr Martin Doyle (Hydrology Consultant), Mr Jeremy Kent-Johnson (Hydropower Engineer and Managing Director of AusHydro), and Dr Dougal Clunie (Engineering Consultant).¹⁴²

250) Mr Griffiths stated that:¹⁴³

- a) throughout the Project's development, highly experienced and qualified engineering input was sought at each key concept design stage;
- b) the top of Morgan Gorge was selected to avoid materially greater ecological; landscape and geomorphic impacts associated with upstream alternatives;
- c) the proposal to install a 10 m³/s bypass valve was a result of investigations and was intended to improve the safety outcomes for river users and reduce potential adverse effects on freshwater ecology;

¹⁴¹ Waitaha Hydro Power Review of Intake Engineering and Fish Passage.

¹⁴² Westpower Memorandum #10, 10 February 2026, Attachments 2 to 7.

¹⁴³ Westpower Memorandum #10, 10 February 2026, Attachment 2.

- d) a side intake with a weir perpendicular to the flow was confirmed as the preferable design;
- e) based on the advice of Dr Tom Jacobsen, a fully-pressurised desander situated below water level was selected; and
- f) he is confident that any issues that arise during detailed design can and will be appropriately accommodated within the parameters of the proposed Application including the resource consent conditions.

251) Mr Kent-Johnson (in summary) stated that he considers that the concept design for the Waitaha Hydro Scheme is more advanced than would typically be undertaken at the consenting stage and, he is confident that it provides a reliable basis for the detailed design, and, subsequently, the operation of the Scheme.¹⁴⁴

252) Mr McCahon confirmed that:¹⁴⁵

- a) the weir will not be a significant barrier to sediment transport and will not be greatly different to what is currently there with the rock platform;
- b) there will be little change to gravel bed levels upstream and very little volume to be filled; and
- c) while he initially promoted a Tyrolean stream bed intake, following further review (including as recently as 2025) he determined a side intake is preferable “by a wide margin”.

253) Dr Clunie said that:¹⁴⁶

- a) The maximum height of the main weir structure above the excavated sluice channel is 7m. This depth is necessary to allow the sluice to keep the submerged intake clear of sediment.
- b) The residual flow release rate will be continuously monitored, and if it falls below the required 3.5m³/s, the Project’s control system will reduce station output to allow the required bypass flow over the weir.
- c) Design refinement since the Application was filed has repositioned the gate intake to be downstream of (i.e., behind) the intake screens.
- d) The Applicant’s proposed conditions for detailed design require collaboration of a suitably qualified and experienced engineer, a freshwater ecologist (to address the fish passage) and an expert familiar with whio.
- e) The sluice gate will provide for the passage of coarse sediment and allow remobilisation of sediment that aggrades within the intake channel. Mechanical

¹⁴⁴ Westpower Memorandum #10, 10 February 2026, Attachment 4, at [13] and Figure 1.

¹⁴⁵ Westpower Memorandum #10, 10 February 2026, Attachment 3.

¹⁴⁶ Westpower Memorandum #10, 10 February 2026, Attachment 5.

maintenance is to assist in reshaping or realigning the intake approach channel following high or unusual sediment deposition events.

- f) Detailed CFD modelling of the intake, approach channel, and upper Gorge area is planned for the detailed design stage of the Project, and will provide the inputs necessary to refine the optimal size of the sluice gate opening and optimise shaping of the intake area.

Joint empanelment

254) At the joint empanelment, the experts for the Applicant and the Panel's peer reviewers, Mr Morgan and Dr Tunnicliffe, provided further information about the design process to date and clarified their views on the key issues raised in the Peer Review Reports and response. All of the witnesses for the Applicant confirmed that they maintained the views set out in their earlier reports and statements for the reasons noted therein.

255) In relation to key issues raised in the Peer Review, the following additional information/clarifications were provided:

- a) Mr Kent-Johnston confirmed that:¹⁴⁷
 - i) the Application is equivalent to preliminary design stage (being something more than concept design, and less than detailed design);
 - ii) he was confident that the Project could meet the requirements based on the amount of work that had been undertaken to date – including engineering, optioneering and concept development (not all of which was necessarily included in the Application);
 - iii) design improvements made to date include the functionality of the desander, a closure for the intake, and access tunnel protection;
 - iv) hard sediments can result in erosion of the turbine stainless steel runner, but any similar Power Station will suffer some erosion; and
 - v) in response to Dr Tunnicliffe's concern about dynamics shifting over time and the lack of modelling to date,¹⁴⁸ that CFD modelling would be undertaken at detailed design to better understand the flow regime, to trial different approach geometries of the intake, and to assess the efficacy of the desander.
- b) Mr Griffiths agreed with Mr Kent-Johnstone that the Application was at preliminary design stage, and emphasized the need to maintain flexibility during the detailed design process.¹⁴⁹
- c) Dr Clunie confirmed that:¹⁵⁰

¹⁴⁷ Joint Empanelment Transcript, Jeremy Kent-Johnston, at 27:46, 32:33, 37:53 and 1:07:56.

¹⁴⁸ Joint Empanelment Transcript, Dr Jon Tunnicliffe, at 1:00:41.

¹⁴⁹ Joint Empanelment Rodger Griffiths, at 1:15:33.

¹⁵⁰ Joint Empanelment Transcript, Dr Dougal Clunie, at 36:05, 46:57, 49:05, and 56:38.

- i) There are no circumstances in which the environmental flow would be diverted to the intake, including outages. He added that the control system would ensure this.
 - ii) He retains a high level of confidence that the final design will effectively manage the (high and coarse) sediment loads.
 - iii) When the sluice gate opens, the water level behind the weir can be drawn down, which increases the velocity and shear stress in the intake channel and mobilises sediment. The gate can potentially pass flows up to around 60m³/s, but in his opinion, there is little to be gained by a larger gate or more gates.
 - iv) The presence of the weir in high flows, particularly mean annual flood and above, is not going to be significantly different within the Gorge to what is observed in natural flow.
 - v) In high floods, sediment transport essentially stalls and coarse sediments will be deposited from the upstream end of Kiwi Flat and in larger floods the sand that is in suspension will be dropped out and deposited extensively across Kiwi Flat, which is evidenced by the sandbars onsite.
- d) Dr Hicks concurred with Dr Clunie, and added that the intake structure itself will have no impact of any significance on the choking phenomenon.¹⁵¹

256) In response, Mr Morgan noted that he gained comfort from Mr McCahon’s involvement in the design process. He noted that the further information provided, particularly the Applicant’s response of 10 February 2026, had addressed a number of gaps and concerns. He agreed with Dr Clunie that there were no circumstances in which the environmental flow would be diverted to the intake,¹⁵² and that the system will be effective at flows up to 60m³/s, but remained concerned about reduced effectiveness at higher flows due to backwater effects.¹⁵³ His remaining concern related to coarse sediment management, based on problems at existing intakes that he was aware of.¹⁵⁴

Evaluation and findings

- 257) We have carefully considered the potential effects on the hydrology and flow regime, in the construction and operational phases of the Project.
- 258) We consider that the detailed hydrological assessments undertaken by the Applicant, its responses to our RFIs and the Peer Review Reports, as well as the oral evidence of its experts at the Joint Empanelment Hearing provide sufficient information to understand the existing environment, and the nature, level of significance and magnitude of effects of the Scheme. We note that DOC and WCRC raised no issues in this regard.
- 259) We agree that the CFD modelling of the intake, approach channel, and upper part of the Morgan Gorge area proposed by the Applicant at the detailed design stage of the

¹⁵¹ Joint Empanelment Transcript, Dr Murray Hicks, at 59:45.

¹⁵² Joint Empanelment Transcript, Paul Morgan, at 36:55.

¹⁵³ Joint Empanelment Transcript, Paul Morgan, at 54:11.

¹⁵⁴ Joint Empanelment Transcript, Paul Morgan, at 1:18:31.

Project is appropriate to refine the design and to manage any adverse hydrology effects arising from the Project. This approach is reflected in relevant conditions.

- 260) While we acknowledge Mr Morgan’s remaining concern regarding coarse sediment management, as we note in the sediment section below, we are satisfied that with the conditions we have imposed, these matters will be able to be appropriately managed.
- 261) Overall, we find that any adverse effects on the river hydrology and flow regime can be adequately avoided, remedied and mitigated through the design of the Scheme and through adherence to the conditions and management plans required by this Decision.

F5: Water quality

Introduction

- 262) The AEE and Freshwater Ecology Report provide an overview of existing water quality in the Waitaha River and assess the effects of the Scheme on water quality.¹⁵⁵
- 263) In relation to the existing environment, and drawing on sampling undertaken in 2007, the AEE noted that:
- a) due to a combination of frequent flood flows and the presence of fine glacial sediment supplies, the Waitaha River often displays high turbidity (low clarity);
 - b) nitrate levels in the catchment were very low;
 - c) dissolved reactive phosphorus was also low and generally below the laboratory detection limit ($< 4 \text{ mg/m}^3$);¹⁵⁶
 - d) with respect to pH and conductivity:
 - i) the water chemistry of the Waitaha catchment is comparable with river water quality data collected from across New Zealand;¹⁵⁷ and
 - ii) its nutrient levels are typical of many other West Coast Rivers where catchment modification is minimal and well below the New Zealand average.¹⁵⁸

Water quality effects during construction

- 264) In relation to water quality effects during construction the AEE noted that:¹⁵⁹
- a) There are potential adverse water quality effects arising from:

¹⁵⁵ AEE, Section 5.18, and Appendix 25 – Freshwater Ecology Report.

¹⁵⁶ There were two sites where it was above the detection limit in the last sampling period at Kiwi Flat, but still only reached 9 mg/m^2 . Refer AEE, Appendix 25 – Freshwater Ecology Report, August 2025, Appendix D, Section 11.2.

¹⁵⁷ AEE, Section 5.18.

¹⁵⁸ AEE, Appendix 25 – Freshwater Ecology Report, , Appendix D, Section 11.4.

¹⁵⁹ AEE, Section 6.5.1.

- i) earthworks, stream works, and in-situ concrete pouring;
 - ii) a potential decrease in stream shading (due to riparian vegetation loss);
 - iii) potential spills of fuel, oil or other contaminants; and
 - iv) potential establishment of didymo.
- b) The existing river and stream network has a very high rate of sediment flux, and therefore any temporary construction-related sediment inputs will be inherently mitigated by natural processes. Notwithstanding this any potential construction-related water quality effects will be actively managed through the implementation of:
- i) an Erosion and Sediment Control Management Plan (**ESCP**) which incorporates methods for minimising sediment generation, addressing sediment or high pH laden run-off, and for creating dry work sites (such as through temporary flow diversions); and
 - ii) a Construction Environmental Management Plan (**CEMP**) which includes various construction and environmental management requirements relating to fuel use and storage, the washing of tools and machinery, machinery maintenance and inspections, the keeping of spill kits and response plans, and protocols to control the spread of didymo.
- c) Riverbed gravel extraction activities will only occur in areas of dry riverbed that are at least 4m from the water's edge and excavation depths will be no lower than the adjacent river water level.
- d) Loss of riparian vegetation will be inconsequential due to the very small area impacted and the rapid natural regeneration.
- e) The Applicant has proffered conditions to ensure water quality effects are appropriately managed.
- 265) The AEE concludes that provided the certified ESCP and CEMP are fully implemented, and the proffered conditions are complied with, the risks associated with potential adverse water quality effects during construction will be appropriately managed and be less than minor.

Water quality effects during operation

266) Regarding water quality effects during operation the AEE:¹⁶⁰

- a) Identifies potential effects arising from:
 - i) sediment discharges to water during in-stream maintenance activities, desander and other flushing events;
 - ii) sudden changes in flow to Morgan Gorge following station trip events;

¹⁶⁰ AEE, Section 6.5.2.

- iii) discharge of stormwater from the Power Station site; and
 - iv) potential spills of fuel, oil or other contaminants at Power Station Site and Headworks.
- b) Notes that the Scheme’s operation results in an alteration of how and when sediment moves through the river system but that:
- i) as the Scheme does not involve production land use changes, there is not expected to be any change to surface water nutrients; and
 - ii) some mitigation is provided by the existing river and stream network’s very high natural sediment load.
- c) Proposes to manage operational water quality effects via:
- i) implementation of a Site Operations and Maintenance Plan (**SOMP**) that incorporates methods for minimising sediment generation, pre-condition parameters for any low-flow desander and Morgan Gorge flushing events, methods to reduce the risk of didymo spread, and protocols relating to unloading, storing and using fuel storage tanks;
 - ii) undertaking flushing trials and the implementation of a Flushing Management Plan (**FlushMP**) to minimise adverse impacts on the quality of habitat for biota and periphyton in the abstraction reach associated with accumulated fine sediment over long periods of low-flow; and
 - iii) implementation of a Stormwater Management Plan (**SMP**).

267) The AEE concludes that adverse water quality effects during the Scheme’s operation will be no more than minor, given the above measures and the conditions it has proffered which require these measures to be implemented.

DOC s.51 Report

268) Following its review of the Application materials, DOC agreed with the Applicant that the effects on water quality can be adequately managed through the proposed management plans and conditions.¹⁶¹

Comments received from invited parties

269) The Minister for RMA Reform & Infrastructure noted that ongoing monitoring and adaptive management will be necessary to ensure compliance with the NPS-FM and NES-FM.

Response to RFI#2 and response to comments

270) The Applicant provided the following information of relevance to water quality in its response to RFI#2.¹⁶²

¹⁶¹ DOC s.51 Report, Appendix C – Concessions Report, at [6.3.13.6].

¹⁶² Westpower Memorandum #6 – Response to RFI#2, 16 January 2026, at [21]-[23].

- a) pH treatment of construction inflows of groundwater will be undertaken due to the potential for contact with construction materials (cementitious material in fresh grout/shotcrete);
- b) long-term inflows of groundwater are anticipated to be clean water without requirement for treatment;
- c) any groundwater diverted into the access tunnel and subsequently discharged to the Waitaha River must however comply with the following quality standards:
 - i) clarity of no less than 100mm; and
 - ii) pH of between 6.7 and 8.2.

271) The Applicant did not directly respond to the Minister’s comment. However, it provided a detailed assessment of the Project’s consistency with the relevant policy framework which we address in Part H of this Decision.

Evaluation and findings

- 272) We have carefully considered the potential water quality effects in the proposed construction and operational phases of the Project.
- 273) We consider that the detailed assessments undertaken by the Applicant provide sufficient information to understand the existing environment, and the nature, level and magnitude of effects of the Scheme.
- 274) We note that following its review of the Application materials, DOC agreed with the Applicant that the effects on water quality can be adequately managed through the proposed management plans and conditions.
- 275) We agree that the SOMP must incorporate methods for minimising sediment generation, pre-condition parameters for any low-flow desander and Morgan Gorge flushing events, methods to reduce the risk of didymo spread, and protocols relating to unloading, storing and using fuel storage tanks; and have included those requirements in the conditions.
- 276) We also agree that the additional requirements for groundwater discharges as summarised above are appropriate.
- 277) We find the completion of Morgan Gorge flushing trials and implementation of a FlushMP to be appropriate to minimise adverse impacts on the quality of habitat for biota and periphyton in the abstraction reach associated with accumulated fine sediment over long periods of low flow conditions.
- 278) Overall, we accept the uncontested evidence of the Applicant and DOC that any adverse effects on water quality can be adequately avoided, remedied and mitigated through the design of the Scheme and through adherence to the conditions and management plans required by this Decision. We find accordingly.

F6: Gravel extraction activities

Introduction

279) Section 6.6 of the AEE addresses the effects of gravel extraction activities.

- 280) The proposal involves locally sourced gravel materials to be used to construct the Project's access roads. The gravel required will be taken from land-based alluvial deposits (some 100,000m³) located on the McLean Farm (which will subsequently be used for spoil disposal associated with the Project) and from the Waitaha riverbed (some 23,000m³).
- 281) The AEE identifies that the land-based gravel extraction will be undertaken with a digger to create shallow depressions or pits. The extracted gravels will be screened onsite to achieve the desired size with all surplus material being returned to the extraction pits. No gravel washing or processing (i.e., crushing) will be needed.
- 282) The Waitaha River gravel extraction will be undertaken within an existing extraction area west of McGregor Creek consented for stone extraction, but which currently excludes the removal of bed material less than 0.3m in diameter, thus the need for consent. Extracted gravels will be screened in a small area located on an old airstrip within the McLean Farm. All surplus material will be returned to the riverbed and used for rehabilitating the extraction area and again no gravel washing or processing will be needed.
- 283) The AEE identifies that Westland Schist Ltd and Westpower have agreed¹⁶³ that Westland Schist will extract gravel for Westpower under the consent sought for construction of the Scheme, but it will not exercise its own consents (or concessions in the area) simultaneously with Westpower's. It also notes that Premier Group Ltd hold a consent for stone removal from the Waitaha River in an area of the riverbed that overlaps (in small part) an area where Westpower propose to remove gravel. In this case the consented riverbed materials are different (stone versus gravel) and Premier Group have confirmed¹⁶⁴ that the consents can be exercised together. The proposed river gravel extraction activity would follow standard WCRC requirements including:
- a) no removal of indigenous vegetation;
 - b) limited to dry riverbed only;
 - c) nesting bird searches;
 - d) adherence to appropriate setbacks from flowing water and any identified nesting birds; and
 - e) maximum extraction depths not to exceed level of adjacent river water levels.
- 284) In terms of riverbed gravel extraction, the AEE notes that with the very high sediment transport loads within the Waitaha River, the proposed volumes of gravel extraction would be replenished within a year or two. It indicates that WCRC have developed conditions that they impose as standard requirements for any river gravel extraction activities which the Applicant proposes to comply with. The Applicant has also proffered the following conditions to address river water quality and ecology during times when the activities are occurring:

¹⁶³ AEE, Appendix 6, p.1.

¹⁶⁴ AEE, Appendix 6, p.10.

- a) that gravel extraction areas are restricted to dry areas of the riverbed (consequently, no indigenous vegetation in that area will be removed);
- b) that gravel extraction activities remain at or above the water level in the adjacent flowing river channel and at least 6 metres from any riverbank (consequently, risks associated with sediment entrainment in the river water column are avoided); and
- c) that excavation is undertaken in strips that are parallel to the flow of the river and not by excavating holes.

285) The AEE concludes that the riverbed gravel extraction activities can be appropriately managed so that any adverse effects will be less than minor.

286) With respect to the proposed land-based gravel extraction activities. The AEE contends that the activity will be equivalent, from an effects perspective, to cut and fill earthworks and therefore any associated effects will be addressed through the ESCP. It notes that depressions or pits created will provide inherent sediment controls and act in a similar way to the sediment retention ponds already proposed for this area and that any adverse effects will be further mitigated by the exclusion of gravel washing or crushing activities; the backfilling of excavations areas with tunnel spoil and full rehabilitation back to pasture; and the short-term nature of the activity. The AEE concludes that any adverse effects associated with land-based gravel extraction activities will be less than minor.

Comments received from invited parties

287) The owners of 944 Allen Road, Tāwhiri-Mātea Ltd, state that the map showing the area for which a gravel extraction consent is being sought indicates that it will be hard against their Waitaha River boundary. They consider they have an interest in, and rights to request, gravel extraction from that part of the river under Permitted Activity Rule 29 Gravel Extraction of the WDP, which they state they can meet.

288) Tāwhiri-Mātea Ltd expressed concern about the mapping coordinates for the riverbed gravel extraction at Location 6 which appear to infringe well past the river edge, and into their private land. They seek that the Applicant check the exact locations of the gravel extraction activity and that they initiate further discussions with them about this.

289) Tāwhiri-Mātea Ltd also note that the map showing the approximate location of the gravel screening area is directly opposite their northern boundary and they were unable to locate information about operation times, and dust, noise and light pollution which might affect them.

Applicant response to comments

290) In response to the comments by Tāwhiri-Mātea Ltd, Mr Jackson confirmed that the proposal to extract riverbed gravel will not impinge on their right to use this same resource. However, he agreed that the boundaries of the proposed river gravel extraction area do appear to slightly overlap the eastern boundary of the Tāwhiri-Mātea Ltd property. He said this was not intended and is an error in the mapping, likely due to the river gravel extraction area being drawn without the benefit of GPS or survey data.

He indicated that a new Schedule C3A was provided in the proposed conditions that removes this slight overlap.¹⁶⁵

- 291) Mr Jackson indicated that he considered Tāwhiri Mātea Ltd's concerns about effects associated with gravel screening activities were adequately addressed by the conditions. However, he also proposed a further condition in two of the land use consents requiring there be no discharge of particulate matter which causes an objectional effect beyond the Site boundary.¹⁶⁶

Evaluation and findings

- 292) Having considered the assessment in the AEE and taking into account the conditions proposed to mitigate effects and the ESCP, the Panel accept that both land-based and river gravel extraction can be undertaken without creating effects that will be anything other than less than minor. In reaching that conclusion we acknowledge that:

- a) sourcing gravel locally will avoid the need to haul gravel to the Site from an external quarry and therefore minimises the effects from construction traffic and overall costs;
- b) the depressions/pits created by the land-based extraction will provide the ability to utilise the material stemming from the tunnel excavations for rehabilitation back into pasture; and
- c) the river extraction is within a concession area where such extraction is already occurring and that replenishing by the river occurs within a relatively short period of time.

- 293) The Panel has considered the response from the Applicant to the concerns expressed by Tāwhiri-Mātea Ltd and acknowledge the amendment to Schedule C3A of the conditions to address the boundary overlap. We also agree that the conditions the Applicant has now proposed (and which we have incorporated) will address Tāwhiri-Mātea Ltd's concerns regarding the effects associated with screening activities linked to gravel extraction.

- 294) Finally, in terms of the replenishing of gravel, the Panel accept Dr Hicks evidence that:¹⁶⁷

- a) there will be minimal impact on the bedload budget and channel geomorphology downstream of the Power Station because the intervening (residual flow) reach has excess transport capacity for the finer bedload phases (coarse sand and gravel); and
- b) the frequent flood regime will "shunt on" the material that deposits in this reach at times when there are significantly reduced flows.

¹⁶⁵ Westpower Memorandum #7, 21 January 2026, Attachment 15, Section 4.

¹⁶⁶ Westpower proposed conditions of 10 February 2026, C2: Condition 3; and C3: Condition 13.

¹⁶⁷ Westpower Memorandum #10, 13 February 2026, Attachment 6, at [26].

F7: Sediment transport and river morphology

Introduction

- 295) A detailed description of the existing sediment transport and fluvial geomorphology of the Waitaha River, and the expected changes to that regime as a result of the Scheme are set out in the Sediment Report.¹⁶⁸
- 296) In terms of the existing environment:
- a) The estimated average annual load of suspended sediment passing through Morgan Gorge exceeds 1 million tonnes/year, equivalent to 9,000 tonnes/km²/year averaged over the catchment. The main sources of this sediment load, are the very high, steep, bare headwater slopes formed in fissile schist.¹⁶⁹
 - b) Landslides within the Waitaha catchment can also deliver large sediment volumes to the valley floors, resulting in wide variability in the sediment load delivered downstream.
 - c) Snowpack and glacial melt (6.6% of the catchment has permanent ice cover) provide a small residual suspended sediment load and turbidity even at baseflows. As a consequence, the suspended sediment concentration (**SSC**) in the Waitaha River at Kiwi Flat, can vary over at least a factor of 10 (and possibly 100), within and amongst runoff events and from year-to-year.¹⁷⁰
 - d) Seventy-three percent of the suspended load passing through Morgan Gorge is transported by discharges greater than 250m³/s (the flow at which the Scheme intake will be closed), and floods peaking higher than 250m³/s occur 15 times per annum on average.
 - e) Smaller floods can carry substantial suspended loads, for example, those that reoccur every two weeks on average carry at least 1,600 tonnes, and annual floods carry at least 194,000 tonnes.
 - f) Suspended load, comprising mud to sand grade fine sediment, dominates the total sediment load entering Kiwi Flat during floods. However, a significant gravelly bedload, which is augmented by cobbles and boulders during the largest floods, is also transported by the River.
 - g) The transport of sediment along and out of Kiwi Flat during runoff events is complicated by the narrow, slot entrance into Morgan Gorge, which causes the entry flows to choke and form a temporary pond that backs up sometimes as far as the Whirling Waters confluence. This pond sets the base-level for the channel along the upper part of Kiwi Flat and for Whirling Waters, and the slower velocity through this pond causes mobile gravel and coarser sand grades arriving from Upper Kiwi Flat and Whirling Waters to deposit on delta lobes at its upstream end and as banks along the margins.

¹⁶⁸ AEE, Appendix 19 - Assessment of Environmental Effects Sediment, NIWA, July 2025 (**Sediment Report**).

¹⁶⁹ AEE, Appendix 19 – Sediment Report, Section 2.1.

¹⁷⁰ AEE, Appendix 19 – Sediment Report, Figure 2-2.

- h) As the flow wanes after the flood peak, the choking clears as the hydraulic control reverts to the riverbed at the Gorge entrance. The water slope and flow velocities towards the Gorge increase. The river scours into the lobe and bank deposits, reworking some downstream into the Gorge but invariably leaving remnants behind. As a result, the normal flow channel may be relocated from where it was before the flood.
- 297) The Waitaha River bed material at Kiwi Flat ranges from silt through to sand, gravel, cobbles, and boulders. Silt and sand typically deposit from suspension on channel margins and in pools on flood recessions.
- 298) During slightly turbid baseflows silt can deposit along the channel margins between partly exposed cobbles, transferred from the main flow by lateral diffusion, and leaving a sludge that can build-up to several cm thick amongst the cobbles if the baseflow persists for several weeks.¹⁷¹ These fine sediments are typically re-entrained by subsequent floods.
- 299) The Sediment Report notes that the Waitaha channel at Kiwi Flat naturally exhibits considerable instability due to frequent large floods, high fluxes of bed-material, and transient deposition and re-working of sediment.¹⁷²
- 300) Between Kiwi Flat and the proposed Power Station site (the abstraction reach), the Waitaha River falls first through Morgan Gorge, then flows along a relatively steep, largely boulder-bed reach. The Waitaha River's capacity to transport its largely gravelly-cobbly bedload along this reach is generally greater than the supply of this material from upstream, and the boulders on the bed are lag deposits of low mobility and help to stabilise the channel character.
- 301) Further downstream around the Macgregor Creek area, the Waitaha River begins to form into a braided river with accumulation of sandy silt sediment.¹⁷³
- 302) In summary, the Sediment report states that given the Scheme is to be built in a natural environment that experiences, at times, intense but also variable sediment transport rates, the Scheme's design must address the dynamic natural environment, manage any side effects on the natural processes due to its hard structures and "replumbing" of the river flow and sediment load past the abstraction reach.¹⁷⁴

Environmental effects assessment

- 303) Potential sediment-related effects of the Scheme were assessed in the Sediment Report in seven different categories, which are summarised in turn below.

¹⁷¹ AEE, Appendix 19 - Sediment Report, Figure 2-3.

¹⁷² AEE, Appendix 19 - Sediment Report, Section 2.1.

¹⁷³ AEE, Section 5.19.

¹⁷⁴ AEE, Appendix 19 - Sediment Report, Section 2.1.

(1) Overall effect on sediment transport and channel morphology

- 304) The Sediment Report concludes that, in general, the Scheme will have no more than minor effects on sediment transport processes and channel characteristics along the Waitaha channel, largely because of the following key mitigating factors:¹⁷⁵
- a) the intake structure will be shut during flows of 250m³/s or more so the Scheme's potential to affect natural river sediment transport processes and channel characteristics is largely limited to intervals between flood events;
 - b) the Scheme will not alter the suite of natural processes and fluvial features, nor their frequencies at Kiwi Flat;
 - c) bed material transport and channel morphology will continue to be dominated by the frequent flood regime along the abstraction reach; and
 - d) the Waitaha River downstream of the Power Station will generally retain its natural flow regime and supply of bedload and suspended load, so no downstream effects relating to interruptions of sediment transport continuity (such as typically occur downstream of a large dam that stores both water and sediment) are anticipated.¹⁷⁶

(2) Transient sediment deposition in the abstraction reach

- 305) The Sediment Report notes that deposits of fine sediment naturally accumulate along the Waitaha channel margin during baseflows and are flushed by the next fresh or flood. It notes the potential concern that during normal Scheme operations, the incidence and extent of fine-suspended sediment deposition, and also coarse-bedload deposition, will increase in the abstraction reach, particularly during extended baseflow periods when the residual flow will be steady at 3.5m³/s.
- 306) Using the simulated flow records, and assuming the Scheme operated over the 1973–2012 period, there would have been 33 events/year on average when the residual discharge into Morgan Gorge was steady at 3.5m³/s for longer than a day.¹⁷⁷ Most of these events (22 events/year) would have lasted from 1–7 days, with only 11 events/year lasting longer than one week.
- 307) Simulations presented in the Sediment Report indicate that:¹⁷⁸
- a) The gravelly bedload discharge into Morgan Gorge during steady 3.5m³/s flow events lasting longer than one week, would range from zero to 3.2 tonnes, which would deposit a layer 0–3mm thick in the first pool downstream of the Gorge, with half of the events depositing less than 1mm.¹⁷⁹ It concludes that these figures are very small, and even if they are underestimated by a factor of 10, at worst bedload would produce only a 30mm thick transient deposit in the first

¹⁷⁵ AEE, Section 6.7.1.1. and Appendix 19 – Sediment Report, Section 3.1.

¹⁷⁶ The potential exceptions at specific locations are discussed in subsequent sections.

¹⁷⁷ AEE, Appendix 19 – Sediment Report, Figure 3-1.

¹⁷⁸ AEE, Appendix 19 – Sediment Report, Section 3.2.

¹⁷⁹ AEE, Appendix 19 – Sediment Report, Figure 3-2.

pool. Therefore, gravelly bedload deposition downstream of Morgan Gorge during extended periods of 3.5m³/s residual flow should have a less than minor effect.

- b) Suspended sediment load entering the abstraction reach would range from 25–254 tonnes and would deposit sediment drapes 2–14mm thick (assuming all the incoming sediment was deposited uniformly along the abstraction reach).
- c) Half of the events (i.e., 5.5 events/year) would deposit drapes over 5mm thick but only a quarter of the events (less than 3 events/year) would deposit drapes over 7mm thick.¹⁸⁰

308) The Sediment Report concludes that thicknesses of fine sediment drape are likely to be upper-bound estimates because of the conservative assumptions made, notably that:

- a) the abstraction reach will trap all the incoming suspended load;
- b) it will be deposited over only a portion of the channel width; and
- c) increases in discharge above 3.5m³/s by tributaries entering the abstraction reach are ignored.

309) The Sediment Report concludes that the only potentially more than minor sediment related effect of the Scheme stems from an increased risk of transient deposition of fine sediment in the abstraction reach downstream from Morgan Gorge during extended periods when the residual flow is steady at 3.5m³/s.¹⁸¹ The significance of this is explained in the assessment in the Freshwater Ecology Report (i.e., it may, from time to time, impact on the quality of habitat for biota, such as blue duck, fish, invertebrates, and periphyton, occupying the channel margins).

310) A strategy to manage this potential effect involves monitoring fine sediment accumulation in the abstraction reach and flushing any excessive accumulations by temporarily reducing the take to the Power Station.¹⁸²

311) The Applicant has proposed conditions, which include undertaking flushing trials, and utilising the results of these trials to develop a FlushMP for the abstraction reach. The AEE concludes that with the FlushMP in place, effects associated with potential sediment build-up in the abstraction reach are expected to be less than minor.¹⁸³

(3) Sand deposition downstream of powerhouse from desander flushing

312) The Sediment Report estimates that approximately 375 tonnes (250m³) of sand will be flushed each time the desander is cleared. The desander sand entrapment analysis¹⁸⁴ indicated that a flush should be required 8.4 times per year (every 6.2 weeks) on average. It notes that a natural high flow event of the same frequency as this desander-flushing (peak discharge exceeding 343m³/s) would carry a sand load of at least 4,120 tonnes. It concludes that the flushed sand would, therefore, increase this

¹⁸⁰ AEE, Appendix 19 – Sediment Report, Figure 3-2.

¹⁸¹ AEE, Appendix 19 – Sediment Report, Section 6.1.

¹⁸² AEE, Appendix 19 – Sediment Report, Section 6.1.

¹⁸³ AEE, Section 6.7.1.2.

¹⁸⁴ AEE, Appendix 19 - Sediment Report, Appendix E.

event sand load by no more than 9%. These changes to the natural sand load would be well inside the natural factor-of-10 (possibly 100) variation in suspended sediment load observed at Kiwi flat amongst runoff events.¹⁸⁵

- 313) The Sediment Report concludes that, provided that desander flushes are done during natural runoff events of an adequate size, effects will be “no more than minor”.¹⁸⁶
- 314) The Applicant has proposed conditions to undertake desander sediment trials¹⁸⁷ in the event that it proposes to operate with more flexibility and flush the desander at lower flows. The results of these trials will be presented in a Desander Flushing Trial Report, which will include confirmed desander flushing event parameters which, in turn, can be incorporated into the SOMP.

(4) Water clarity changes due to Scheme operations

- 315) The Sediment Report states that the only potentially noticeable effects on water clarity during normal Scheme operations would be during baseflows when the residual flow in the abstraction reach was steady at 3.5m³/s.¹⁸⁸ In that state, enhanced fine sediment settling from suspension is expected along the abstraction reach which would actually increase the clarity of the flow out of the abstraction reach.
- 316) Due to sediment removal in the desander, the tailrace outflow is expected to be slightly less turbid overall. The AEE stated that the Scheme should only reduce water clarity during five periodic operations:
- a) *Channel maintenance works at the intake structure after floods:* However any such effect would be minor relative to the clarity reductions associated with natural freshes and floods and the effect of such works could be mitigated by limiting the rate of gravel shifting/excavation, working if safe and practical at higher river flows (when the “signal” of the works would be diluted), and minimising machine operation in-channel when possible.
 - b) *Maintenance of the Macgregor Creek road-crossing after floods:* The effect would be minor relative to the clarity reductions associated with natural freshes and floods, particularly after limiting machine earth-moving rates and minimising in-channel operations whenever possible.
 - c) *Desander flushes:* Effects at the tailrace are expected to be less than minor provided that the flushes occur during natural run-off events. Changes in water clarity are expected to be hard to discern visually because of the high ambient suspended mud load of the river during the flushing event and the estimated low proportions of mud in the sediment trapped in the desander. The flushed sand itself should have low impact on water clarity because the sand coarser than 300 microns that is targeted by the desander has much less impact on water clarity than does suspended mud.

¹⁸⁵ AEE, Appendix 19 - Sediment Report, Figure 2-2.

¹⁸⁶ AEE, Appendix 19 - Sediment Report, Section 3.3.

¹⁸⁷ AEE, Section 6.7.1.4.

¹⁸⁸ AEE, Appendix 19 - Sediment Report, Section 3.4.

- d) *During any engineered flow releases along the abstraction reach to flush deposited fine sediment in that reach:* The effect on downstream water clarity in the abstraction reach would be well within the bounds of water clarity changes experienced more frequently during natural runoff events and are therefore expected to be minor.
- e) *During emergency Power Station shutdowns:* a rapidly ramped-up flow should have a similar effect on fine sediment remobilisation as would an engineered flush, even in the worst emergency shutdown case. Thus, the water clarity changes experienced with an emergency shutdown should also be minor.

(5) Kiwi Flat aggradation

- 317) The Sediment Report notes that Kiwi Flat exhibits a more complex hydraulic and sedimentation behaviour than would a typical alluvial reach, due mainly to the constricting effect of the narrow entrance to Morgan Gorge, which sets the hydraulic control for flood flows along the lower section of Kiwi Flat. Hydraulic modelling at 1,000m³/s without the weir in place indicates a choked backwater water surface profile extending some 700m upstream (almost as far upstream as Whirling Waters) and aligning with the elevations of the recently deposited sand banks. It also confirms that:¹⁸⁹
- a) Re-running the model with the weir in place made no difference to the 1,000m³/s flood profile, because during floods the weir will be submerged in the backwater reach upstream of the control point that occurs in the Gorge throat. Thus, the weir at its proposed location and with its proposed profile would have a less than minor impact on river processes during large floods along Kiwi Flat.
 - b) The weir’s impact would be seen at lower flows when the weir would set the hydraulic control at the Gorge entrance. Under those conditions, the weir would initially create a backwater that would extend about 200m upstream. The short pond created by the weir would have only a few thousand cubic metres of storage, thus it would fill with cobbly-gravel material quickly, possibly over the first small high-flow event or flood recession, and intersect the natural riverbed profile about 300m upstream from the weir. The Sediment Report confirms that this would be the likely upstream extent of the weir’s influence on channel morphology at flows when the Gorge does not choke, and the width of the bed-level regrading would be confined to a relatively narrow and incised normal flow channel.
 - c) Given that these effects would be limited spatially to within a few hundred metres upstream of the weir and would be small compared with the natural morphological variability associated with large, Gorge-choking floods and erratic sediment supplies, the Sediment Report concludes that overall, the effects of the weir on channel form and behaviour at Kiwi Flat would be minor.
 - d) The Applicant proposes future LiDAR surveys of Kiwi Flat, repeated on a 5–10 yearly basis, to verify this projection when compared with the LiDAR survey of Kiwi Flat that was done in November 2024.

¹⁸⁹ AEE, Appendix 19 – Sediment Report, Section 3.5 and Figure 3-3.

(6) Bank erosion opposite the Power Station

- 318) The Sediment Report notes that in relation to the potential for increased bank erosion opposite the Power Station due to concentrated flood flows associated with the construction of the floodwall, the modelling of the 100-year recurrence interval flood showed that the floodwall would induce only small increases in water level (8–17cm) and drag against the Waitaha left bank.¹⁹⁰ While some bank erosion is likely during an event of this size, bank retreat and consequent channel widening by only a few metres would be all that would be required to recover the hydraulic conditions without the floodwall.
- 319) At the mean annual flood discharge, the modelling showed that all the flow would just be contained by the Waitaha channel and would not be concentrated by the floodwall. Thus, the hydraulic effects of the floodwall would only occur with floods with recurrence intervals exceeding ~2.3 years, and even during the largest of those events, bank retreat extents would be short and naturally mitigated by self-armouring.
- 320) The Sediment Report concludes that the effect of the floodwall on bank erosion of the left bank across from the Power Station would be less than minor. It also concludes that the riverbank opposite the Power Station should not be eroded by spray from the emergency bypass valve since its discharge is to be directed downstream, not towards the bank. This requirement is incorporated into the Applicant's proposed conditions.¹⁹¹

(7) Geomorphic effects of gravel extraction

- 321) The assessment of the gravel extraction proposed from the Waitaha riverbank immediately downstream from the Macgregor Creek confluence showed that the total extracted gravel volume of up to 23,000m³ would be at most 61% of the Waitaha River's mean annual bedload. In addition, the Sediment Report notes that the frequent shifting of braids in the extraction reach signals that the bar surfaces where extraction will occur beside the Waitaha are likely to be "worked-over" by the river within several years, and possibly sooner, depending on what floods occur after the extraction.
- 322) The Report also notes that, when diffused downstream along the 14km span of braided channel to the SH6 bridge, the extracted volume would only induce a temporary average riverbed lowering of 3 mm.¹⁹² It therefore concludes that the impact of the proposed extraction on the local channel morphology and gravel transport would be short-lived and minor, and the downstream effects less than minor.

Conclusions on sediment related effects of the Scheme

- 323) Given all of the above, overall the Sediment Report concludes the Scheme's impact on sediment transport in the Waitaha River will be limited.

¹⁹⁰ AEE, Appendix 19 - Sediment report, Section 3.6.

¹⁹¹ AEE, Section 6.7.1.5.

¹⁹² AEE, Appendix 19 - Sediment Report, Section 3.7.

DOC s.51 Report

- 324) Following its review of the Application materials, DOC agreed with the Applicant that the effects on river sediment transport and river morphology can be adequately management through the proposed management plans and conditions.¹⁹³

Comments received from invited parties

- 325) No invited parties directly commented on matters relevant to this topic.

Response to RFIs

- 326) In response to RFI#2 the Applicant provided the following information of relevance to sediment transport and river morphology:¹⁹⁴
- a) Dr Clunie confirmed that the desander will be pressurised when the Scheme is in operation. Within the desander, flow velocities will reduce to around 0.2m/s, encouraging the settling of sediments of sizes down to 0.3mm.
 - b) Dr Clunie stated that flushing of settled material from the desander system is proposed using the Sedicon slotted pipe sediment extraction system. The piped system leads to a sediment sump at the downstream end of the desander chamber. From the sump, an embedded sediment bypass pipe extending along the waterway tunnel and then down the access tunnel allows flushing of the desander, with sediment discharged downstream to the station tailrace.

Technical peer review

- 327) As noted earlier in this Decision, we engaged Dr Tunnicliffe to undertake a peer review and provide us with advice on fluvial geomorphological matters.
- 328) In his Peer Review Report, Dr Tunnicliffe identified several points in the Applicant's sediment assessment methodology that he considered undermined the conclusion that effects will be "less than minor." These related to:
- a) The characterisation of bedload transport and its partitioning relative to suspended load: Dr Tunnicliffe noted that the Applicant's estimates of bedload (approximately 5-6% of total sediment load) are derived from an empirical relationship with the nearby Whataroa River. He contended the Applicant's estimate is likely to be biased low for the intake area of the Waitaha River. He noted that bed load proportions are highly uncertain and vary from event to event, and no measurements have been taken. Given the Waitaha's modest glacier cover (6.6%), proximity to mass-wasting runout processes, steep gradient ($S \approx 0.015$), and flood-dominant transport regime, higher proportions (10-15%+) should be considered, leading to important implications for intake operability and downstream sediment continuity.
 - b) The system-scale implications of locating the intake at a critical sediment connectivity node: Dr Tunnicliffe stated that the proposed intake is located at the governing node of the Waitaha's sediment system, where Kiwi Flat —a laterally unconfined, low-gradient alluvial reach — transitions abruptly into the narrow

¹⁹³ DOC s.51 Report, Appendix C – Concessions Report, at [6.3.13.6].

¹⁹⁴ Westpower Memorandum #6, 16 January 2026, Attachment A.

bedrock constriction of Morgan Gorge. Under natural conditions, sediment supplied from steep headwaters is stored transiently across Kiwi Flat and episodically exported through Morgan Gorge during favourable flow conditions, generally on the rising limb of flood hydrographs. The introduction of a weir at this location would modify this critical control point by reducing the effective longitudinal slope and extending backwater effects, shifting sediment delivery from a semi-continuous, event-driven process to a more pulsed, intervention-dependent regime.

- c) The treatment of sediment transport dynamics in the abstraction reach: The principal consequence of locating the intake at this sediment connectivity node is an elevated and ongoing requirement for mechanical in-river maintenance. These effects arise from system-scale geomorphic controls rather than local design detail. Dr Tunnicliffe contended that the Applicant's documentation does not provide:
- i) quantitative grain-size distributions across Kiwi Flat and at the Gorge entrance;
 - ii) calibrated morphodynamic modelling under rising and falling hydrograph limbs;
 - iii) a clearly articulated coarse sediment and debris management strategy; or
 - iv) an operational maintenance plan describing contingencies for floods of varying magnitude. In his opinion, without this information the Panel cannot assess whether the Scheme can maintain sediment continuity without frequent mechanical excavation.
- d) The inadequacy of proposed adaptive management as a substitute for robust baseline assessment: Dr Tunnicliffe noted that the Waitaha River supports populations of whio (blue duck), classified as Nationally Vulnerable. Whio require clean, fast-flowing water with low sediment loadings and diverse invertebrate communities. The Scheme's operational regime—characterised by reduced and stabilised flows, increased fine sediment residence time, periodic artificial turbidity pulses, ongoing in-stream works, and potential disruption to substrate composition from interrupted bedload supply—is inconsistent with these habitat requirements.

329) In conclusion, Dr Tunnicliffe assessed the overall effects profile as more than minor. In Dr Tunnicliffe's opinion, the Applicant's conclusion of "less than minor" effects rests on optimistic assumptions about sediment dispersal, a likely underestimate of bedload proportions, reliance on spatial averaging that obscures localised impacts, and faith in adaptive management despite well-documented limitations. He contended that the precautionary principle, appropriate given the presence of threatened species and the irreversibility of some potential effects, supported a more conservative assessment.

- 330) Mr Paul Morgan also provided some comments on fluvial geomorphological matters, noting that:¹⁹⁵
- a) there is no significant analysis of the quantities, size, and location of coarse sediment, how it will be managed, or how the structure and operation will be affected as that occurs;
 - b) a 30mm to 40mm screen opening will result in much of the debris in the flow being trapped in the intake; and
 - c) there is little evidence of the intake design taking account of the physical processes of water, sediment and debris combined with the important values and environmental, cultural, social and safety needs to achieve the best outcomes.
- 331) In response to the Panel’s question regarding whether the intake structure is going to pass sediment reliably, Mr Morgan stated that:¹⁹⁶
- a) There are limited details of the effects of deposition and mobilisation, and effects of a weir constructed across the river. The processes of deposition including location, material size, quantities and how that relates to the operation of the intake are not presented.
 - b) He had concerns relating to coarse sediment being deposited in front of and within the intake.
 - c) The desander system regarding velocities and storage of sand more than 0.3mm in diameter and the sluicing of it appeared to be a reasonable system (for sand).
 - d) The velocity within the desander when clean will be in the order of 0.25- 0.3m/s, noting that medium sand will generally deposit for velocities below approximately 0.5m/s. The sluicing of the desander will increase velocities that should remobilise sand but is limited as to what it can achieve with much coarser sediment.
 - e) Given the risks associated with coarser sediment and debris management at the Site, and given its alpine West Coast River environment, he would have expected to see detailed analysis of these issues as they could have very significant operational impacts.
 - f) While the proposed sluice gate is likely to be able to move coarse sediment close to the sluice opening, it is unclear from the Application how far upstream the sluice would be effective in moving coarse sediment.
 - g) He had concerns about any coarser sediment that deposits between the intake and the start of the desander, or even in the desander, which will include gravel

¹⁹⁵ Waitaha Hydro Power Review of Intake Engineering and Fish Passage, Paul Morgan – River and Fish Engineering Solutions Ltd, 26 January 2026.

¹⁹⁶ Waitaha Hydro Power Review of Intake Engineering and Fish Passage, Paul Morgan – River and Fish Engineering Solutions Ltd, 26 January 2026, at [7.1(b)].

and rocks of various shapes, and whether such material can move through a 30-40mm opening between screen bars.

Applicant response to peer review

- 332) In response to the Peer Review Reports, the Applicant provided a detailed response comprising a legal memorandum, a statement from Dr Murray Hicks, with additional material included in the statements of by Mr Rodger Griffiths, Mr Ian McCahon, Mr Martin Doyle, Mr Jeremy Kent-Johnson, and Dr Dougal Clunie.¹⁹⁷
- 333) In his response Dr Hicks contended that the effects of the Scheme on the river geomorphology and processes “will not be as dire as Dr Tunnicliffe predicts”, and stated that he maintained his view that the sediment related effects on the river’s physical environment, after any mitigation triggered by monitoring, will be no more than minor.¹⁹⁸
- 334) Dr Hicks also responded specifically to the eight key issues raised by Dr Tunnicliffe in his review, as follows:¹⁹⁹
- a) In relation to bedload proportion and estimation methodology, Dr Hicks accepted that the bedload transport rates in his Sediment Report were likely underestimated. However, based on sensitivity analyses undertaken, and that bedload estimates had not been utilised in the intake design to date, he was satisfied that the current concept design will allow bedload transfer into Morgan Gorge without the need for ongoing artificial bypassing and that it will not promote extensive persistent aggradation of bedload over Kiwi Flat. Dr Hicks also considered that the methodology retained flexibility to be modified as informed by the more detailed bedload investigations planned for the next design stage.
 - b) With regard to sediment connectivity at Morgan Gorge, Dr Hicks strongly disputed Dr Tunnicliffe’s suggestions that the weir will alter the “balance” of bedload transfer down and out of Kiwi Flat, shifting the reach from transient sediment storage to ongoing aggradation requiring mechanical intervention.
 - c) In regard to altered flow regime and geomorphic effectiveness, in Dr Hicks’ opinion even relatively modest “residual floods” down the abstraction flow reach should, along with less common large floods, maintain the capacity to flush fine sediment from the bed of the residual flow channel. Therefore, the geomorphic effectiveness of the Waitaha at transporting sediment and delivering ecological functions along the abstraction reach should not be impaired by the diversion of flows when the natural river flow is under 250m³/s. Monitoring and adaptive management conditions proposed in relation to the FlushMP and SOMP will mitigate any unforeseen adverse effects.
 - d) In relation to the deposition of fine sediment and subsurface infiltration, Dr Hicks contended that subsurface infiltration, particularly of cohesive sediment that resists re-entrainment, is unlikely given the dynamic nature of the steep,

¹⁹⁷ Westpower Memorandum #10, 10 February 2026, Attachments 2-7.

¹⁹⁸ Westpower Memorandum #10, 10 February 2026, Attachment 6, at [2].

¹⁹⁹ Westpower Memorandum #10, 10 February 2026, Attachment 6, at [9], [28], [30(c)], [33(c)], [37(b)], [39(a)], [44] and [47].

bouldery abstraction reach, with frequent floods and lack of slow flowing “pools”, and the non-cohesive nature of the sediments primarily involved (i.e., only a relatively small clay fraction had been observed on the bed).

- e) Dr Hicks disagreed with Dr Tunnicliffe that the desander flushes would deliver an unnatural pulse of 375 tonnes of sand and that there would likely be times when the desander needs flushing but a suitable river flow event capable of on-flushing the sand down the river is not naturally forthcoming. Dr Hicks opined that some degree of “unnaturalness” is unavoidable in the Scheme’s operation, but synchronising the desander flushes with natural runoff events aims to mitigate this as far as practical.
- f) With regard to the limitations of visual monitoring, Dr Hicks continued to support the visual monitoring approach as proposed without quantitative monitoring of embeddedness. The fine sediment cover change tolerance for triggering adaptive management is a Waitaha-specific criterion that acknowledges the expected variability in the reference state and can be set within the FlushMP once the baseline dataset had been collected and the baseline precision determined.
- g) Dr Hicks did not agree with Dr Tunnicliffe’s assertion²⁰⁰ regarding reliance on adaptive management as the primary safeguard against adverse effects. Dr Hicks contended that the primary issues around continuity of sediment transfer are being dealt with by the weir and sluice/intake design, the SOMP, and that the Waitaha River has the physical capacity to transport considerably more sediment than is supplied to it. He supports the management regime as set out in the proposed conditions, and the requirement to include operational and maintenance procedures in the SOMP.
- h) In relation to long-term maintenance dependency, Dr Hicks contended that the in-channel maintenance works are primarily to train the river flow towards the intake and sluice channel as needed. He confirmed that the primary means of bypassing gravel will occur via the sluice channel and during larger flow, directly over the top of the weir itself.

335) Mr Doyle noted the frequency and magnitude of floods as a key characteristic of this locality, in particular the unusually high ponding effect that occurs across the bottom third of Kiwi Flat, creating slow velocities while also ‘drowning out’ the intake location.²⁰¹ He noted that while small floods can pass through Morgan Gorge with ease, at a flow of approximately 150m³/s, the constriction of the Gorge creates a choke, and water quickly begins to pond up above this point, until the additional head of the water is able to overcome the increased friction of the Gorge walls.

336) Mr McCahon stated that the natural Morgan Gorge choke controls the water levels during large floods at least as far upstream as Whirling Water and probably much of Kiwi Flat.²⁰² Mr McCahon confirmed that the choke occurs at a flow of between about 150 and 250m³/s, with the hydraulic control shifting from the rock platform to the

²⁰⁰ Statement of Evidence of Dr Jon Tunnicliffe on River Geomorphology, 23 January 2026, at [11].

²⁰¹ Westpower Memorandum #10, 10 February 2026 - Attachment 7: Response of Martin Doyle, at [5].

²⁰² Westpower Memorandum #10, 10 February 2026 - Attachment 3: Response of Ian McCahon, at [10].

Gorge corresponding to a large increase in water depth and decrease in flow velocity upstream of the Gorge entry.²⁰³

Joint empanelment

- 337) At the joint empanelment, the key issues raised in the Peer Review Reports and the Applicant's responses to those reports were discussed. While the additional information had narrowed the areas at issue, there remained disagreement between the Applicant's witnesses and the peer reviewers on a number of points.
- 338) The first related to the effective management of sediment loads through the system. Dr Tunnicliffe was concerned that measures proposed may not be effective without interventions to maintain the passage of the material.²⁰⁴ In contrast, Dr Clunie confirmed that:²⁰⁵
- a) he had a high level of confidence that the final design will effectively manage sediment loads;
 - b) the necessary components to allow effective sediment management had been included in the preliminary design;
 - c) sediment modelling of Kiwi Flat and detailed modelling of the intake area to be undertaken in future design phases would allow for optimisation of those components, in particular refining the operational regime of the sluice gate;
 - d) he maintained high confidence that the desander design will be effective and noted that the flushing system was supported by Dr Tom Jacobson, an expert with significant international experience;
 - e) sediment aggregation will be limited to the Headworks local area, in the order of 10's of metres;
 - f) the effect of continuity of sediment passage into Morgan Gorge would not change as it is not dependent on sluicing operations - sediment not passed through the intake channel will instead pass over the weir; and
 - g) there is sufficient capacity within the desander to allow flexibility in its flushing operation to deal with the variability in sediment load and hydrology, and as such, effects from the desander flushing will remain consistent with those in the Application.
- 339) Mr Kent-Johnston also clarified that the preliminary design did include 2D modelling of the entire Kiwi flat area through a range of gates. Although sediment modelling would be included in subsequent design stages, Mr Kent-Johnston was confident, based on the robust engineering completed, that the velocities and shear stresses at the gates could be achieved.²⁰⁶

²⁰³ Westpower Memorandum #10, 10 February 2026 - Attachment 3: Response of Ian McCahon, at [9].

²⁰⁴ Joint Empanelment Transcript, 13 February 2026, Dr Jon Tunnicliffe, at 11:25, and 16:08.

²⁰⁵ Joint Empanelment Transcript, 13 February 2026, Dr Dougal Clunie, at 9:05, 10:12, and 13:51.

²⁰⁶ Joint Empanelment Transcript, 13 February 2026, Jeremy Kent-Johnston at 30:22.

- 340) The second issue related to bed load rates and whether they should have been considered in the design to date. Dr Hicks confirmed that no bed load rates had been used in the intake engineering design to date, and that bed load transfer is to be included in the CFD modelling at the next design phase. He noted that his estimates of bed load as a proportion of suspended load were increased by a factor of 10 as part of his sensitivity analysis, and were therefore conservative.²⁰⁷ Dr Clunie added²⁰⁸ that the majority of bed load will pass over the weir and to some extent through the intake channel via the open sluice gate. In his opinion, bed load quantification is an operational issue rather than an effects-based issue. He also added that the number of times that mechanical intervention is required to assist the flushing system relates to the variable hydrology, and variable sediment loads in the system.²⁰⁹
- 341) The third issue related to whether the construction and maintenance of the berms required consideration.²¹⁰ Dr Clunie stated that the Applicant does not plan to create berms to channel the flow, or to shape the river unnaturally upstream of the intake.²¹¹ Mr Morgan opined²¹² that this should have been tested at the preliminary design stage. Dr Clunie disagreed with Mr Morgan on this point.
- 342) The fourth issue related to sediment flushing. Dr Hicks confirmed that the Morgan Gorge flushing program is designed to flush fine sediment from the river between the toe of Morgan Gorge and down past the Power Station.²¹³ The specifications for release would be refined during a program of trials in the first year of operation. Those trials would assess the effectiveness of the flushing process and possibly involve a review of the specifications.
- 343) The fifth issue related to monitoring. Dr Hicks outlined the rationale for preferring surface monitoring rather than embeddedness, including that it is relatively easily done, and that most of the deposition will occur as a surface drape rather than infiltrating into the substrate. In his opinion, it is a conservative proxy that mitigates the uncertainty.²¹⁴ Ms McMurtrie added that in her opinion relying on embeddedness may be less precautionary than sufficient measurements of fine sediment.²¹⁵ In response, Dr Tunnicliffe stated that it would be prudent to undertake an assessment of how fine sediment accumulation or embeddedness might occur both as a baseline and going forward.²¹⁶ Dr Hicks disagreed with Dr Tunnicliffe on this point.
- 344) The sixth issue related to the effect of the weir on sediment emplacement. Mr Doyle confirmed that 150m³/s is a break point between two phases of river flow and as the choke and ponding develops, this enables the change in sediment deposition.²¹⁷ He

²⁰⁷ Joint Empanelment Transcript, 13 February 2026, Dr Murray Hicks, at 19:44.

²⁰⁸ Joint Empanelment Transcript, 13 February 2026, Dr Dougal Clunie, at 21:58.

²⁰⁹ Joint Empanelment Transcript, 13 February 2026, Dr Dougal Clunie, at 24:17.

²¹⁰ Joint Empanelment Transcript, 13 February 2026, Dr Jon Tunnicliffe, at 26:08.

²¹¹ Joint Empanelment Transcript, 13 February 2026, Dr Dougal Clunie, at 26:29.

²¹² Joint Empanelment Transcript, 13 February 2026, Paul Morgan, at 27:05.

²¹³ Joint Empanelment Transcript, 13 February 2026, Dr Murray Hicks, at 32:58.

²¹⁴ Joint Empanelment Transcript, 13 February 2026, Dr Murray Hicks, at 35:48.

²¹⁵ Joint Empanelment Transcript, 13 February 2026, Shelley McMurtrie, at 38:44.

²¹⁶ Joint Empanelment Transcript, 13 February 2026, Dr Jon Tunnicliffe, at 40:45.

²¹⁷ Joint Empanelment Transcript, 13 February 2026, Martin Doyle, at 44:08.

stated that once the Gorge is choked and ponding has occurred, there is very little hydrological effect apart from some very localised changes to velocity right at the weir itself. In reply, Dr Tunnicliffe contended that notwithstanding that, the movement of the sediment will be altered by the emplacement of the weir.²¹⁸

- 345) In overall response, Dr Tunnicliffe stated that he still had concerns regarding the characterisation of the sediments and the sediment effects, including the level of uncertainty in regard to the annual sediment yield. These included diminished capacity for onward transport and deposition, somewhat diminished connectivity, the maintenance regime, the ecological effects and the overall trajectory of the system.²¹⁹ His position was that a robust modelling framework and data set can address some of these concerns. In response, Dr Hicks accepted that it is a very complex environment, but he considered that Dr Tunnicliffe's modelling is misleading in relation to what happens during choking events. Dr Hicks contended that the time lapse photography shown in Figure 2 of his statement of evidence indicated what the real prototype situation actually does and how it behaves.²²⁰
- 346) For completeness we note that following the joint empanelment the Panel received a memorandum from DOC attaching email correspondence with the Applicant in relation to the number of times mechanical in-stream works would be required following floods. The email correspondence from the Applicant indicated that mechanical intervention would likely be required between five and 15 times per annum following floods of 250m³/s or greater, but that there was a possibility that it may also be required for floods smaller than 250m³/s, and therefore flexibility was sought. The effects of this excavation are addressed in other parts of this Decision.

Evaluation and findings

- 347) The Panel has carefully considered the potential effects associated with sediment transport and fluvial geomorphology, in the proposed construction and operational phases of the Scheme.
- 348) The Panel found the Peer Review Reports useful in identifying information gaps and issues that the Applicant was then able to respond to more fully. We consider that taken together the detailed assessments undertaken by the Applicant, its RFI responses and the outcomes of the Joint Empanelment Hearing provide sufficient information to understand the existing environment, and the nature, level and magnitude of effects of the Scheme on sediment transport and fluvial geomorphology.
- 349) While there was not agreement between the Applicant's experts and the peer reviewers on every issue, we find that the outstanding matters identified in the Joint Empanelment Hearing are matters that can be appropriately addressed in the detailed design phase where the Applicant proposes to use three-dimensional CFD modelling of flow and sediment transport to determine the final arrangement/shaping of the Headworks. This approach is reflected in relevant conditions.
- 350) In relation to the issue of bedload, the conditions suggested by the Applicant (and which we have imposed) include a requirement that the Final Weir and Intake Structure

²¹⁸ Joint Empanelment Transcript, 13 February 2026, Dr Jon Tunnicliffe, at 46:24.

²¹⁹ Joint Empanelment Transcript, 13 February 2026, Dr Jon Tunnicliffe, at 50:40.

²²⁰ Joint Empanelment Transcript, 13 February 2026, Dr Murray Hicks, at 54:40.

Design Report, provide information that confirms that the structure will “manage and pass bedload sediment”. This information will also form part of WCRC’s consideration during their certification process.

- 351) We are satisfied that that monitoring and adaptive management conditions proposed in relation to the FlushMP and SOMP will appropriately manage effects.
- 352) Overall, the Panel finds that any adverse effects of sediment transport and fluvial geomorphology can be adequately avoided, remedied and mitigated through the design of the Scheme, through the measures set out in the management plans and through adherence to the conditions we have imposed.

F8: Vegetation

Introduction

- 353) Effects on terrestrial vegetation are assessed in the Vegetation Report²²¹ and summarised in the AEE.²²²
- 354) The Vegetation Report compiles survey information from a range of documents and field investigations from 2012 to 2025 to accurately describe the vegetation types present within the Scheme footprint and adjacent and surrounding areas.
- 355) Full vegetation descriptions within the Scheme footprint are found within Appendix D1 and depicted in Maps 2 to 5 (covering vegetation Areas 1 to 4) of the Vegetation Report.
- 356) A summary of significant vegetation types is provided in Table 1.²²³ Indigenous vegetation in Areas 1 and 2 form part of the continuous forest type in the wider Waitaha Valley and is considered significant, whereas Area 4 has a relatively small area of indigenous vegetation that is also considered significant.
- 357) Table 2 provided a summary of the indigenous vegetation areas impacted as follows:²²⁴
- a) Area 1: 1.01ha construction footprint, 0.13ha permanent footprint, and 0.09ha riparian construction footprint;
 - b) Area 2: 5.58ha construction footprint, 4.13ha permanent footprint, and 0.59ha riparian construction footprint;
 - c) Area 3: no impact to indigenous vegetation; and
 - d) Area 4: 0.21ha construction footprint, 0.21ha permanent footprint, and 0.03ha riparian construction footprint.

²²¹ AEE, Appendix 20 – Vegetation Report, TACCRA Ltd, June 2025.

²²² AEE, Section 6.8.

²²³ AEE, Appendix 20 – Vegetation Report, Table 1.

²²⁴ AEE, Appendix 20 – Vegetation Report, Table 2.

- 358) The Applicant later simplified the total area of indigenous vegetation permanently removed and specified that it must not exceed the following:²²⁵
- a) Headworks – 0.13ha;
 - b) Power Station site (including tailrace) – 0.67ha;
 - c) Access road / transmission line south of Macgregor Creek – 3.46ha; and
 - d) McLean Farm including Construction Staging Area 3, spoil disposal areas, access road, transmission lines and gravel screening – 0.21ha.
- 359) The Applicant also subsequently updated the above summary of indigenous vegetation impact to include the alternate tramping route which would result in approximately 615m² of indigenous vegetation being disturbed or removed within Area 2.²²⁶
- 360) A percentage scale has been used to compare impacted indigenous vegetation type versus remaining indigenous vegetation type in the wider Waitaha catchment and ecological district. A contextual reference has also been made within the spatial scale of natural disturbance (i.e., what would occur if the Scheme was not there).
- 361) The effects on indigenous vegetation are summarised as:
- a) Area 1: negligible (less than minor) and within the spatial scale of natural disturbance;
 - b) Area 2: minor and within the spatial scale of natural disturbance;
 - c) Area 3: negligible as there is no impact to indigenous vegetation within this area; and
 - d) Area 4: negligible (less than minor).
- 362) A range of mitigation measures have been proposed for the construction and operational phases which we summarise as:
- a) standard machinery hygiene practices;
 - b) defining the route of the access track through Area 2 in detailed design to avoid where practicable large hardwood trees (60 + dbh)²²⁷ and podocarp trees (30 + dbh) and wetlands;
 - c) weed monitoring and control in Areas 1 and 2;
 - d) rehabilitation of the staging area (including the access track from the Headworks to the staging area) in Area 1, the staging area in Area 2 and the location of the Power Station and tunnel portals; and

²²⁵ Proposed resource consent condition, 10 February 2026 – Condition 19.

²²⁶ Westpower Memorandum #12, 17 February 2026.

²²⁷ Dbh being diameter at breast height.

- e) branch trimming to avoid total tree loss for transmission line construction and geotechnical testing.
- 363) The overall level of effect of the Scheme was assessed as being no more than minor for Areas 1 and 2, and negligible for Areas 3 and 4 once mitigation has been applied. Offset or compensation actions have been stated as not being warranted.

DOC s.51 Report

- 364) The DOC s.51 Report included comments regarding the effects on vegetation. In summary these were that:²²⁸
- a) most adverse effects will occur during construction but in some cases ongoing adverse impacts will remain;
 - b) there are no rare or unusual species of vegetation within the areas to be cleared and those present are well represented in the surrounding conservation lands but noting that kāmahi and southern rātā are taonga species;
 - c) during the construction phase there will be adverse vegetation effects due to the significant area of vegetation to be removed along the access road route and at the Power Station location;
 - d) residual risk of weed incursion remains and the conditions of consent and VMP need to be updated to include standard practice and weed control methodologies;
 - e) the proposed mitigation measures are satisfactory for vegetation management and DOC are satisfied that adverse effects on vegetation can be adequately avoided, remedied and mitigated; and
 - f) it should have a certification/approval role in relation to the VMP.

Comments received from invited parties and Applicant response

- 365) The Conservation Board commented that there were no maps showing the vegetation clearance and that computer generated maps indicating the modelled cleared areas would provide a clearer indication of the impact of vegetation clearance.
- 366) DOC reaffirmed the comments made in its s.51 Report (which have been captured above) and provided updated conditions relating to a certification/approval role for the VMP and that any plants recommended in the VMP are to be locally genetically sourced.
- 367) The Applicant did not provide any direct response relating to vegetation matters.

Evaluation and findings

- 368) We consider that the vegetation surveys and effects assessment provide sufficient information to understand the ecological values, level and, magnitude of effects on vegetation within and in proximity of the proposed Scheme footprint.
- 369) There appears to be broad alignment between the Applicant, DOC and the Conservation Board in terms of information provided, effects and measures to address those effects.

²²⁸ DOC s.51 Report, Appendix C – Concessions Report, Section 6.3.14.

In terms of weed management, we note that the conditions we have imposed include requirements that:

- a) all machinery has to be cleaned prior to its arrival on Site so that it is free of weeds, seeds and other plant material; and
 - b) a weed monitoring control plan be included in the VMP.
- 370) The two outstanding matters as between the parties relate to the rehabilitation of the edge of the access road through Area 2 and whether DOC should have a certification role.
- 371) In terms of the rehabilitation of the access road edge, we consider that this is a minor gap in information which can be rectified by a condition of consent. We have imposed a condition to address this.
- 372) As we have addressed elsewhere in this Decision, we consider it is not appropriate for there to be a dual certification role in relation to management plans, including the VMP. For the VMP we consider this certification role appropriately sits with WDC. However, DOC's input will still be required to be obtained prior to the VMP being submitted for certification. We have included a condition of consent to address this.
- 373) With the conditions we have imposed, which include a requirement for a VMP, and which are largely agreed between the parties, we are satisfied that effects on vegetation can be appropriately addressed.

F9: Bats

Introduction

- 374) The assessment of effects on long-tailed bat (*Chalinolobus tuberculatus*) were addressed in the Terrestrial Fauna Report.²²⁹
- 375) A regionally significant population of bats have been identified in the Waitaha Valley (lower mid-valley) based on records from the DOC bat database and historic surveys between 1994 and 2002.
- 376) Long-tailed bat surveys were undertaken in November and December 2012 over three separate occasions. The Terrestrial Fauna Report noted that no further long-tailed bat surveys were undertaken in 2024 due to seasonality constraints and because it was considered that the presence of long-tailed bats could still be inferred from previous surveys.
- 377) The long-tailed bat surveys found bat activity at Kiwi Flat, the river terraces below Morgan Gorge, along the proposed access road and transmission line corridor, between Morgan Gorge and Macgregor Creek and below the Macgregor Creek confluence. The highest encounter rates were noted as being at Kiwi Flat (Headworks area and upper Kiwi Flat). The Terrestrial Fauna Report also noted the possibility that this long-tailed bat population could have maternity roosts in mature vegetation at Kiwi Flat and Morgan Gorge.

²²⁹ AEE, Appendix 21 - Terrestrial Fauna Report, Rhys Buckingham, July 2025.

- 378) Long-tailed bats have a DOC threat ranking of nationally critical and as a result the indigenous ecosystems within the Application's proposed footprint are deemed to be significant in terms of habitat value for long-tailed bats based on the significance criteria outlined in Table 1.²³⁰ The Report states that this population of long-tailed bat is of particular significance based on threat ranking and high encounter rates.
- 379) The overall effects on long-tailed bats are however considered less than minor due to a combination of avoidance, minimisation and mitigation measures. These proposed measures comprise:
- a) provision of an access and water diversion tunnel to avoid vegetation clearance in an area of high bat activity;
 - b) minimisation of the Scheme's footprint (Areas 1 to 4) with avoidance, where practicable, of potential bat roost trees (i.e., large emergent trees);
 - c) retaining areas with no artificial lighting and where lights are proposed they are to be designed in accordance with bat-friendly lighting specifications for both construction and operation phases of the proposed Scheme;
 - d) management of noise and vibration in sensitive areas relating to long-tailed bats during construction;
 - e) management of vehicle collision risk with long-tailed bats (via a proposed 50km/h speed limit on the access track in Area 2); and
 - f) implementation of a certified BMP which includes mitigation measures for both construction and operational phases of the proposed Scheme.
- 380) In addition, a financial contribution (\$15,000 annually) to an ecosystem programme which includes pest animal control has been offered as a precautionary compensation measure to outweigh any unforeseen adverse effects that may occur.

DOC s.51 Report

- 381) The DOC s.51 Report included comments regarding the effects on bats. In summary these were that:²³¹
- a) The proposed BMP generally aligns with the DOC Bat Roost Protocols, DOC supports the artificial lighting mitigation measures but seek a condition that light colour temperature of 2700k is specified.
 - b) Changes were necessary to the BMP to better align it with the Bat Roost Protocols.²³² In particular, DOC do not support:
 - i) allowing minor variations to the Bat Roost Protocols without DOC approval;

²³⁰ AEE, Appendix 21 - Terrestrial Fauna Report, p.6, Table 1.

²³¹ DOC s.51 Report, Appendix D – Wildlife Approvals Report, Section 8.

²³² DOC Protocols for minimising the risk of felling occupied bat roosts, October 2024.

- ii) “low risk” vegetation being removed at any time of the year without reference to the Bat Roost Protocols; and
 - iii) enabling permission to be sought to remove bat roosts containing bats if they remain after 10 days.
- c) If any bat roost trees are removed which contain bats it would be an offence under the Wildlife Act.

382) DOC also sought a certification/approval role in relation to the BMP.

Comments received

- 383) The Conservation Board supported the recommendations in the Terrestrial Fauna Report for bats, the BMP, and the monitoring and mitigation proposed, but sought that there be a system for reporting of bat harm or deaths.
- 384) The Minister for the Environment recommended amending the BMP to address the impacts of artificial lighting during construction and operation as much as possible.
- 385) DOC and NZCA both recommended that the BMP be updated to align with the Bat Roost Protocols and sought that the width of the permanent access road be reduced to further avoid effects on potential bat roost trees.
- 386) WCRC stated that they had no objection to a dual certification role as outlined in the DOC s.51 Report.

Applicant response to comments

- 387) The Applicant noted that the Bat Roost Protocols have no formal statutory basis and advised that minor variations to those Protocols are needed to reflect the context and circumstances of the Project area. The Applicant considered that a condition requiring DOC approval for minor variations from the Bat Roost Protocols is not required and is more onerous than necessary.
- 388) In relation to lighting concerns, the Applicant proposed a condition that light colour temperature of 2700k is specified.
- 389) The Applicant also agreed to reduce the width of the access track from the tunnel portal on the true right bank of the Waitaha River to the Construction Staging Area (Area 1) to no more than 5m. Although this change was proposed primarily for landscape purposes it would also further reduce the impact on high value bat habitat in proximity to the tunnel portal (Headworks area).

Comments on Panel draft conditions

- 390) In its comments on our draft conditions, DOC sought that the requirement to comply with the Bat Roost Protocols be expanded to “any vegetation clearance”. This was opposed by the Applicant. The Applicant also maintained its request for some exclusions to these Protocols, although the requested exclusions had been reduced in number.
- 391) A summary of these comments (and our responses) are set out in **Appendix G2**.

Evaluation and findings

- 392) There appears to be broad alignment between the Applicant, DOC, the Conservation Board, the Minister for the Environment, and NZCA in terms of the information provided and the level and term of financial contribution provided as a compensation measure.
- 393) We are satisfied that the baseline bat surveys and effects assessment provide enough information to understand the ecological values, nature and level of effects on long-tailed bats within and in proximity to the proposed Scheme footprint.
- 394) Based on the DOC s.51 Report, comments received and the Applicant’s response to comments we accept that effects can be appropriately managed through a BMP which follows standard practice.
- 395) We are satisfied that lighting is limited to the Power Station and Headworks locations only, that external lighting will be manually turned on an ‘as required’ basis, and that the condition imposed reflects this with an external light bulb specification of 2,700k.
- 396) The recommendation in the Terrestrial Fauna Report of applying a 50km speed limit on the access track within Area 2 is an important mitigation measure to reduce potential bat strike. We have therefore ensured that our conditions include this speed restriction.
- 397) The outstanding matters as between the parties, related to the Bat Roost Protocols, and whether DOC should have a certification/approval role.

Bat Roost Protocols

- 398) We disagree with the Applicant in regard to enabling minor variations to the Bat Roost Protocols. The Protocols set minimum standards to address the risk of harm or death to bats. These are standard protocols that apply across the country including in West Coast conditions. In our view, the Applicant has not provided sufficient justification to deviate from the Protocols. Compliance with these Protocols is warranted here due to the Scheme’s footprint containing a significant population of bats and due to their nationally critical threat status. We have therefore included reference to the Bat Roost Protocols (unmodified) in conditions relating to the BMP.
- 399) However, and as noted in response to comments on conditions (**Appendix G2**), we have not accepted DOC’s request to expand the requirement to follow the Bat Roost Protocols for “any vegetation clearance.”. In our view the Bat Roost Protocols are specifically directed at the risk of felling occupied bat roost trees, and state such trees are rare. We consider DOC’s suggested change would significantly broaden the requirement and would be unduly onerous. Notwithstanding this, we have amended the relevant condition to refer to ‘potential’ bat roost trees as opposed to ‘occupied’ bat roost trees to ensure all such trees are considered.

Certification

- 400) As we have addressed elsewhere in this Decision, we do not consider it is appropriate for there to be a dual certification role in relation to management plans, including the BMP. For the BMP we consider this certification role appropriately sits with WDC. However, DOC’s input will still be required to be obtained prior to the BMP being submitted for certification and we have strengthened the condition to require a suitably qualified and experienced person (**SQEP**) (independent of the Project) to assess the BMP following DOC’s input.

Overall conclusion

- 401) With the conditions we have imposed, which were largely as agreed between the parties, we are satisfied that effects on bats can be appropriately addressed.

F10: Avifauna

Introduction

- 402) The assessment of effects for avifauna were addressed in the Terrestrial Fauna and Whio Reports.²³³
- 403) Native bird surveys were undertaken between 2006 and 2024 using the standard 5-minute bird count methodology. Over 40 species were recorded during this period including species that are classified as threatened, at-risk and nationally vulnerable. Three species were listed as of being of conservation importance.
- 404) Baseline whio surveys were undertaken between 2006-2012 (between five and seven survey occasions depending on location) to understand habitat preferences within the Scheme footprint and adjacent parts of the Waitaha River and surrounding tributaries.
- 405) There was no detectable change in native bird distributions or relative abundance between 2006 and 2024 but low encounter rates of kākā, kākārīki, robin and rifleman were noted, presumably from predation pressure.
- 406) A further whio survey was undertaken in 2024 to assess the current population status which confirmed approximately 4 to 5 pairs currently reside within the Scheme area. There was no detectable change in the whio population or territory from the 2006-2012 surveys.
- 407) Whio within the Scheme area are likely to be part of a larger meta population and therefore influenced by immigration (currently declining) from surrounding populations and other variables (climate, flood events, predation, sedimentation, avian influenza) in the wider landscape.
- 408) The habitat within the Scheme footprint is considered significant based on the threatened or at-risk status of native bird species identified and is also potentially significant for non-threatened birds. Furthermore, the riverine habitat within the Scheme footprint is considered highly significant for whio across all relevant criteria.

Effects

- 409) The greatest potential effects on native birds (excluding whio) are predicted to be along the access road and transmission corridor of Area 2 as this is the largest area of intact indigenous vegetation proposed to be removed. The level of effect on native birds is however considered less than minor for both Areas 1 and 2.
- 410) Whio were expressly considered during the optioning phase of the Scheme's preliminary concept with the majority of the whio riverine habitat being avoided, a lower weir profile minimising back-watering effects above Morgan Gorge, the Power Station tail

²³³ AEE, Appendices 21 and 22 respectively.

race location reducing impacts on preferred who habitat within adjacent tributaries, and minimisation of sedimentation from vegetation removal.

- 411) The effects of the Scheme on who are considered in Table 2 of the Who Report, which is divided into pre-construction, construction and operational phases. Four main effects caused by the proposed Scheme are identified as being: noise from blasting, helicopter use, pile driving and sirens.
- 412) It is considered that construction activities will result in the partial or complete displacement of the who pair closest to the Headworks area which has been stated as significant. After mitigation has been applied these effects are considered less than minor with a few being minor positive on who. It is noted that feeding habitat downstream of Morgan Gorge is likely to increase due to lower velocities and that after construction a similar who population is expected to remain in and around the Scheme area.
- 413) The areas of least concern for native birds are Areas 3 and 4 due to the modified nature of the landscape, species that occupy this landscape being highly mobile and limited indigenous vegetation removal being proposed in these areas. The level of effect on native birds was assessed as less than minor to negligible in Areas 3 and 4.

Measures to address effects

- 414) The following mitigation measures were recommended for Areas 1 and 2 (which include the gravel extraction areas):
- a) minimising the removal of large diameter trees (Areas 1 and 2);
 - b) controlling construction noise and lighting;
 - c) vehicle speed restrictions (50km/h) on the access track in Area 2;
 - d) rubbish management; and
 - e) implementation of a certified AMP which includes mitigation measures for both construction and operation phases of the proposed Scheme.
- 415) The following mitigation measures were recommended for who:
- a) seasonal restrictions on helicopter movements based on the who breeding season, restricted locations for helicopter landing and management actions for who in the helicopter landing zone (to the extent practicable);
 - b) a restriction on undertaking stream works maintenance at the Headworks during the who breeding season (to the extent practicable);
 - c) maximum weir height to reduce back-watering effects;
 - d) fish pass design on the weir to enable upstream duckling movement;
 - e) seasonal restrictions on blasting based on the who breeding season and who management prior to blasting;
 - f) minimum flows for the abstraction reach;

- g) rubbish management; and
 - h) implementation of a certified AMP which includes mitigation measures for both construction and operation phases of the proposed Scheme.
- 416) A financial contribution (\$35,000 annually) to an ecosystem programme which supports the West Coast's who population is also proposed to outweigh any unforeseen adverse effects that may occur during operation associated with potential who displacement (noise and feeding habitat loss) and mortality (duckling entrainment).
- 417) A financial contribution (\$35,000 annually) to an ecosystem programme which includes pest animal control has been offered as a precautionary compensation measure to outweigh any unforeseen adverse effects that may occur on biodiversity generally which includes native birds.
- 418) A draft AMP was provided with the Application, and updated by the Applicant on 17 November 2025 (before comments were sought) to clarify that a wildlife approval is sought to disturb, catch and liberate who and to clarify that direct handling of who (by a who specialist) is only required to protect their safety.²³⁴

DOC s.51 Report

- 419) The DOC s.51 Report included comments regarding the effects on avifauna. In summary these were that:²³⁵
- a) generally, the application provides a comprehensive assessment of avifauna values, the surveys undertaken were thorough and well reported, and the proposed construction mitigation measures are adequate for the protection of avifauna;
 - b) the potential presence of kiwi pukupuku within the Scheme area and the electrocution risk for New Zealand falcon from the proposed transmission lines should also be considered;
 - c) overall, the draft AMP is generally appropriate, but DOC has some concerns on nesting deterrent measures and seek further information regarding the effectiveness of these measures;
 - d) while the AMP provides a review provision if who mortality and injury occurs, DOC does not support construction continuing through the review phase, and instead seek construction stops until the review is completed and any recommendations implemented; and
 - e) nest protection measures in the AMP only relate to certain species but these measures should relate to all native bird species found within the Scheme footprint.

²³⁴ Westpower Memorandum #2, 17 November 2025, Attachment 4A.

²³⁵ DOC s.51 Report, Appendix D – Wildlife Approvals Report, Section 7.

Comments received from invited parties

- 420) The Conservation Board commented that there is no mechanism for reporting harm or death of species within the Terrestrial Fauna Report. They support recommendations in the Whio Report but note that whio relocation was not assessed. They consider the AMP to be appropriate.
- 421) The Minister for the Environment recommended amending the AMP condition to require avoidance of helicopter movements during the breeding season.
- 422) DOC considered the measures proposed to protect birds during construction are adequate but reinforce the matters it raised in its s.51 Report.
- 423) NZCA reiterated DOC concerns regarding whio nest deterrents and sought clarification of the effectiveness of the methodology. It also mentioned that it is an offence under the Wildlife Act to disturb or destroy nests of protected species and suggest the Panel take this into consideration.

Applicant response to comments

- 424) In response to the matters raised, the Applicant:
- a) proposed a condition that requires the acoustic data mentioned in the Terrestrial Fauna Report to be reassessed for kiwi presence and supplied to DOC prior to any vegetation being removed on DOC land;
 - b) confirmed that there are no transformers on poles (nesting structure potentially used by New Zealand falcon) within the proposed transmission lines and therefore no risk of electrocution to New Zealand falcon;
 - c) clarified that the AMP is for threatened, at-risk and specified species of conservation importance only and stated that it would be unduly onerous to apply the AMP to all native bird species, and therefore no such changes were proposed;
 - d) stated that it is a reasonable approach to leave details on nesting deterrents to a suitably qualified and experienced ecologist and this has been an accepted approach in a recent Environment Court case; and
 - e) confirmed that in the event of a whio mortality event, the AMP restricts construction from continuing until a review of is completed;
 - f) submitted that it would be unduly onerous to impose any further conditions.

Joint empanelment

- 425) The joint empanelment hearing addressed matters relating to the construction and operational effects of the Scheme on whio. Experts addressing effects on whio were Dr McLennan (Applicant) and Mr Malham (DOC).²³⁶
- 426) Experts were asked about the impact on whio of sediment build up at Kiwi Flat and the operation of the Scheme on whio behaviour.

²³⁶ Joint Empanelment Transcript, 13 November 2026, Part 2, at 57:01 to 1:04:22.

- 427) Dr McLennon stated that the Whio Report had considered the change in sediment dynamics above the Headworks area which resulted in a minor adverse effect and below Morgan Gorge a minor positive effect, with the overall effect being minor (adverse).
- 428) Mr Malham agreed with Dr McLennon. He further stated that the whio pair above the Headworks area is likely to be pushed up to the top end of their territory based on the construction and operational effects of the Scheme. He noted that the feeding area for that pair is likely at the top end of their territory in any event and that this caused territory overlap with up-valley pairs but would not impact the birds significantly. He noted that lower flows in Morgan Gorge are unlikely to result in it being good whio habitat since the riverbed in this area is bedrock. He agreed that lower flows downstream of Morgan Gorge will result in improved habitat for whio in this location.
- 429) Dr McLennon clarified that the territory of the whio pair above the Headworks extends up to the confluence of Whirling Water which is higher quality habitat compared to the Headworks area. He did not consider that this pair will be displaced from their territory but considered that they will spend more time in their upper territory which is already their favoured habitat.
- 430) Experts were also asked aside from the whio pair at Kiwi Flat, whether whio are likely to be affected by changes in sedimentation.
- 431) Dr McLennon stated that the Whio Report considers a worst-case approach that up to two pair of whio will be impacted (territory displacement). He recognised Mr Malham’s comments about potential territory displacement but concluded that it was his professional opinion that this is unlikely and only one pair of whio would be impacted. Mr Malham agreed.

Comments on conditions

- 432) There was a large degree of agreement in terms of the conditions proposed to address effects on avifauna. We address the few remaining issues in our discussion on conditions in Part L below.

Evaluation and findings

- 433) The Panel considers that the baseline avifauna and whio surveys and effects assessment provide enough information to understand the ecological values, level and magnitude of effects on avifauna (and whio) within and in proximity of the proposed Scheme footprint.
- 434) In relation to the issue raised by the Conservation Board about relocation of whio, the Panel consider the mitigation measures outlined in the AMP for whio around site clearance and deterrents prior to construction and operational activities (blasting, pile driving, helicopter activity) are sufficient. The Panel accepts with these measures it is appropriate to rely on self-relocation and no other forms of relocation are warranted.
- 435) In relation to the Minister for the Environment’s request regarding avoiding helicopter activity during whio breeding season, the Panel notes that:
- a) the Whio Report also recommended avoiding helicopter flying during the whio breeding season (September – December), “if practicable”; and

- b) the Applicant proposed a condition restricting flight paths for helicopter trips at all times during construction and operations as far as practicable to the airspace directly above and 30m either side of Morgan Gorge and the Waitaha River upstream of Construction Staging Area 1 to minimise impacts on whio.
- 436) Given whio are classified as a nationally vulnerable species, and as a taonga species of Ngāi Tahu, we consider that:
- a) the helicopter flight path condition is an appropriate restriction, but that the Tributaries upstream of Construction Staging Area 1 should also be included; and
- b) a similar restriction should apply to in-stream works maintenance (i.e., avoiding such activities as far as practicable) during the whio breeding season (September to December).
- 437) We have recommended amendments to the relevant conditions to reflect this.
- 438) The recommendation in the Terrestrial Fauna Report of applying a speed limit of 50km on the access track within Area 2 is an important mitigation measure to reduce potential bird strike. We have therefore included this requirement in our conditions.
- 439) In relation to the following concerns raised by DOC and NZCA:
- a) Kiwi potentially present in the Scheme footprint: The Panel accepts it is appropriate to impose a condition requiring the acoustic recording to be validated and for the results to be sent to DOC prior to vegetation being removed on DOC land. The Panel consider it necessary that the condition wording references that the SQEP is to be independent and that if kiwi are identified that the AMP must be updated and re-certified. Changes have been included in the condition set accordingly.
- b) Electrocution risk of New Zealand Falcon: The Panel accept the Applicant's response that there are no transformer boxes proposed, and therefore no need for an assessment.
- c) Whio nest deterrents and procedures addressing whio incidental harm or death: The Panel accepts that it is appropriate to leave nest deterrent methodologies to a SQEP to determine as part of the AMP. We note that the AMP currently includes a restriction on construction works recommencing until any harm or death of a whio has been reviewed. We consider that to be appropriate.
- d) Whether the AMP should cover all indigenous bird species protected under the Wildlife Act: The Panel accepts the Applicant's view that it is appropriate to limit the AMP to threatened, at-risk and specified species of conservation importance only. The Panel considers that any residual effects associated with other common indigenous bird species are sufficiently addressed by the proposed compensation measures, and that any associated death of individual common indigenous birds are not significant based on the small vegetation clearance footprint compared to remaining vegetation in the landscape.
- 440) Based on the DOC s.51 Report, comments received, the Applicant's response to comments and the evidence given at the joint empanelment, the Panel:

- a) accepts the evidence of the who experts (Dr McLennan and Mr Malham) that effects on who will be minor; and
 - b) finds that all effects can be appropriately managed through revised conditions and an updated and certified AMP which follows standard practice.
- 441) As we have addressed elsewhere in this Decision, we do not consider it is appropriate for there to be a dual certification role in relation to management plans, including the AMP. For the AMP we consider this certification role appropriately sits with WDC. However, DOC's input will still be required prior to the AMP being submitted for certification, and similar to the change we made to the BMP above, we have strengthened the condition to require a SQEP(independent of the Project) to assess the AMP following DOC's input.
- 442) With the conditions we have imposed, which are largely as agreed between the parties, we are satisfied that effects on avifauna, including who, can be appropriately addressed.

F11: Powelliphanta land snails

Introduction

- 443) Effects on Powelliphanta have been assessed within the Terrestrial Fauna Report.²³⁷
- 444) Focused walk-through surveys and a nocturnal search for Powelliphanta were undertaken in October 2006, and January 2007 with no Powelliphanta found (live or shells). Single Powelliphanta shells were found at the Whirling Stream / Waitaha River confluence in 2007 and on the bank of Whirling Stream in 2011.
- 445) The closest other Powelliphanta records to the Scheme footprint are a finding of *Powelliphanta ossiana* (nationally endangered) at Mt. Bonar (8km away) and unidentified Powelliphanta shells found on the Karnback and Tuke River headwaters in 2023.
- 446) Powelliphanta surveys were extended in November and December 2012 within the Scheme footprint and to focus on the area that the shells were found in 2007 and 2011. No new signs of Powelliphanta were found.
- 447) Based on the surrounding Powelliphanta populations being at higher elevation and no live or dead shells found in the 2006/2007 and 2012 survey, the Terrestrial Fauna Report author opined that the shell found had been washed down from alpine areas in the Waitaha River or Whirling Stream catchments. In this location of the West Coast, Powelliphanta are not known to populate lowland forest habitat which is what is found within the Scheme footprint.
- 448) In 2024 freshwater survey eDNA samples were collected with no Powelliphanta detected.

²³⁷ AEE, Appendix 21.

449) Based on the above survey effort the Terrestrial Fauna Report author considered it unlikely that Powelliphanta are present within the Scheme footprint, and therefore did not address effects on them.

DOC s.51 Report

450) The DOC s.51 Report did not provide any discussion on Powelliphanta.²³⁸

Comments received from invited parties

451) No party expressly commented on Powelliphanta.

Evaluation and findings

452) We accept that the baseline Powelliphanta surveys and professional opinion presented is sufficient to conclude that it is unlikely that Powelliphanta are present within the Scheme footprint. We therefore find that no Powelliphanta-specific conditions of consent or management plans are required, and Powelliphanta considerations do not weigh against the grant of the approvals sought.

F12: Lizards

Introduction

453) The assessment of effects on lizards were addressed in the Lizard Report.²³⁹

454) The areas of lizard habitat identified within the Scheme footprint comprise the following:

- a) Headworks area and Construction Staging Area 1;
- b) Power Station area;
- c) access road and transmission line corridor area;
- d) Construction Staging Area 3 and the spoil disposal area; and
- e) transmission line and access road corridor between Macgregor Creek and the northern farm boundary with Anderson Road.

455) Eight species of native lizards have been recorded within 20km of the Scheme footprint with three or four of these species potentially being present within the Scheme footprint based on habitat preferences.

456) Field investigations were undertaken in February 2013, August 2024 and December 2024 over different parts of the Scheme footprint with no lizard detection or signs of lizard presence.

457) The Lizard Report considers that the presence of lizards in the Construction Staging Area 3, the spoil disposal area, and in the transmission line and access road corridor between Macgregor Creek and the northern farm boundary with Anderson Road area,

²³⁸ DOC s.51 Report, Appendix C – Concessions Report, Section 6.3.15; and DOC s.51 Report, Appendix D – Wildlife Approvals Report.

²³⁹ AEE, Appendix 24 - Assessment of Environmental Effects Lizards, RMA Ecology Ltd, 27 July 2025.

can be ruled out. This is based on the lizard survey efforts which would have found lizards in this simplistic habitat if they were present.

- 458) Due to the complex habitat, cryptic nature of lizards and standing vegetation being difficult to survey, the Lizard Report considered that there is a moderate likelihood of lizards being present in the Headworks area and the Construction Staging Area 1, Power Station area, and the access road and transmission line corridor area.

Effects

- 459) Overall, it is noted that the scale of impact to any potential lizard population is small due to the size of the Scheme footprint when compared to the remaining potential habitat adjacent to the Scheme footprint and in the wider area.
- 460) The Lizard Report noted that if any individuals of the identified lizard species potentially present are lost it would be a negligible effect across their natural distribution but due to their declining status, all efforts should nevertheless be made to avoid effects on lizard species.
- 461) All habitat within the Headworks area and the Construction Staging Area 1, Power Station area, the access road and transmission line corridor area is considered significant due to the threat classification of West Coast green gecko that could be potentially found in these areas.
- 462) The Lizard Report states that, based on the ecological value of lizard habitat, ecological value of the lizard species potentially present and the magnitude of effect (vegetation clearance) compared to the wider area of existing vegetation, the overall level of effect on lizards is low equating to a less than minor effect.

Measures to address effects

- 463) Based on standard practice the following mitigation measures were proposed:
- a) lizard salvage (manual and machine assessed) immediately prior to vegetation clearance; and
 - b) vegetation reuse or stockpiling to promote self-relocation of any lizards missed in the salvage operation.
- 464) A financial contribution to an ecosystem programme for less than minor effects on protected wildlife is supported to manage potential adverse effects on lizards.
- 465) On 17 November 2026, the Applicant provided an updated LizMP to refer to the relevant proposed conditions and to provide more detail on lizard capture methods.²⁴⁰

DOC s.51 Report

- 466) The DOC s.51 Report included comments regarding the effects on lizards. In summary, DOC:²⁴¹

²⁴⁰ Westpower Memorandum #2, 17 November 2025, Attachment 4B.

²⁴¹ DOC s.51 Report, Appendix D – Wildlife Approval Report, Section 6.

- a) support the precautionary approach taken to include lizard species that are likely to be present but not yet identified with the LizMP identifying the appropriate species;
- b) considered that the LizMP contains best practice, however they sought further information regarding emergency procedures if individual lizards need veterinarian attention and further details on declining capture rates;
- c) acknowledged that the assessment and information contained within the Lizard Report and updated LizMP is adequate but stated it was unclear if predator control will be undertaken at the lizard release site and noted that such control is generally a requirement;
- d) did not support the release of West Coast green gecko to any sites where predator control had not been undertaken and considered that any release site needed to be legally protected; and
- e) requested that a contingency plan be included in the LizMP in case West Coast green gecko are found.

467) DOC also sought a certification role for the LizMP.

Comments received from invited parties

- 468) The Conservation Board supported the recommendations in the Lizard Report and considered the LizMP to be appropriate. However, it noted that while the use of DNA is not recommended, it would support its use in providing information about the relocated lizard populations.
- 469) The Minister for the Environment recommended amending the proposed LizMP condition to include post-release lizard monitoring.
- 470) DOC repeated their s.51 Report comments with the addition of a comment regarding the ability of the Applicant to clear potential lizard habitat outside of October – April (inclusive) in areas that had been subject to pre-clearance salvage efforts where no lizards were found.

Applicant response to comments

- 471) The Applicant provided an updated LizMP to:²⁴²
- a) specify the appropriately qualified subject matter expert;
 - b) include an emergency response if veterinarian attention is needed; and
 - c) provide specific triggers regarding the salvage decline rate.

472) The Applicant:

²⁴² LizMP, revised 21 January 2026.

- a) disagreed that additional mitigation measures for threatened or at-risk species were necessary, given what it had already proposed with any additional measures considered to be more onerous than necessary; and
- b) did not consider pest control at the lizard release sites to be necessary since that measure had not been proposed and recommended in the Lizard Report.

Conference with Poutini Ngāi Tahu

- 473) In our conference with Poutini Ngāi Tahu they confirmed that West Coast green gecko is not a taonga species, they are satisfied there are ways of managing effects on such species (as demonstrated by earlier releases of other lizards back in Te Wai Pounamu), and that they do not have concerns regarding how effects on West Coast green gecko are proposed to be managed.

Evaluation and findings

- 474) The Panel considers that the baseline lizard surveys and effects assessment provide sufficient information to understand the ecological values, level and magnitude of effects on the four lizard species that are potentially present in proximity of the Scheme footprint.
- 475) With a few minor exceptions, we note that there appears to be broad alignment between the Applicant and the Conservation Board, and support from Poutini Ngāi Tahu for what the Applicant has proposed.
- 476) The Panel notes that DNA samples are not proposed to be taken from individuals and the data collection process outlined in section 3.5 of the LizMP is standard practice and accepted by the Panel.
- 477) With respect to the Minister for the Environment’s request that the LizMP condition be updated to include post release monitoring, the Applicant has stated that post release monitoring is not proposed because of the potentially low number of lizards being released and poor detectability of any relocated individuals. The Panel agrees with the Applicant and no updates to the conditions have been made in this respect.
- 478) There are only a few outstanding matters not resolved as between the parties. These relate to additional mitigation measures, pest control and certification.
- 479) In relation to the additional mitigation measures proposed by DOC, the Panel agrees that triggering the set maximum threshold of salvaged individuals should action a response as it is above the envelope of effects assessed in the Lizard Report and LizMP. The Panel has also added an advice note into the LizMP condition regarding timing of construction works and lizard salvage clearance, which we consider goes some way to addressing comments from DOC on this issue.
- 480) In relation to the issue of pest control at the lizard release sites, we acknowledge that such pest control is standard practice and typically undertaken at lizard release sites for other projects across New Zealand. In this circumstance however, we consider that pest control is not warranted at the proposed release sites, due to the low numbers of lizards estimated to be found and given that pest control would be ineffective based on the scale of the relocation outlined in the LizMP. We do however note, and agree with the Applicant that the outcomes of the proposed financial compensation will have a

positive effect for any local lizard populations and outweigh any potential mortality of relocated lizards based on predation.

- 481) In relation to certification, as we have addressed elsewhere in this Decision, we do not consider it is appropriate for there to be a dual certification role in relation to management plans, including the LizMP. For the LizMP we consider this certification role appropriately sits with WDC. However, DOC's input will be required to be obtained prior to the LizMP being submitted for certification, and as with other wildlife-related management plans, we have strengthened the condition to require a SQEP (independent of the Project) to assess the LizMP following DOC's input.
- 482) With the conditions we have imposed, which are largely as agreed between the parties, we are satisfied that effects on lizards can be appropriately addressed.

F13: Terrestrial invertebrates

Introduction

- 483) The assessment of effects on terrestrial invertebrates (excluding *Powelliphanta*) were addressed in the Terrestrial Invertebrate Report.²⁴³
- 484) A standard approach of using data from online databases and validated through field surveys was undertaken. Field surveys were undertaken in discrete habitats within the Scheme footprint in February 2013 using a range of standard methods.
- 485) The results from field surveys concluded that the identified invertebrate communities are typical and well represented on the West Coast, highly correlated with vegetation or habitat types and are not classified as threatened or with restricted distributions.
- 486) Of note, three *Therevidae* species identified are taxonomically undescribed, a North Island understory leaf roller was identified which is outside of its currently known range, and while no wētā were found the Waitaha Valley is thought to be within the natural range of Wellington tree wētā and eDNA samples have identified cave wētā.
- 487) An assessment of significance was undertaken.²⁴⁴ Habitat, representativeness, threatened species, distinctive communities, diversity, connectivity and context were all classified as significant. The high level of significance is based on the highly specialised nature of the invertebrate community to the riverine riparian environment and that these features are limited to narrow corridors in the existing environment.

Effects

- 488) The effects on invertebrate communities were identified as being associated with vegetation and habitat clearance during construction, edge effects on adjacent vegetation and habitat, weed incursion and lighting effects. In particular:
- a) Vegetation clearance effects are considered to be mitigated by the large areas of retained invertebrate habitat adjacent and in proximity to the Scheme footprint. It was concluded that the proposed vegetation clearance would not have a measurable adverse effect on the invertebrate community. In addition, it was

²⁴³ AEE, Appendix 23 - Assessment of Environmental Effects Terrestrial Invertebrates, Entecol Ltd, June 2025.

²⁴⁴ AEE, Appendix 23, Table 1.

noted that the vegetation removal methodology may increase the amount of dead wood on the ground above current conditions, which could have a positive effect on the proportion of invertebrate community which use deadwood over the short to medium term.

- b) Edge effects (in this instance increased light and incursion of exotic vegetation) will cause effects on climatic variables such as temperature, light, wind, moisture and humidity between 40m and 1km into the adjacent vegetation dependant on the species.
 - c) Effects on riverine invertebrate habitat are identified as disturbance during construction and changes to flood events. It is noted that the invertebrate community within the riverine environment are adapted to disturbance and therefore construction is not anticipated to cause a measurable long-term effect. The Scheme is thought to have minimal effect on flood dynamics and sediment deposition and therefore not anticipated to cause a measurable long-term effect.
 - d) Effects on the boulder field habitat along the access road is thought to have no measurable long-term effect due to the extensive amount of the same habitat either side of the access road, the invertebrate community that depends on this habit being highly mobile, and the access road not presenting a barrier to migration between habitats.
 - e) Effects of weed incursion, pest animals and invasive invertebrates are considered to cause effects on invertebrate communities which could be exacerbated by the proposed Scheme.
 - f) Effects of artificial light can affect invertebrate communities through behavioural changes and can cause death. It is noted that the only artificial lighting will be at the Power Station and Headworks and only switched on for short periods of time when required.
- 489) Overall, the Terrestrial Invertebrate Report concluded that the effects on invertebrate communities will be less than minor to minor without mitigation and less than minor with mitigation and time applied.

Measures to address effects

- 490) Proposed mitigation actions comprised:
- a) reduction of vegetation clearance and permanent Scheme footprint;
 - b) edge planting adjacent to existing vegetation;
 - c) lighting design to account for light orientation and invertebrate friendly UV spectrum together with light positioning and timing restrictions; and
 - d) biosecurity measures for waste management, weed incursion, invasive invertebrate incursions and pest animal control.

DOC s.51 Report

- 491) The DOC s.51 Report did not specifically mention terrestrial invertebrates, but the following DOC statements can be inferred to relate to terrestrial invertebrates due to their correlation to vegetation:²⁴⁵
- a) DOC accepted that adverse effects will occur on vegetation during the construction phase due to the significant area of vegetation to be removed along the access road and at the Power Station location;
 - b) DOC considered that the residual risk of weed incursion would remain and that conditions of consent and the VMP needed to be updated to include standard practice and weed control methodologies; and
 - c) DOC accepted that the proposed mitigation measures are satisfactory for vegetation management, and that adverse effects on vegetation can be adequately avoided, remedied and mitigated.

Comments received from invited parties

- 492) The Conservation Board supported the recommendations of the Terrestrial Invertebrates Report and noted that any impacts on invertebrates will be less than minor.
- 493) DOC agreed with the conclusions reached within the Terrestrial Invertebrate Report and noted that the incursion of weeds is the primary threat to invertebrate species. DOC was concerned at the level of detail currently in the VMP to manage weed incursion and sought a role in the management plan certification process.

Applicant response to comments

- 494) The Applicant did not provide any specific response in relation to comments on invertebrates but updated its proposed management plan conditions that relate to DOC land to provide an opportunity for DOC to provide feedback on relevant plans prior to those plans being certified.

Evaluation and findings

- 495) The Panel considers that the baseline invertebrate surveys and effects assessment provide sufficient information to understand the ecological values, level, and magnitude of effects on invertebrate communities within and in proximity of the proposed Scheme footprint.
- 496) There appears to be broad alignment between the Applicant, DOC and the Conservation Board in terms of information provided and mitigation measures proposed for invertebrates.
- 497) The outstanding matters relate to specific technical detail within the VMP associated with weed incursion monitoring and control methodologies, (which we addressed in the vegetation clearance section above) and whether DOC should have a certification role (which we have addressed in a number of earlier effects sections above).

²⁴⁵ DOC s.51 Report, Appendix C – Concessions Report, Section 6.3.15.

498) Overall, we find that effects on terrestrial invertebrates can be appropriately managed with the conditions and management plans (including the VMP) that we have imposed.

F14: Construction surface water takes

Introduction

499) As part of the construction phase of the Scheme, up to 20 litres per second of fresh water is required for a combination of activities including tunnel drilling, concrete batching, dust suppression and other ancillary activities associated with all Construction Staging Areas. It is therefore proposed to abstract water from the Waitaha River and from tunnel seepage for these activities.

500) The AEE identifies the potential effects associated with surface water abstraction activities as being:

- a) potential over-allocation of the freshwater resource and consequential ecological effects; and
- b) potential effects on downstream users.

501) The AEE identifies that the 7-day Mean Annual Low Flow (**MALF 7-day**) of the Waitaha River, at the SH6 Bridge is 9.7 cubic metres per second. It notes that the proposed combined rate of take of 20 litres per second, albeit located upstream of the SH6 Bridge, represents approximately 0.2% of MALF 7-day. The AEE states that this is an inconsequential proportion of the MALF 7-day and accordingly that any adverse effects of the proposed take on available water allocation is also inconsequential. On this basis, the AEE considers that the proposed take will not cause any consequential adverse impact on in-stream ecological values or downstream water users. However, to ensure these potential effects are appropriately managed, the Applicant proposes to monitor each take and ensure the combined maximum rate of take will not exceed 20 litres per second with specific conditions proposed to this effect.

502) Overall, the AEE considers any adverse water management related effects from the proposed surface water takes during construction will be less than minor.

Comments received from invited parties

503) The Minister for RMA Reform & Infrastructure noted that ongoing monitoring and adaptive management will be necessary to ensure compliance with the NPS-FM and NES-FM.

Applicant response to comments

504) In response to the Minister for RMA Reform & Infrastructure comments on adaptive management, Westpower noted its expert team had considered the activities in freshwater in significant detail, adopting a worst-case approach to managing known effects. It said the proposed RMA conditions adopt an adaptive management approach to hydrology (through the weir and intake structures), sedimentation and aquatic ecology.²⁴⁶

²⁴⁶ Westpower Memorandum #7, 21 January 2026, at [3.16].

Evaluation and findings

- 505) The Panel has considered the potential effects associated with the proposed surface water takes for the construction phase of the Project. We accept that any effects will be less than minor on the basis that the proposed water takes are an extremely small percentage of the MALF 7-day (0.2%), that the takes will be monitored to ensure the combined maximum rate of take will not exceed 20 litres per second, and that the takes only relate to the construction phase and therefore will be temporary in their duration.

F15: Aquatic/freshwater ecology

Introduction

- 506) The assessment of effects on freshwater ecology were addressed in the Freshwater Ecology Report.²⁴⁷
- 507) The Freshwater Ecology Report is focused on a reach scale assessment and has divided the Scheme into the following four areas:
- a) downstream of Douglas Creek (below the Scheme);
 - b) Douglas Creek to Morgan Gorge (abstraction reach);
 - c) Morgan Gorge to Waitaha Gorge (includes intake structure and Kiwi Flat reach);
and
 - d) upstream of Kiwi Flat (above the Scheme).
- 508) Freshwater surveys have been undertaken between 2007, 2008, 2013 and 2024. In summary, these surveys comprise macroinvertebrate, periphyton (including introduced algae) and water quality sampling at 31 sites, fish sampling at 48 sites and eDNA sampling at 20 sites.
- 509) The mainstem of the Waitaha River is described as an unmodified low nutrient system with high flood frequency, highly mobile riverbed and cold glacial flow waters. These characteristics influence the freshwater ecology within the Waitaha River. The Site tributaries are considered more stable and support greater ecological values when compared to the Waitaha River mainstem.
- 510) The macroinvertebrate community was found to be like other large river catchments on the West Coast. Four macroinvertebrate taxa were found to have a threat status of at-risk naturally uncommon. The macroinvertebrate communities differed in density, diversity and evenness between the Waitaha mainstem and the tributaries sampled which is due to the tributaries being more stable and having greater primary productivity.
- 511) In total eight species (seven native and one introduced) of fish were found in the Waitaha catchment with threat status ranging from threatened-nationally vulnerable to at-risk declining. The fish community was found to be like other large river catchments on the West Coast at the same elevation and distance inland. It is noted that kōaro are the only fish species found above Morgan Gorge indicating that the Gorge is a natural

²⁴⁷ AEE, Appendix 25 – Assessment of Effects Freshwater Ecology , EOS Ecology, August 2025.

fish barrier. The same trend as macroinvertebrates was reported when comparing the Waitaha mainstem with the tributaries (downstream of Morgan Gorge).

512) The significance of freshwater ecology in the Waitaha River for each criterion was found to be:

- a) very high for intactness;
- b) high for representativeness, rarity and distinctiveness (Stable tributary and Douglas Creek only), diversity and pattern, ecological context, connectivity, threat (Stable tributary and Douglas Creek only) and viability;
- c) medium for rarity and distinctiveness (overall), threat (overall) and migratory species; and
- d) low for protected status.

Effects

513) The effects on freshwater ecology were divided into construction and operational effects and are summarised below after mitigation has been applied.

Construction

- a) sediment release from vegetation removal and in-stream works in both the mainstem and tributaries – less than minor;
- b) construction contaminants in both the mainstem and tributaries – less than minor;
- c) spread of didymo – less than minor;
- d) fish passage during in-stream works – less than minor;
- e) localised fish mortality – less than minor;
- f) gravel extraction – minor at the point of impact and less than minor downstream;

Operational

- g) reduced flow and habitat availability for macroinvertebrates and fish – minor to less than minor;
- h) reduced flow for periphyton – minor to less than minor;
- i) rapid flow reductions from emergency shutdowns – minor to less than minor depending on reach;
- j) altered sedimentation dynamics – less than minor;
- k) fish entrainment and mortality – minor;
- l) fish attraction to the tailrace – less than minor;

- m) fish passage at tributary crossing structures – less than minor;
- n) fish passage at the weir – less than minor;
- o) in channel maintenance works above the Headworks area – less than minor;
- p) loss of channel shading from vegetation removal in tributaries – less than minor;
and
- q) lighting on adult macroinvertebrates – less than minor.

Measures to address effects

- 514) The following range of measures were used to reduce the overall level of effect after mitigation was applied:
- a) reduction of sedimentation by applying maximum open ground limits and standard erosion and sediment controls;
 - b) application of machine hygiene protocols for in-stream works and standard environmental techniques or controls to prevent contaminants being discharged to any receiving environment;
 - c) ensuring fish passage for in-stream works but above the weir, preventing upstream passage of all fish species except for kōaro;
 - d) reducing fish mortality by in-stream works being undertaken in summer, by reducing the footprint of in-stream works and by undertaking fish relocation;
 - e) monitoring periphyton and sediment, and use of flushing flows to control growth with monitoring and adaptation if necessary;
 - f) use of gradual flow ramping to avoid fish stranding with monitoring and adaptation if necessary;
 - g) fish pass (tributary crossings and weir structure), fish screen and tail race to be designed by a multi specialist design team including a suitably qualified and experienced ecologist to reduce effects to the anticipated level;
 - h) monitoring of the effectiveness of the fish pass and adaptation if necessary; and
 - i) lighting only to be used at the Power Station and Headworks locations with external lighting only on when required using prescribed bulbs.

Comments received from invited parties

- 515) Poutini Ngāi Tahu confirmed that all effects on taonga fish species had been appropriately addressed to their satisfaction.
- 516) The Conservation Board supported the recommendations in the Freshwater Ecology Report and noted the concerns discussed in that Report re didymo and periphyton bryophyte. It considered the FEMP to be appropriate. It also noted that if eDNA is to be used its limitations should be stated.

- 517) The Minister for RMA Reform & Infrastructure noted that ongoing monitoring and adaptive management will be necessary to ensure compliance with the NPS-FM and NES-FM.
- 518) The Minister for the South Island and Hunting and Fishing suggested measures could be implemented for species important for recreational fishing and to monitor ecological impacts on freshwater species.
- 519) DOC did not comment further on freshwater ecology matters in its s.53 comments.

Applicant response to comments

- 520) The Applicant noted that DOC is relatively comfortable with the complex freshwater fisheries approvals, in which they have largely accepted recommended changes to conditions.

Peer Review Reports

- 521) The Peer Review Reports raised the following matters of relevance to freshwater ecology and in particular fish pass issues:
- a) Based on the current preliminary design the tailrace flow could restrict up to 50% of kōaro movement upstream with only the true left bank being available. The tailrace flow could also attract fish into the structure.
 - b) The reduced flow of 3.5m³/s through Morgan Gorge will promote the upstream passage of kōaro but will also increase the risk of other species (eel and trout) being able migrate upstream when previously restricted.
 - c) There were potential performance issues with (i.e., attraction of kōaro to) the fish pass on the weir structure given the differential flow between the fish pass and the environmental flow and given how changes in bed morphology upstream of the weir may change this.
 - d) There was a possibility of entrainment risk during downstream passage and mortality through the intake structure and weir with the potential risk of harm to kōaro larvae being greater than reported.
 - e) There was also a general concern regarding an apparent lack of integration of input from various technical specialists into the preliminary concept design of the tailrace and weir and an associated risk of leaving these issues to detailed design which may result in unforeseen effects that have not been accounted for.

Joint empanelment

- 522) The joint empanelment addressed matters relating to the construction and operational effects of the Scheme on freshwater ecology. Experts addressing effects on freshwater ecology were Ms McMurtrie (Applicant) and Ms Richardson (DOC).
- 523) Experts were asked about the risk and design consideration of energy dissipation across the top of the weir in regard to the upstream passage of kōaro.
- 524) Ms McMurtrie stated that the preliminary concept design maintains the existing level of fish passage for kōaro. Kōaro migrating downstream are in larvae form and are passively entrained in high flood flow where the weir is being overtopped and energy

dissipation is negligible. The location of the fish pass for upstream kōaro migration is situated in a position where low-flow energy dissipation from the weir overtopping is thought to be less than the existing environment.

- 525) Ms McMurtrie stated that the preliminary concept design of the fish pass is flexible and any risk of kōaro being entrained at the top of the fish pass into the Scheme or effects of sediment build-up at the top of the fish pass can be accounted for at detailed design. In general, Ms Richardson agreed with Ms McMurtrie on these matters.
- 526) Experts were asked about their confidence that effects on kōaro could be managed through detailed design and the flexibility for the weir design to incorporate fish pass modifications.
- 527) Ms McMurtrie reiterated that she was confident that the monitoring, adaptive management and maintenance framework proposed is sufficient to drive the desired outcome through detailed design and to maintain the current level of upstream fish passage for kōaro. Ms Richardson provided comment on the morphology and behaviour of kōaro in relation to them orientating and their ability to climb the fish pass and raised no concerns.
- 528) Ms McMurtrie was further asked if a freshwater ecologist should be involved with the detailed design and whether the detailed design should be independently peer reviewed. Her view was that the involvement of a freshwater ecologist was important as part of a multi-disciplinary team including DOC and that she thought the conditions reflected this and a peer review process. Ms McMurtrie and Mr Kent-Johston both provided comment that they thought it was possible and relatively straightforward for the fish pass to be modified in the future based on monitoring results and that the flexibility would be built into the design. Ms Richardson was comfortable for information to be left to detailed design as long as good practice is followed and conditions are rigorous but provide adaptability if things are not working.
- 529) Experts were asked about the significance of the kōaro population above Morgan Gorge.
- 530) Ms McMurtrie stated that based on current environmental factors (distance inland, high frequency of disturbance, the challenge posed by Morgan Gorge, limited habitat and spawning capacity) that the kōaro population is low density and is likely to be a sink population rather than a source population. She indicated that the significant habitat above Morgan Gorge for kōaro was the tributaries rather than the Waitaha River mainstem itself as the tributaries were stable and had a higher food source and connectivity with the riparian margin.
- 531) Ms McMurtrie considered the risk of trout getting past the fish pass structure to be low, but that if they did, the impact would be minimal as the environment would be inhospitable for trout (low food source, low water clarity and cold temperatures). Although she acknowledged that some eel may get above the fish pass structure, there was a similarly low likelihood of eel having an impact on the kōaro population because of those same environmental factors. Ms Richardson generally agreed with the above. When asked if environmental flow in Morgan Gorge could provide a positive benefit in allowing more kōaro upstream and thereby increasing the population, Ms McMurtrie generally thought that the level of attrition based on environmental factors would even out the positive effect and the population would stay at relatively the same level.

- 532) Ms Richarson noted that the threat status of kōaro is at-risk declining and that therefore any population that is deemed safe is an important population. Ms Richarson stated that she did not have the data to comment on the size of the kōaro population above Morgan Gorge and therefore could not comment on the significance of the population other than saying that the significance could be due to trout not being able to inhabit the same area. She did however say that from a more global perspective (taken as meaning regionally or nationally) it is not a significant population or strong hold for kōaro from her perspective.
- 533) The experts were also asked about the cumulative long-term effects of the Scheme on the kōaro population above Morgan Gorge.
- 534) Ms McMurtrie reiterated that the kōaro population above Morgan Gorge is likely a sink population and is dependent on recruits from other source populations (meta-population dynamics). She stated its long-term future is more dependent on the wider fishery rather than the outcome of the proposed Scheme and that the population is likely regulated by the disturbance regime rather than flow regulation or biotic interactions.
- 535) Ms Richardson stated the existing population and recruitment are important factors and that any population is in a dynamic flux. If the population above Morgan Gorge was impacted by the Scheme (worst case - disappeared) that over time it could be re-seeded by other source populations. The best case scenario could be that the population above Morgan Gorge increases due to increased recruitment. In her view it would be hard to ascertain long-terms effects in isolation of other variables not related to the proposed Scheme, but that the difference pre and post scheme would be neutral.

Conference with Poutini Ngāi Tahu

- 536) Of relevance to freshwater ecology matters, Poutini Ngāi Tahu confirmed that while kōaro were a taonga species, they were comfortable with the work done by Westpower to address effects on kōaro, and that based on their considerable experience with fish passes in other awa, they had faith the fish pass would work.²⁴⁸

Evaluation and findings

- 537) The Panel considers that the baseline freshwater ecology surveys and effects assessment provide sufficient information to understand the ecological values, level and magnitude of effects on the fish and macroinvertebrate communities within the Waitaha River and the proposed Scheme footprint.
- 538) There appears to be broad alignment on most issues between the Applicant, Poutini Ngāi Tahu, DOC, the Conservation Board and the Minister for RMA Reform & Infrastructure.
- 539) Of importance, the Panel notes that Poutini Ngāi Tahu have confirmed that all effects on taonga fish species (including kōaro) have been appropriately addressed to their satisfaction.
- 540) The Panel finds that the Conservation Board's concerns regarding didymo and periphyton have been adequately addressed in the consent conditions and FEMP and

²⁴⁸ Panel conference with Poutini Ngāi Tahu, 27 February 2026.

the limitations of eDNA is not of a concern as it is only one of many methodologies that have been employed to understand the freshwater ecological communities.

- 541) The Panel notes that the FEMP contains an adaptive management framework (which should satisfy the matter raised by the Minister) but have also recommended that this adaptive management framework be provided for in the conditions. This includes a requirement for BACI monitoring of kōaro prior to commencing construction of the diversion weir.
- 542) Based on the findings of the Freshwater Ecology Report and in relation to the Scheme’s construction and operational freshwater footprint, the Panel considers that the proposed impact to the recreational fishery is negligible. As a result, we consider the suggestion by the Minister for the South Island and Hunting and Fishing that further measures and monitoring are needed are not justified, and we have therefore not incorporated them.
- 543) The Freshwater Ecology Report relies on technical freshwater ecological input being provided at the detailed design phase for matters relating to upstream fish passage at the tailrace and weir structures. The Panel is satisfied that the modified conditions provide the appropriate framework for the right ecological and technical subject matter experts to input into the detailed design process. This also includes DOC.
- 544) We have accepted the Applicant’s proposed condition requiring a 20m setback from the ecologically important Stable Tributary for the access road, but we have, in our conditions, clarified the points from which that setback is to be measured.
- 545) As we have addressed elsewhere in this Decision, we consider it is not appropriate for there to be a dual certification role in relation to management plans or other design aspects of the Project. We consider this certification role appropriately sits with WCRC. However, DOC’s input will still be required to be obtained prior to the detailed design of the tail race and fish pass on the weir being finalised and the FEMP being certified. Further, we have strengthened the FEMP certification condition to require a SQEP (independent of the Project) to assess the FEMP following DOC’s input.
- 546) With the conditions we have imposed we are satisfied that effects on freshwater ecology can be appropriately addressed.

F16: Traffic

Introduction

- 547) The Applicant addressed transportation effects in Section 6.16 of the AEE and the Appendix 30 Traffic Report.²⁴⁹
- 548) Traffic effects are primarily associated with the construction phase of the Project - operational daily traffic movements will be low (one to two vehicles per week) with occasional higher traffic volumes associated with major maintenance activities.
- 549) The Applicant provided assumed traffic movements for the Project during its estimated 37-month construction period as the basis for its assessments. The Applicant excluded the re-build of the Waitaha substation on Bold Head Road from its assessment as the

²⁴⁹ AEE, Appendix 30 – Traffic Report, Melvin David Sutherland, June 2025.

construction period of the substation is short (6 months) and the associated increase in the number of vehicles is considered by the Applicant to be insignificant.

- 550) The Traffic Report recommended the following measures to mitigate adverse effects during the construction phase of the Project:
- a) maintenance of viewing lines and inclusion of advanced warning signs at the intersection of Waitaha Road and SH6 along with maintenance of the inside edge of the intersection curve to avoid seal edge break;
 - b) creation of passing places along Waitaha Road and Anderson Road, and the completion of a pre and post-construction condition survey as the basis for negotiation with WDC regarding a contribution to maintenance of the roads;
 - c) creation of a new junction and two-lane section of Anderson Road to avoid vehicles passing existing residents and farm operations, along with improved visibility through vegetation removal where any obstruction occurs; and
 - d) a Construction Traffic Management Plan (**CTMP**) be prepared for the Project (including specific requirements such as headlights on, two-way communication systems, traffic scheduling to avoid existing peak times and any events).
- 551) The AEE concluded that overall, with these traffic management methods implemented throughout the construction phase, all transportation related effects over this phase will be acceptable.

Comments received from invited parties

- 552) NZTA did not provide a response to the invitation to comment. However, the AEE notes that NZTA had earlier provided feedback to the Applicant on the proposed mitigation measures for the SH6 and Waitaha Road intersection.²⁵⁰ NZTA were supportive of the proposed approach to the SH6 intersection and requested to continue to be involved in the process.
- 553) WDC are responsible for Waitaha and Anderson Road. WDC did not provide any specific comments regarding the proposed transport mitigation measures in their written comments on the Substantive Application.²⁵¹
- 554) Granite Developments Ltd noted the potential for disruption arising through the transportation of gravel for the road.²⁵²

Applicant response to comments

- 555) The Applicant responded to Granite Developments Ltd comments regarding transportation of gravel from a noise effects (but not traffic) perspective. The response is discussed further in Subpart F17 below.

²⁵⁰ AEE, Appendix 30, Appendix D - Email from Kelsey Watson, 26 May 2025.

²⁵¹ WDC Comments on Substantive Application, 13 January 2026.

²⁵² Granite Developments Ltd Comments on Substantive Application, 14 January 2026.

Evaluation and findings

- 556) The Panel is satisfied that the transportation aspects of the Project have been suitably taken into account in the AEE.
- 557) In the absence of any technical evidence to the contrary, we accept the Applicant's evidence, and find that the conditions of consent and CTMP will appropriately mitigate any potential adverse effects.

F17: Noise

Introduction

- 558) Noise will be generated from several activities during both construction and operation, with potential effects on residents, recreational users and wildlife.
- 559) During the construction period (some 3-4+ years), potential noise effects were considered to arise primarily from access track construction, traffic movements, helicopter movements, blasting and concrete production.
- 560) Once the Scheme is operational, there will be noise associated with:
- a) staff and contractor vehicle movements on the road network;
 - b) infrequent helicopter movements; and
 - c) occasional short-term operation of emergency sirens.
- 561) Section 6.17 of the AEE addressed noise effects. This was supported by an assessment of noise effects prepared by Marshall Day Acoustics (**Noise Report**),²⁵³ a draft construction noise management plan (**CNMP**),²⁵⁴ an assessment of effects on terrestrial fauna, (Terrestrial Fauna Report),²⁵⁵ and an assessment on whio preparing by Sustainability Solutions (**Whio Report**).²⁵⁶ A further letter on noise matters was also provided by Marshall Day Acoustics in response to the release of TTPP decision version (**Noise Letter**).²⁵⁷
- 562) All but the potential effects on local wildlife are assessed in the Noise Report. Construction and operational noise effects on wildlife are instead assessed in the Terrestrial Fauna and Whio Reports.

Residents and dwellings – construction and operation

- 563) The Noise Report noted that the only dwellings that will be exposed to notable noise from the construction of the access road are those located at 1095 Waitaha Road. The Report concluded that noise effects will be reasonable if noise limits set out in NZS

²⁵³ AEE, Appendix 29 - Noise Report, 28 July 2025.

²⁵⁴ AEE, Appendix 41 -Draft CNMP, 11 July 2025.

²⁵⁵ AEE, Appendix 21 - Terrestrial Fauna Report, July 2025.

²⁵⁶ AEE, Appendix 22 - Whio Report, July 2025.

²⁵⁷ Westpower Memorandum #2, Attachment 2B, Marshall Day Acoustics Letter, 13 November 2025.

6803:1999 Acoustics – Construction Noise are achieved. All other dwellings are over a kilometre away and road construction noise at these dwellings will be negligible.

- 564) Other than for the access road upgrade, the location of the proposed Project is such that construction noise sources will generally be over four kms from the nearest dwellings and noise from most construction activities will be negligible. The exception is helicopter movements. The Noise Report recommends helicopters are flown in accordance with noise abatement techniques such as The Helicopter Association International “Fly Neighbourly” programme. Completed analysis indicates noise emissions for dwellings can be managed below the recommended limits provided in NZS 6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas.
- 565) The Noise Report noted traffic movements on Waitaha Road will vary considerably and at times residents will experience a noticeable increase in traffic noise, although noise levels are predicted to be within acceptable guidelines. Nonetheless, the Noise Report recommends heavy vehicles only use Waitaha Road during daytime hours as far as practicable.
- 566) All dwellings are a significant distance away from parts of the Scheme where blasting will be required. The Noise Report notes that noise from blasting is expected to be well below acceptable limits at all dwellings and therefore reasonable. Notwithstanding this, it is recommended that residents within five kms of any blasting work are informed prior to blasting to minimise any potential adverse reactions.
- 567) The Noise Report concludes that providing the recommendations in the Draft CNMP are adhered to, any potential construction noise effects will be reasonable at nearby dwellings.
- 568) The Noise Report notes that the separation distances from the nearest dwellings to the Project is such that operational noise will easily comply with both the Operative WDP and TTPP noise limits. The only noticeable noise associated with the Project once it enters the operational phase will be staff vehicle movements on the local road network, infrequent helicopter movements and occasional emergency sirens. Noise effects are expected to be negligible.
- 569) The Noise Letter notes that General Rural Zone in the TTPP appears to have an error as it has the same noise limits at both the site and notional boundaries. It also notes that the TTPP includes more stringent weekend noise limits. Notwithstanding these changes, the operational noise levels from the Project are expected to be able to comply with the new noise limits at both the site and notional boundaries.

Recreational users – construction and operation

- 570) The Noise Report relied upon the Recreation Report²⁵⁸ for information on the anticipated use of the area by kayakers, trampers and hunters. The Noise Report concluded that:
- a) The whitewater characteristics of the area result in a relatively high level of ambient noise which will mask some of the construction operational noise effects.

²⁵⁸ AEE, Appendix 28 - Assessment of Environmental Effects Recreation, Rob Greenaway of R&R Consulting (NZ) Ltd, June 2025.

- b) The walking track will be re-routed away from the construction areas for health and safety reasons but construction noise will be clearly audible on parts of the walking track. This will be transitory as trampers move through the area.
- c) The Noise Report recommends closing the track during periods of blasting such that a 500m buffer is maintained between the track and blasting activity. Associated mitigation measures are included in the draft CNMP.
- d) For Kiwi Flat hut, potential noise effects will be reasonable, provided that construction activities are managed in accordance with NZS 6803:1999 Acoustics – Construction Noise and comply with the recommended noise limits contained in that Standard.
- e) Helicopter noise levels will be relatively high for short periods but the likelihood of exposure, and therefore adverse effect, is low, given the duration of helicopter noise and the relatively small number of individuals that use the walking track. Helicopter effects will be minimised by implementing the techniques set out in the draft CNMP.
- f) Once operational, the Scheme will be largely inaudible over river noise. The only noticeable noise to recreational users is on occasions when emergency sirens operate to warn them about a sudden change in water flow in the event of an emergency shutdown, which is when the bypass valve will be operating.
- g) The Noise Report recommends 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.

Livestock

- 571) The Noise Report outlines how livestock become habituated to noise and considers that any livestock in the vicinity of construction activities are unlikely to demonstrate any adverse response to construction noise. Notwithstanding this, buffer distances for livestock have been included in the Draft CNMP to ensure animals are not exposed to construction noise above acceptable limits.

Terrestrial fauna

- 572) The Terrestrial Fauna Report considered effects associated with noise and vibration along with other construction and operational matters. The Report concludes that overall the noise effects on fauna (bats and birds other than whoio) during construction are less than minor providing recommended mitigation is carried out and DOC protocols with respect to bats are adhered to. Negligible effects are expected during Scheme operation.
- 573) Recommended mitigation includes minimising traffic, construction activities, and open-air blasting between sunset and sunrise in the Headworks area to minimise effects on commuting bats and other crepuscular species (including weka); and if practicable, beginning construction before the peak breeding season (December to January) to reduce effects on bat breeding. In addition, to address any remaining effects, the Report recommends contributing to an ecosystem programme during construction (at a minimum).

Whio

- 574) The Whio Report accepted and supported the noise management provisions provided in the Noise report and Draft CNMP, and made several additional recommendations relating to helicopter movements, blasting, piling, siren sound levels and avoiding certain construction activities during the whio breeding season, where practicable.
- 575) The Whio Report concludes that during the construction and operational phases whio local to the Site are likely to be disrupted at times. Therefore, even with the proposed mitigation measures (including the additional measures recommended in the Whio Report itself), there will still be minor to significant levels of residual effects for some activities. These are proposed to be addressed through contributions to an ecosystem programme. This is addressed above in the avifauna effects section.

Summary

- 576) The AEE concludes that:
- a) As regards construction noise:
 - i) if conditions are complied with, any construction noise effects on local residents, recreational users and livestock will be no more than minor and overall acceptable; and
 - ii) compliance with the relevant management plans and the compensation payments to ecosystem programmes will ensure construction noise effects on wildlife are no more than minor.
 - b) Operational noise effects on:
 - i) local residents, will be negligible given the large separation distances and expected low vehicle and helicopter movements;
 - ii) recreational users, will be minimal given the Scheme will be largely inaudible over river noise, given the rarity of siren events and provided the siren is no louder than necessary; and
 - iii) wildlife, will be inconsequential given the Scheme will be largely inaudible, given the rarity of siren events and provided the siren does not exceed a conservative noise threshold that is considered potentially permanently harmful to avifauna or temporarily harmful to whio.

Comments received from invited parties

- 577) Tāwhiri-Mātea Ltd expressed concern about potential noise effects from the gravel screening area directly opposite their northern boundary. Granite Developments Ltd saw potential for disruption through helicopter noise and machinery.

Applicant response to comments

- 578) In response to these matters, the Applicant noted that noise matters had been assessed in the Noise Report and that its proposed conditions of consent address noise

levels, helicopter movements, with effects on residents assessed as being reasonable after the proposed mitigation.²⁵⁹

Evaluation and findings

- 579) The Panel has considered the potential noise effects associated with the proposed construction and operational phases of the Project. We accept the expert evidence for the Applicant that provided conditions are complied with and the management plan measures are implemented, any effects will be generally minor or less than minor with the possible exception of who in the immediate vicinity of the Scheme. We have addressed the effects on who and other wildlife in other sections of this Part.
- 580) We also accept that some uncertainty exists in relation to the proposed mitigation measures and effects and that financial contributions by Westpower to ecosystem programs is the appropriate approach to address this uncertainty. We address the appropriate levels of those payments in later parts of this Decision.
- 581) Tāwhiri-Mātea Ltd's concerns regarding gravel extraction are addressed in Subpart F6 above which evaluates and makes findings on the effects of those activities.
- 582) Overall, we find that noise effects are not a bar to granting the approvals sought.

F18: Geotechnical and natural hazards

Introduction

- 583) Sections 6.20 and 6.21 of the AEE address geotechnical and natural hazards. This analysis is supported by a geological feasibility study prepared by Geotech Consulting Ltd (**Geology Report**).²⁶⁰
- 584) Natural hazards that the Applicant identified as requiring consideration with respect to the Project design are:
- a) Land instability: Some aspects of the Project including the intake and Power Station structures are located in areas of steep terrain with inherent geotechnical land instability risks associated with potential slope failures and rock falls.
 - b) Seismic events: the Project will be constructed in relatively close proximity to the main Alpine Fault with associated ground shaking and ground rupture risk (approximately 1 km from the Power Station); and
 - c) Flooding: the Project is at risk from flooding and inundation during the construction and operational phases.
- 585) The general approach proposed by the Applicant to uncertainty regarding the identified natural hazards and geotechnical risks is a planned geophysical and geotechnical investigation drilling and testing programme, including further analysis and quantification of underlying rock properties.

²⁵⁹ Westpower Memorandum #7, 21 January 2026, at [3.38(c)(iii)].

²⁶⁰ AEE, Appendix 17.

- 586) Once the investigations are completed, the final design and construction plans for the Scheme will be designed to comply with all appropriate engineering standards to ensure long-term structural integrity is achieved.
- 587) The Applicant will also incorporate learnings from their Amethyst scheme, which is situated in similar terrain and geological conditions and was constructed in 2014.

RFI#2 and response

- 588) In RFI #2, we requested additional information from the Applicant on the following matters of relevance to this topic:
- a) Flooding and inflows: how flooding and inflows to the intake excavations will be managed during construction;
 - b) Groundwater: the basis for the Applicant’s assumed cumulative groundwater inflow rate of 200L/s and the anticipated associated effects from either drawdown of the surrounding groundwater or discharge of the groundwater to the environment;
 - c) Spoil materials: The potential for spoil material to generate contaminated groundwater seepage when exposed to rainwater and the atmosphere in the spoil disposal area;
 - d) Cut slopes: The level of design completed for cut slopes required for the access road in the vicinity of Granite Creek; and
 - e) Seismic hazard: further details on the assessments completed for the identified seismic hazard.
- 589) The Applicant proposed to address the above matters as follows:
- a) Seismic events: The Applicant has ensured that all major components of the Scheme are to the east of the main fault to reduce the likelihood of a major shear through the Scheme tunnels. All structures will be designed to withstand high seismic loadings and achieve a performance standard of Importance Level 4. The Scheme will also install seismic sensors to detect any major events and if detected will automatically shut the head gates to isolate the waterways. To inform the design process, the Applicant has confirmed that a site-specific seismic hazard assessment will be completed following the investigations. A condition has been proposed (which we have included) requiring this assessment to be completed.
 - b) Flooding: During construction, remote rainfall and river level monitoring sites will be established upstream of the Headworks to provide early warning of increasing river levels and allow equipment to be removed from the river and immediate environs. During operations the Headwork facilities will be designed to withstand significant flooding and submergence, including the impact from entrained gravel and boulders being transported down the river. The access tunnel high point will be located well above the 1 in 1,000 year Annual Exceedance Probability (**AEP**) to ensure access can be safely maintained. The Power Station will be designed to achieve flood protection from a 1 in 10,000-year AEP.

- c) Rockfill bund: The bund will be used to isolate the in-river construction site and involve:
 - i) high density polyethylene or similar liners within the bund to manage leakage into the excavation;
 - ii) frequent maintenance of the bund following high river flow events; and
 - iii) construction will target seasonal low-rainfall periods and use up to date catchment monitoring and accurate weather forecasting.
- d) Groundwater: The anticipated quantity of groundwater inflow to the tunnels has been estimated by the Applicant based on previous experience, including with the Amethyst scheme. The proposed investigations will provide further information on anticipated inflows. If inflows are higher than expected a range of mitigation measures, including grouting, are available during construction. The Applicant expects any effects from groundwater extraction will be mitigated by the very high rainfall in the area and the depth of the tunnels. During construction it is expected that groundwater will require some treatment to address suspended sediment and pH before discharge to the Waitaha River.
- e) Spoil materials: Spoil material will be tested for contaminants during the geotechnical investigations. Nonetheless, the Applicant has assumed that spoil will comply with the definition of “cleanfill material” in the RLWP.
- f) Cut slopes: The Applicant has noted that cut slopes for the access road in the vicinity of Granite Creek will be approximately 16m high with an anticipated slope of 1 in 0.7. Any stabilisation and slope treatment required will be assessed by the construction manager in consultation with the DOC liaison officer.

Comments received

- 590) No s.53 comments were received with respect to geotechnical and natural hazards. However, we note that in response to our draft conditions, both WCRC and the Applicant took issue with the proposed inclusion of a 200L/s limit on groundwater abstraction.²⁶¹

Evaluation and findings

- 591) We have carefully considered the likely geotechnical and natural hazards. We accept the uncontested evidence of the Applicant that detailed design can address the areas of current uncertainty following the completion of the proposed geotechnical investigations. Nonetheless, in regard to a number of matters, conditions are required to ensure effects will be minor or less than minor. We have imposed such conditions.
- 592) We note that we have deleted the 200L/s limit in the condition for groundwater abstraction in response to comments from WCRC and the Applicant. This is on the basis that the precise flow rate cannot be determined at this stage and instead amendments have been made to the conditions to require identification of any constraints associated

²⁶¹ Refer Appendix G2 for further details on this matter.

with groundwater diversions and the provision of recommended design parameters as part of the Site Specific Seismic Hazard Assessment.

593) Accordingly, with the conditions we have imposed we find that geotechnical and natural hazard matters can be appropriately addressed and do not preclude the granting of the approvals sought.

F19: Landscape, natural character and visual amenity

Introduction

594) The landscape assessment was undertaken by Mr James Bentley (**Landscape Report**).²⁶² Mr Bentley describes the Upper Waitaha Catchment as containing a very high to near pristine level of natural character and notes that it is identified as an Outstanding Natural Landscape (**ONL**) in the proposed TTPP and that the Waitaha Hot Springs are listed as a geopreservation site of regional importance. The springs are not however listed as a site of regional significance, and there is no specific recognition or protection within the WDP or TTPP for them.

595) Mr Bentley considers that at a broad Upper Waitaha Catchment scale, the Scheme will affect the very high²⁶³ levels of **natural character** at two discrete nodes – the entrance to Morgan Gorge and the area around the Power Station. He states the Scheme will introduce a level of modification to the Upper Waitaha Catchment and will alter the natural hydrology of the Waitaha River for a 2.5km stretch. Nevertheless, he notes that there are human incursions already evident, such as the track, the swing-bridge and numerous huts, including Kiwi Flat Hut which is located approximately 1km from the Project Site. Further, the Scheme is located closer to the more modified paddocks of the Lower Waitaha catchment, rather than the more remote upper reaches of the Waitaha catchment.

596) In terms of local effects to the natural character associated with reduced flow, Mr Bentley considered there will be **low** adverse effects to the abiotic and biotic natural character aspects of the Waitaha River, and **moderate** adverse effects relating to the perceptual attributes of natural character.

597) Mr Bentley assesses the Scheme at both the broad and local scale adopting the following scale in referencing the relevant RMA effects:²⁶⁴



Figure 4: Scale of effects

598) Based on his assessment, Mr Bentley considers the Scheme will result in varied adverse effects to the landscape values, the visual appearance and natural character of the

²⁶² AEE, Appendix 27 - Landscape Effects Assessment Report, James Bentley of Boffa Miskell, 30 July 2025.

²⁶³ AEE, Appendix 27, p.25 which illustrates the natural character continuum.

²⁶⁴ Te Tangi a te Manu, p.15 'Seven-point level of effect scale'.

surrounding environment. He states it will result in **low-moderate** adverse effects on landscape values and the natural character at the broader scale, and **low** adverse effects on visual matters, noting that this is principally due to the small and defined footprint of the Scheme. He acknowledges that remoteness values would be affected, however, he points out that the Scheme is not occurring within a National Park, nor on a river with a Water Conservation Order, there are various areas of modification and the area is not actively managed by DOC, so pests are present. Mr Bentley notes that helicopters visit the Upper Waitaha Catchment, dropping off hunters and kayakers to a range of destinations, and that the Scheme is in close proximity to the boundary with the Lower Waitaha Catchment, and away from the truly wild and more remote areas further upstream beyond Waitaha Gorge.

599) At the local scale, Mr Bentley assessed each of the Scheme locations and considered:

- a) The Headworks Site would have **moderate-high** adverse landscape effects and **moderate-high** adverse natural character effects, while at the Power Station, there would be **moderate** landscape effects and **moderate-high** adverse natural character effects.
- b) There would be **moderate-high** adverse visual effects at near-distance (within 800m to 1km) vantage points at the Headworks, and at greater distances, this reduces to a **neutral** (or no effect).
- c) At the Power Station, there would be **moderate-high** adverse visual effects at near-distance locations, reducing to **moderate-low** at more distant locations. The effects of the tailrace (including the associated fencing/railing and warning signs) are **high** when the water plume is operating, and otherwise **moderate-high**.
- d) During construction, there would be **high** (significant) adverse effects to the landscape values, the natural character condition and visual amenity.
- e) The reduced river flow through the abstraction reach would have **low** abiotic and biotic natural character effects and **moderate** perceptual effects on natural character.
- f) In terms of the Power Station access road and transmission route (which includes traversing Macgregor Creek), there will be **moderate-high** landscape effects during construction, reducing to **low** as the vegetation matures to visually soften the route.
- g) The landscape effects of the spoil disposal area would be **moderate** during construction, reducing to **low**.
- h) In terms of the new access road and transmission corridor through the working farm from Macgregor Creek to Waitaha Road, the construction effects are **low**, reducing to **neutral**.
- i) The landscape and visual effects of upgrading of the transmission corridor through the Lower Waitaha Valley, are assessed as being **low** during construction, reducing to **neutral**.

- 600) Mr Bentley concluded that due to the range of adverse effects, overall, the adverse effects would be 'more than minor' in the RMA context at the local scale and for some values (notably remoteness) also at the broader scale. He considered that despite the effects being 'more than minor' overall, the Scheme satisfies the matters set out within ss.6(a), 6(b), 7(c) and 7(f) of the RMA and is not an inappropriate use and development in the context of ss.6(a) and 6(b).
- 601) In addressing the provisions of the West Coast Regional Policy Statement (**RPS**) in terms of natural character, Mr Bentley considers the natural elements, patterns and processes will still continue following implementation of the Scheme and that for landscape, despite the Scheme being in an ONL, the overall values will be retained. He is of the view that despite the Scheme adversely affecting some localised landscape values, none of the identified values will be lost, rather there will be a reduction to some values. This he said will not remove the ONL status from this landscape, and the Project will be carefully designed to avoid permanent significant effects.
- 602) With respect to the TTPP objectives and policies (as notified), Mr Bentley considered the Scheme would not create significant adverse effects on the ONL. He said it was recognised that the Project, as a new renewable run-of-the-river hydro scheme, needs to occur on a river, the emphasis is on avoiding significant adverse effects. He noted his assessment was that the long-term landscape effects are not significant.
- 603) For natural character under the TTPP, Mr Bentley said the effects are not significant, considering that the river will still maintain a natural appearance and will still appear to have natural freshes and floods. He considered the higher-level effects are localised and associated with the built parts of the Project as they intersect with the river and the natural environment, while the high effects occurring throughout the construction phase at the Headworks and Power Station Sites, are temporary and localised.
- 604) Mr Bentley said the WDP includes specific provisions with respect to landscape in Part 3.10 (Objectives) and Part 4.8 (Policies). He said the Scheme is consistent with the WDP broad-based landscape objectives. He considered that due to the Scheme's small footprint within the mountainous landscapes of Westland District, it does not impinge on the integrity of the broader district landscape values, that areas of new planting are proposed, and that the infrastructure proposed will be small, low profile and integrated with the natural environment.
- 605) Mr Bentley went on to say that the iterative design process and mitigation measures proposed will enable the Scheme to sit well within its landscape, to respond to its setting and to acknowledge the outstanding landscape, natural character and visual amenity values the Upper Waitaha Catchment holds by avoiding potentially significant effects. He considered overall, the Scheme is appropriate with respect to natural character, landscape and visual amenity despite the fact that at more local levels the natural character, landscape and visual amenity effects are assessed as being moderate to high (or more than minor), while at a broader scale the effects are, at worst, moderate - low (or minor). He noted conditions are recommended, including implementation of the LMP, to avoid effects being to a degree or scale which are inappropriate to the landscape, features and setting within which the Scheme is located.

TTPP -decision version

- 606) In his response to the notification of the decision version of the TTPP,²⁶⁵ Mr Bentley noted there was now a preamble associated with Schedule 5: ONLs and that Morgan Gorge, whilst located within an ONL is not a natural feature mapped and identified in Schedule Six: Outstanding Natural Features (**ONFs**).
- 607) Mr Bentley also addressed the DIS activity status now applying to the new transmission lines stemming from the Power Station. He noted that the proposed 66kV power poles will be marginally taller than the existing 11kV poles (at approximately 15.5m in height). He said that within Mclean Farm, the combined 11kV and 66kV transmission route will be primarily evident at a distance from Waitaha Road (when looking south), and therefore the primary effects will be associated with the slightly higher 15.5m high poles (and overhead wires) but that visually, there will only be one transmission alignment evident.
- 608) Mr Bentley said that on Waitaha Road, the 11kV and proposed 66kV transmission routes separated. He considered adding a second, parallel line will intensify the linear infrastructure present, making it a more dominant element in views from the road and surrounding properties and that this additional visual presence along Waitaha Road (between Anderson Road and ONL20) will introduce **low-moderate** adverse visual effects during construction, reducing to **low** adverse visual effects in the longer term.
- 609) Within the northern part of the Waitaha Valley, Mr Bentley noted that the proposed upgrades to the transmission poles extend into ONL20 and involve combining both the existing 11kV and new 66kV transmission lines on the same pole. He said that any effects of the upgraded transmission corridor in this location will essentially be the same in scale and character as currently exists, with no vegetation loss, noting that the principal difference will be slightly higher poles (up to 15.5m in height). Based on this, and that the viewing audience is primarily travelling at speed along SH6, the adverse visual effects of the electricity upgrade in this ONL would be **low**.

Response to RFI#1

- 610) In response to our RFI#1, Mr Bentley provided further visual aids (updated plans and simulations) to indicate the position and visibility of various features. Having provided that information he also confirmed that there were no changes to his conclusions in his original assessment.²⁶⁶

DOC s.51 Report

- 611) As part of its s.51 Report, DOC provided an independent peer review from landscape architect Jeremy Head of the Applicant's Landscape Report.²⁶⁷
- 612) Mr Head broadly agreed with the content and conclusions in the Applicant's Landscape Report and LMP, and for the most part considered the findings in terms of effects to be fair and reasonable. However, in his opinion the Project cannot be easily considered 'appropriate' in the local context, as concluded by Mr Bentley, in such a highly natural setting. In his opinion, measures have been taken in the design, which also relies on

²⁶⁵ Westpower Memorandum #2, 17 November 2025, Attachment 2A.

²⁶⁶ Westpower Memorandum #5, 10 December 2025, Attachments 2 and 2A.

²⁶⁷ DOC s.51 Report, Appendix C1 – Waitaha Hydro Scheme Landscape Peer Review, 3 December 2025.

the draft LMP to 'minimise' any operational adverse effects as much as possible, which is different.

- 613) Mr Head considered that, at 'day one' (as opposed to 10 years out) the adverse effects ratings may be slightly higher at certain times than determined by Mr Bentley. He said for instance, at 'day one' and/or when maintenance work is being conducted with the excavator in the river or a helicopter is in operation, the effects of the Project on landscape and visual amenity values at the localised level may at any given time be **high** or possibly **very high** (both of which equate to significant). Accordingly, and while such effects will be essentially temporary, they will be part of the outworking of the Scheme.
- 614) Mr Head differs from Mr Bentley's assessment in respect of the adverse visual effects of the Power Station access road and transmission route on conservation land. In his opinion the transmission poles and wires will be almost as visible at 'day one' as they will be over time from distant viewpoints and cannot be mitigated. As a result, they will more likely generate at least a **moderate-low** residual visual effect, as opposed to **low**, even after the poles have weathered.
- 615) Mr Head considered the Scheme represents semi-industrial activity being introduced into a near-pristine and highly natural setting which will never be fully mitigated to view, although over time the built introductions will weather and revegetate which will help. However, he said there will always be a physical change to the landscape's elements, patterns and processes and so any adverse effects on landscape character and natural character will prevail so long as the Scheme is in place.
- 616) Mr Head said this will be particularly obvious at the entrance to the Gorge where natural elements, patterns and processes are concentrated in one place. He considered any built intervention in landscape 'focus points' such as this will be far more acute than in other less dynamic locations.
- 617) Mr Head said the ongoing in-stream maintenance work using an excavator and at times helicopters ferrying supplies and personnel to and from parts of the Scheme means the Scheme will always be 'active' to a degree where the levels of perceived naturalness will be reduced – at times greatly. He said some people who appreciate the area for its remoteness and naturalness may be discouraged from further accessing this part of the West Coast's hinterland via the Gorge once they know it has been modified, due to the effects of the Project on perceptual and experiential values.
- 618) Mr Head indicated he had sought to clarify some matters through discussions with Mr Bentley. Mr Head concluded by saying that because of the high levels of remoteness and naturalness of the Project Site, and the nature of the activities that would be introduced to the area, genuine efforts should be made to minimise the effects of the Project in multiple ways, as suggested and recommended in the Landscape Report, and draft LMP.
- 619) DOC's overall commentary concluded that:²⁶⁸

While DOC considers that Westpower has made appropriate efforts to remedy, mitigate or avoid adverse landscape effects, the Scheme inherently detracts from the current very high natural

²⁶⁸ DOC s.51 Report, Appendix C – Concessions Report, at [6.3.16.15].

character and landscape values. The effects on natural character and landscape values cannot be fully remedied, mitigated, avoided, compensated for or offset despite Westpower's efforts.

Comments received from invited parties

- 620) Poutini Ngāi Tahu stated that the Waitaha Valley makes up a small proportion of the back-country remote area on the West Coast, and that landscape matters had been addressed to their satisfaction.
- 621) Tāwhiri-Mātea Ltd noted that the effects on natural character, landscape, visual amenity would be more than minor at a local level, mainly due to an industrial intrusion into an otherwise natural environment.

DOC

- 622) Based on Mr Head's review of Mr Bentley's landscape assessment DOC concluded that:²⁶⁹
- a) The ample number of landscapes on the West Coast with similar levels of natural character value does not mean the valued attributes at the Site are any less valued, nor that effects of a change may be somehow more 'acceptable' due to the area's high albeit ubiquitous levels of landscape character. On a regional basis, the West Coast has a very high proportion of New Zealand's natural areas.
 - b) The Project represents semi-industrial activity being introduced into a near-pristine and highly natural setting. Even after some time (10 years+), parts of the Scheme will remain visible with enduring adverse visual effects. It will never be fully mitigated to view, although over time the built introductions will weather and revegetate, which will help.
 - c) The ongoing in-stream maintenance work using an excavator and at times helicopters ferrying supplies and personnel to and from parts of the Scheme means it will always be 'active' to a degree where the levels of perceived naturalness will be reduced – at times greatly, especially during construction and active maintenance.
 - d) There will be permanent adverse effects on natural character and landscape character, irrespective of whether the changes can be seen.
 - e) While Westpower has made appropriate efforts to remedy, mitigate or avoid adverse effects on landscape values, the Scheme inherently detracts from the current very high natural character and landscape values. The effects on natural character and landscape values cannot be fully remedied, mitigated, avoided, compensated for or offset despite Westpower's best efforts. Notably, Westpower has not attempted to offset or compensate for the loss of natural character and landscape values.
- 623) Notwithstanding the above, DOC advised that if the Panel is minded to grant the approvals sought, it recommends further mitigation measures be adopted to lessen the remaining adverse effects on natural character and landscape values. These include:

²⁶⁹ DOC s.53 Comments, 14 January 2026.

- a) making the permanent access road narrower in width than 12 metres where practicable;
- b) ensuring the colour(s) of the structures blend in with the natural environment by requiring the use of an appropriate colour palette;
- c) undergrounding transmission cables where practicable;
- d) requiring the retention and protection of sufficient vegetation to screen building, machinery, stockpiles and general activities; using more definite terms, such as 'will assist', in conditions; and requiring that the species list provided be drawn on for any required detailed landscape plan in the future; and
- e) appropriate compensation to address conservation values rather than discrete ecological values.

624) In summary, DOC considered the Waitaha Valley has ecological, landscape and recreational values of local, regional, national and international significance, and that measures additional to those proposed by Westpower can be undertaken to further avoid, remedy, mitigate, or compensate adverse effects on the values present at the site. However, significant residual effects on landscape (and recreational) values will remain.

NZCA

- 625) NZCA considered the adverse effects on the landscape values at the local scale cannot be mitigated and that the residual adverse effects are such that the Application is not consistent with a number of objectives and policies of the Conservation General Policy 2005 (**CGP**) and the CMS.
- 626) NZCA consider the scarring of the landscape from the vehicle access tunnel, powerlines, and access roads will result in high visitor effects along the track below the Power Station and at Kiwi Flat, which will continue for the lifetime of the Scheme. Particular reference is made to the Morgan Gorge entrance where NZCA consider natural elements, patterns and processes are concentrated and any built intervention in landscape 'focus points' such as this will be far more acute than in other less dynamic locations.
- 627) NZCA consider that while Westpower has made appropriate efforts to remedy, mitigate or avoid adverse landscape effects, the Scheme inherently detracts from the current very high natural character and landscape values and therefore cannot be fully remedied, mitigated, avoided, compensated for or offset despite Westpower's efforts.²⁷⁰

Applicant response to comments and DOC s.51 Report

- 628) In his response to Mr Head's peer review, Mr Bentley had revised his Table 2 and indicated changes to the Scheme had been made. These included:²⁷¹
- a) that the excavator be a dark recessive colour;

²⁷⁰ NZCA Comments, 14 February 2026.

²⁷¹ Westpower Memorandum #7, Attachment 7 - Statement of James Bentley, 21 January 2026.

- b) that the access track at the Headworks will now be a maximum of 5m in width (instead of 12m) following construction; and
 - c) that the Power Station exterior and roof are one colour (natural grey / green / brown hues with maximum light reflectance value of 12% maximum).
- 629) Mr Bentley confirmed (and Mr Head agrees) that the magnitude of effects, while slightly higher on 'day one' does not warrant an elevated level of effect (on the seven-point scale) overall.
- 630) In response to Mr Head's comments regarding the access road and transmission line from the Power Station to Macgregor Creek, Mr Bentley said it would be unlikely that people using the existing track or river would be able to see much of the transmission alignment (other than a short section of it near the Power Station) due to the height of existing trees. He said that while he agreed with Mr Head that undergrounding would reduce the visual presence of the lines, in his view, the access road already represents a modification within this section of the landscape and that transmission lines, although an additional modification, will not materially increase the overall effects. Further, over time these will soften into the treescape as materials weather and vegetation continues to mature.
- 631) In addressing Mr Head's opinion regarding the appropriateness of the Scheme, Mr Bentley said it was important to understand the values that underpin the landscape. He said these relate to the remote and high natural setting, the dramatic Morgan Gorge, the hot springs, mountain context, wildness and transitory character of the Waitaha River and the recreational and cultural associations bound to these. Mr Bentley said he agreed that the Scheme will retain a physical and visual presence during operation, albeit that over time, it will weather and revegetate. He considered that at a localised scale, the Scheme gives rise to natural character, landscape and visual amenity effects that are assessed as moderate to high (and therefore more than minor under the RMA), however these effects are spatially limited, and do not undermine the overall integrity or appreciation of the wider landscape. While at a broader catchment and regional scale, the effects are assessed as no more than moderate-low (minor under the RMA), and the Waitaha River will remain a dominant part of the landscape and will continue to display a range of flow characteristics. He concluded that when considered in its entirety, and with the proposed mitigation and management measures in place, including the preparation and implementation of a LMP (which he suggested updates to), the Scheme is appropriate.
- 632) Mr Jackson, in response to DOC's position that a landscape architect should be involved in the weir and intake final design process, said that this was not supported, given the preliminary weir and intake design is complete and has already been assessed by a Landscape Architect. He noted that the intake must be "in general accordance with" the information provided in the Application, and any design change that results in a more than de minimis increase in landscape effects will require a consent variation.
- 633) Based on the advice of Mr Derks that eco-sourcing plants from the area would take too long to grow, Mr Jackson did not support DOC's position that locally eco-sourced plants are used in all rehabilitation works. However, subsequent to this response, Mr Jackson revised his view and accepted that a condition requiring locally eco-sourced plants to be used in the first instance was acceptable.

Response to RFI#7

- 634) In response to our RFI#7 regarding the landscape effects of the reduced flow in Morgans Gorge, Mr Bentley referred back to his substantive report, noting he had stated that:²⁷²
- a) the Scheme will not affect the Gorge’s overall physical, associational and perceptual values to a significant degree and therefore not reduce its ‘outstandingness’ as a feature within the ONL.
 - b) The river will maintain its course through the Gorge despite reduced flows.
 - c) The currently occurring river processes, in particular flood flows with high sediment transportation capacity, will continue to sculpt the Gorge reach.
 - d) The Gorge is the most difficult part of the river to view from its steep banks, due to its incised sides and boulder-strewn riverbed. Access here is very difficult, and as the Recreation Report indicates, only experienced kayakers have ventured down this stretch of the Waitaha River.
- 635) Mr Bentley said that in relation to the periods of reduced flow, his adverse effects rating for the entire abstraction reach, was equally applicable to Morgan Gorge. He went on to say that whilst there will be a reduced flow, due to the dynamic environment of the Gorge (and the frequency of freshes and floods), the river will continue to influence the Gorge, displaying a range of fluvial characteristics akin to the present.
- 636) Mr Bentley assessed these effects as follows:
- a) Broad landscape, natural character and visual amenity effects on Morgan Gorge - **Moderate-Low**;
 - b) Morgan Gorge reduced flow: abiotic and biotic (natural character) – **Low**;
 - c) Morgan Gorge reduced flow: perceptual (natural character) – **Moderate**; and
 - d) Waitaha River Hot Springs: **Low**.
- 637) Mr Bentley also confirmed that the majority of Morgan Gorge is almost impossible to view (especially from the old track route on the true right), due to the nature of the terrain and mature vegetation blocking views.

Responses to Minute #8 and the joint empanelment

DOC

- 638) Mr Head, who had attended the joint empanelment hearing as an observer, provided a statement responding to additional matters pertaining to landscape and natural character effects raised through that hearing. The focus of his statement was on landscape and natural character effects of the in-stream and bank maintenance works.

²⁷² Memorandum #11, 13 February 2026, Appendix A - Memorandum from James Bentley, 12 February 2026.

- 639) Mr Head’s opinion was that the operational effects of the in-stream flow path and/or gravel bank intervention required via a mechanical digger will be potentially greater than what has been assessed by Mr Bentley. His opinion was based on:
- a) the evidence of Dr Tunnicliffe regarding the geomorphological effects of the Scheme on the Waitaha River catchment;²⁷³
 - b) the general level of uncertainty expressed by Westpower’s experts at the joint empanelment around when gravel and boulders will need to be cleared from the intake area; and
 - c) Dr Clunie’s confirmation that the number of instances the digger would be working at the intake end of the Scheme following floods of greater than 250m³/s was potentially greater than the five to 15 times per annum referred to by Mr Bentley in his 21 January 2026 response to comments.²⁷⁴
- 640) Mr Head’s opinion, as set in his earlier statement,²⁷⁵ was a digger moving about in the stream, when observed by the public will have a **high**, if not **very high** (both of which equate to significant) albeit temporary effect on landscape and visual amenity values at the localised level of the Headworks area. He said this short-term, but very pronounced ‘spike’ in adverse landscape and amenity effects would occur when walkers hear and/or see the activity from the swing-bridge and nearby sections of the adjoining track. He commented that:²⁷⁶
- a) the digger moving about will appear incongruous in an otherwise highly natural and remote setting;
 - b) the presence of the digger in operation combined with the control structure and weir will cumulatively reduce natural values further to the point where the natural elements, processes, and patterns become overwhelmed by the industrial forms and kinetic activity of the digger;
 - c) the presence of the machinery and its non-visual effects will at times extend well beyond its operational footprint;
 - d) the digger will draw attention to the other permanent parts of the Scheme that may have otherwise gone partly unnoticed by walkers;
 - e) due to the adverse effects on landscape, natural character and amenity values, for regular back country walkers, a repeated experience of the digger in operation (or possibility thereof) would be a disincentive to further return to the area;
 - f) the digger in operation would reinforce the industrial nature of the Scheme and likely have a negative effect on those that see it; and

²⁷³ Statement of Evidence of Dr Jon Tunnicliffe on River Geomorphology, 23 January 2026.

²⁷⁴ Westpower Memorandum #7, 21 January 2026, Attachment 7.

²⁷⁵ DOC s.51 Report, Appendix C1 – Landscape Peer Review.

²⁷⁶ Further Statement of Jeremy Head in Response to Minute#8 of the Panel, 19 February 2026, at [9].

- g) the timing of the digger in operation following storm / flood events is likely the same time walkers will be keen to get into the back country.

Applicant

- 641) Mr Bentley responded that he was reassured by Westpower’s engineers that the design of the Project can be delivered in a manner that minimises the need for channel maintenance works. He noted that conditions have been developed ensuring that environmental effects can be managed appropriately, and which are able to be enforced. He noted that these now included undertaking a review if on average, there are more than 15 occurrences of excavator use per year over a 5-year period.
- 642) Mr Bentley accepted that there may be scenarios that result in the excavator being used more than 15 times a year, however, he said this did not change his assessment. He accepted that there are ‘pronounced spikes’ in landscape and natural character effects due to the presence of the excavator in use if visitors are present at that time. However, he maintained that adverse effects are within the ‘**moderate high**’ range when the excavator is in use reducing to ‘**moderate**’ when it is not.
- 643) Mr Bentley said he agreed with Mr Head that the presence of the excavator “will appear incongruous in an otherwise highly natural and remote setting”. However, he considered during operations, the headworks themselves (and the access road / power station if accessed from the lower valley) will reflect a modified environment at the local scale at that time.
- 644) Mr Bentley said he understood from other experts’ that the likelihood that people will be present near Morgan Gorge every time the excavator is in use, is low. He accepted that on occasions people maybe present, and that this had been taken into account in his assessment of moderate-high effects.²⁷⁷

Evaluation and findings

- 645) Having considered the assessments, comments and additional information provided the Panel accept the landscape effects of the Scheme are a key issue for our consideration.

Construction effects

- 646) The Panel accept that the adverse effects associated with the construction of the Scheme on landscape values, natural character and visual amenity at the Headworks and Power Station will be significant and that those effects will extend for a reasonable period of time (upwards of three years). Users of the area will be subjected to a range of landscape effects over this period, but most notably perceptual values which include visual effects at the Headworks site where despite some mitigation associated with the construction staging area, views of the construction works themselves will be more open.
- 647) However, we agree with Mr Head that construction effects are by definition ‘temporary’, in most cases adverse, and are usually at the upper end of the effects scale for a relatively short period of time and that mitigating such effects is not easy. The construction effects of many major infrastructure projects in New Zealand will be seen

²⁷⁷ Westpower Memorandum #13, 23 February 2026, Attachment D.

as significant in terms of landscape (and other) values. In many respects, such effects are unavoidable.

Operational effects

Broad scale effects

- 648) The Panel acknowledges Mr Bentley’s consideration of the broad scale effects, and we agree that at this scale the Scheme will result in low to moderate adverse effects on landscape values and natural character, and low visual adverse effects, due to the relatively small footprint of the Scheme itself within this broad landscape. We agree that the remoteness values will be affected to some degree by the Scheme although we accept that there are already effects such as helicopters dropping off hunters and kayakers occurring in this broader area.
- 649) We have considered the effects on the three ONLs the Scheme is contained within. We accept that for those encompassing the Upper Waitaha Catchment this contains a near pristine level of natural character with limited human incursion most of which is associated with recreational activity. Overall, we have concluded that the visual effects on the ONLs are limited, particularly given their broad expanse. That is not to say we consider there are no visual effects, however, we are of the view that for the most part these effects are confined to the discrete nodes of the Headwork and Power Station areas and the Morgan Gorge reach.
- 650) While we accept that at a broader catchment and regional scale, the ongoing operational effects are moderate–low (minor) and the Waitaha River will remain a dominant part of the landscape and will continue to display a range of flow characteristics, we consider this is somewhat subservient to the effects at the local scale. We have therefore placed a greater weighting in our considerations on the effects at the local scale where we consider they are clearly more apparent and the impacts are greater.

Landscape and visual effects

- 651) We agree with the landscape architects that the magnitude of landscape effects on 'day one' of operation will be higher than those 10 years later. At the Headworks site in particular, due to the openness of the lower reaches of Kiwi Flat, we are of the view that these effects are bordering on significant. However, we accept that over time vegetation growth and weathering will reduce those effects somewhat and features such as the access tunnel entrance will be less visible. We also note that amendments to the width of the access track following construction will reduce its impact.
- 652) We acknowledge that Morgan Gorge itself, whilst located within an ONL is not identified as an ONF in the TTPP. However, we were initially somewhat surprised that neither landscape architect considered the reduction in flow rates did not impact significantly upon the landscape values of Morgan Gorge. From our site visit we were able to view the entrance to the Gorge and see the visual attraction that the volume of water entering the Gorge and cascading down it created. We were also provided with photographs in the area of the hot springs, and again the cascade of water appears to be a dominating feature.
- 653) We acknowledge however, as described by Mr Bentley, that the river will maintain its course despite the reduced flows at times, that the overall physical nature of the Gorge and its associated values in that regard will remain, that river processes will continue

and that visually most parts of Morgan Gorge are difficult to see. On that basis we accept Mr Bentley's conclusion that the effects of the reduced flow are in the moderate and moderate-low categories (being more than minor) and do not reach the level of significant.

- 654) We have less concerns about the visual effects of the Power Station and the associated access road and transmission lines. The ability to provide a degree of screening through bunding and planting, the use of recessive colours for the built form and existing vegetation will all reduce the visibility of these features. Further, the realignment of the walking track so as to avoid the extent of the Power Station means that most visitors passing through this area will only really be aware of its presence through crossing the access road and seeing the transmission lines.
- 655) We considered whether there was a need to underground the transmission lines in the vicinity of the Power Station and/or through to Macgregor Creek. However, we agree with Mr Bentley that the access road already represents a modification on the same route as the transmission lines and they will not materially increase that effect, and that the height of existing vegetation will predominantly screen them from view.
- 656) In terms of the new transmission lines from Macgregor Creek through to the substation on Bold Head Road, we accept that their impact on the landscape will be minimal.

Ongoing maintenance effects

- 657) In terms of the ongoing maintenance required, the Panel agree with Mr Head that this will be a key effect due to its inherent characteristics – an excavator working in a remote part of the West Coast landscape at any given time would not be anticipated in this location by those passing through. While we consider the effects of such ongoing maintenance are more impactful on recreational values than landscape values given the intermittent nature of the activity, we accept that there is a level of impact. However, we have discussed this matter in more detail in the Recreation section below to avoid duplication.

Conditions

- 658) The Panel note that landscape measures have been proposed in conditions to address and mitigate effects, and we acknowledge that these have evolved during the process. A LMP and VMP form key components of providing for these measures alongside specific conditions associated with the Headworks and Power Station sites. The Panel generally agrees with these measures and accepts that they will, to varying degrees, reduce the level of effects overall but we have included some amendments to address matters that have arisen during the process.

Overall conclusions

- 659) The Panel does not accept that the landscape effects assessment carries more weight than the recreation effects assessment as suggested by Mr Jackson. We view these as two separate matters and have assessed them on that basis.
- 660) The Panel is of the view that overall, the adverse effects on landscape values can be considered 'more than minor' in an RMA context at the local scale and in relation to construction effects reach the level of significant. At the Headworks site we consider the effects are, post construction, at least initially very close to being considered significant, however we accept that they will reduce to some extent over time.

- 661) At the broader scale, notably in terms of remoteness, we again consider the effects on landscape values are predominantly 'more than minor', but do not reach anywhere near the significant threshold.
- 662) The Panel agrees with Mr Bentley that despite the effects being predominantly 'more than minor' overall, the Scheme is able to satisfy the matters set out in ss.6(a), 6(b) and is not an inappropriate use and development in that context, however, we consider there is some inconsistency with ss.7(c), 7(d) and 7(f) of the RMA.
- 663) Overall, the Panel agrees that in its entirety, and with the proposed mitigation and management measures in place, including the preparation and implementation of a LMP and VMP, the Scheme can, from a landscape perspective, be seen as acceptable, albeit by a relatively limited margin.

F20: Recreation

Introduction

- 664) The recreation assessment was undertaken by Mr Rob Greenaway (**Recreation Report**).²⁷⁸
- 665) Mr Greenaway said that the Waitaha Study Area receives relatively low use from kayakers, trampers, hunters and canyoneers – the latter being a new activity in the Upper Waitaha Valley with potential for growth. He said low recreational use is a natural and preferred quality of the backcountry-remote management of the setting and not a reflection of low value. He said its primary recreational values are its high-quality white water and backcountry-remote characteristics and that for both values, the Waitaha contributes to a large West Coast backcountry-remote recreation setting.
- 666) Mr Greenaway considered the Scheme has the potential to affect the quality and nature of the recreation experience in the Waitaha Study Area by:
- a) changing the backcountry-remote characteristics of the Kiwi Flat and Douglas Creek settings via the installation of the access road and transmission line corridor from Macgregor Creek to the Power Station Site, the Power Station itself and its tailrace, and periodic maintenance activities and infrequent bypass valve events;
 - b) an altered flow regime in the Morgan Gorge and much of the Douglas Creek reaches; and
 - c) the introduction of a weir and intake structures at the Headworks at the top of Morgan Gorge near Kiwi Flat.
- 667) Mr Greenaway said restrictions on the ability to carry out existing recreation activities in the Waitaha Valley (the recreation opportunity) are limited to white water kayaking. This would include restrictions on those highly experienced kayakers paddling the Morgan Gorge, and on all kayakers on the river who portage the Gorge but use the river below it to complete their journey. He said the residual flow regime would reduce the availability of preferred flows for kayaking in Morgan Gorge (17.5 to 22.5 m³/s, as

²⁷⁸ AEE, Appendix 28 - Assessment of Environmental Effects Recreation, Rob Greenaway of R&R Consulting (NZ) Ltd, June 2025.

identified by DOC) from 15.5% of the time naturally to 2.5% of the time with the Scheme in place (i.e., from 57 days per year to 9). This is a shift from some availability of mid-range flows to infrequent availability (and especially so when weather conditions are factored in).

- 668) Mr Greenaway considered mitigation opportunities are available to reduce the scale of effects on kayaking (temporary cessation of abstraction or the delivery of a preferred flow potentially using the bypass valve and flow control system, kayak access over or around the weir, and regional compensation), but the net effect on kayaking opportunity in the abstraction reach would potentially be **high** (significant). He noted that WWNZ had reached an agreement with Westpower regarding an agreed number of no-take days for kayaking, financial compensation and other Scheme components, which had resulted in WWNZ being content that the adverse effects of the Scheme on paddle sports/whitewater recreation have been appropriately mitigated.
- 669) Mr Greenaway's view is that the net effect on the West Coast kayaking scene is likely to be **low** with mitigation in place.
- 670) Mr Greenaway said that if there are no changes to access levels in the Upper Waitaha Valley, the tramping, canyoning and hunting experiences will remain 'hard-won' but would be diminished by Scheme infrastructure and periodic maintenance at Kiwi Flat. Within the abstraction reach and at Kiwi Flat, the change to the backcountry-remote characteristics of the setting (the recreation values) due to the placement of structures will be **high** (significant) after mitigation (as it imposes a fundamental change) – more so at Morgan Gorge and Kiwi Flat as most visitors to the Valley remain at Kiwi Flat or pass through it and is where the weir structures are visible and visitors have the potential to be affected by maintenance activities. For the rest of the Upper Waitaha Valley, the effect on the values will be **low – moderate** (and nil for those who solely traverse the top of the catchment).
- 671) Mitigation opportunities are available to reduce interaction with structures in the Lower Valley by realigning the access track to avoid the Power Station infrastructure, and at the Morgan Gorge swing-bridge to limit or avoid views of the weir. The hot springs in the Gorge will remain in place but within, normally, a quieter and less dramatic river-side setting.
- 672) At the regional level, Mr Greenaway considers the scale of effect on recreation values is likely to be **low**.
- 673) Mr Greenaway considers there are **no** effects of note on angling or jet boating.
- 674) Mr Greenaway's view is that construction activities at Kiwi Flat will have **very high** (significant), but temporary and localised adverse effects on all users in the Upper Waitaha Valley due to noise, lighting and the presence of construction machinery and personnel. He states that, importantly, the relatively small scale of the Headworks 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 no longer required.
- 675) Mr Greenaway considered the adverse effects of the Scheme on the wild and scenic qualities and recreation values of the Waitaha River are difficult to mitigate. He described the key issue as being a change from an uncontrolled and undeveloped state to one with hydro structures at the Power Station site, the weir and portal entrances at

the Headworks, and a controlled flow regime through the abstraction reach, with periodic maintenance activities. He said the Landscape Report details how visual amenity and natural character effects of the Scheme in both the Upper and Lower Waitaha Valleys have been managed, and these actions were fundamental to minimising adverse effects on recreation values.

- 676) Mr Greenaway said there were management opportunities to maintain – as far as is possible – quality recreational opportunities and experiences in the Upper Waitaha Valley and that there is the potential to increase visitor activity in the Upper Valley by improving the quality of the tramping track between Macgregor Creek and Kiwi Flat. However, he noted that this has both pros and cons, as providing easier access may increase visitors and further change the current recreational experience. He said this is a decision best made by users and managers of the conservation area and the preferred option is to offer financial support to recreation services that may be in the Waitaha Valley or elsewhere in the Region.
- 677) Mr Greenaway recommended a number of potential mitigation measures:
- a) design the weir in cooperation with WWNZ to allow safe kayaking access to Morgan Gorge;
 - b) provide no-take days, or controlled flow levels, to allow kayaking through Morgan Gorge, with adequate flexibility to suit the level of planning required to paddle in the Upper Waitaha Valley;
 - c) provide a bypass valve and flow control system to avoid safety effects for in-river recreation in the event of a Scheme emergency shut-down;
 - d) provide online telemetry of actual flows in the Waitaha River immediately upstream of the weir to enable kayakers to take advantage of natural flows;
 - e) provide online information on construction activities;
 - f) improve access for the kayak portage from the top of Morgan Gorge to 'Alpha Creek' to address lowered kayak amenity in the abstraction reach;
 - g) realign the access track upstream of Macgregor Creek to avoid, as much as possible, Scheme infrastructure;
 - h) enhance kayaking experiences and access in other rivers of the region;
 - i) 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; and
 - j) relocate the swing-bridge over the Morgan Gorge at Kiwi Flat to reduce visibility of the weir and diversion structure.

678) The Applicant adopted most, but not all of these recommendations. The AEE explained the reasons that the Applicant did not agree to implement three of these measures:²⁷⁹

- a) Track improvements for kayak portaging of Morgan Gorge: This was not a matter raised during consultation with WWNZ and Westpower is not interested in contributing towards development or upgrading tracks to make it easier to carry kayaks as this conflicts with the backcountry-remote setting experience.
- b) Relocation of the swing-bridge at the entrance to Morgan Gorge: This would include realignment of the adjoining walking track sections. Westpower considered it would be cost-prohibitive and would undermine the commercial viability of the Project.
- c) 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.

679) While acknowledging the two significant residual adverse recreation effects identified in the Recreation Report, the AEE opined that:²⁸⁰

On the basis that the types of significant residual adverse recreation effects identified in the Landscape Report are "experiential" or "perceptual" in nature, these are more appropriately addressed as part of the effects assessed within the Landscape Report. In this respect, the landscape effects assessment provides a more holistic and integrated assessment of the effects. The Landscape Report considers there are no significant adverse effects associated with the Project.

680) The AEE also cautioned that:²⁸¹

... the Panel must not decline the application because of the two significant adverse recreation effects identified. These two effects are not sufficiently significant to be out of proportion to the Project's significant regional or national benefits. Further, a decline is not supported by the purpose of the FTAA, especially after taking into account Westpower's proposed Approvals conditions.

Response to RFI#1

681) In response to our RFI#1, Mr Greenaway confirmed that the decision version of the TPPP and additional information provided by the Applicant's experts in response to that RFI did not change his assessment as he had prepared it on the premise that the Project area qualified as an ONL.²⁸²

²⁷⁹ AEE, Section 6.19.2.2.

²⁸⁰ AEE, p.304.

²⁸¹ AEE, p.305.

²⁸² Westpower Memorandum #5, 10 December 2025, Attachment 3.

DOC s.51 Report

- 682) As part of its s.51 Report DOC provided a recreation technical report prepared by Michelle Sidley, a Senior Visitor Advisor with DOC, with input from other DOC officers as appropriate (**DOC Recreation Report**).²⁸³
- 683) The DOC Recreation Report concludes that:
- a) The Waitaha Valley is a low-use but high-value recreation setting, offering solitude, natural beauty, character, and challenging terrain. It supports a range of activities, including internationally significant extreme kayaking in Morgan Gorge, remote tramping opportunities, emerging canyoning experiences, hunting, hot springs, angling, and jet boating.
 - b) The Scheme introduces temporary construction effects and permanent infrastructure and activity levels that conflict with CMS objectives for Backcountry-Remote zones, which prioritise natural character, solitude, and minimal mechanisation.
 - c) Construction effects will be incompatible with the experiences associated with a remote recreation setting with the net effect on recreational values being a **significant** intrusion and disruption to all back country recreational users.
 - d) The Scheme will permanently erode naturalness and solitude and for most visitors to Kiwi Flat, the transformation from a wild, free-flowing river to a regulated system will represent a **high** effect on the recreation setting. These effects diminish upstream, though perceptual changes persist, including visual effects from the monitoring stations.
 - e) Kayaking in Morgan Gorge would be **significantly** diminished despite mitigation or compensation.
 - f) No clear recreational gains, such as improved public access, have been identified. While mitigation measures include design adaptations, minor track realignment, and user group engagement; the combined residual effects on the recreation setting remain high for the life of the Scheme.
 - g) The one-off \$25,000 contribution toward track and hut maintenance does not represent meaningful mitigation and is inadequate given the scale and duration of adverse effects and does nothing to address the permanent loss of naturalness, which is central to the recreation experience and cannot be offset by financial contributions.
 - h) The Scheme and the measures proposed to avoid, remedy and mitigate effects on recreation values do so to a degree but there remain **significant** effects on those recreation values. The measures offered do not address the fundamental loss of natural character, solitude, and remoteness that underpin the valley and objectives of Backcountry-Remote Zone.

²⁸³ DOC s.51 Report, Covering Report, at [1.7]; Appendix B – Technical expert credentials; and Appendix C2 – Recreation Report.

684) The DOC Recreation Report recommends:

- a) reinstating the track on the true left of the Waitaha River;
- b) 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;²⁸⁴ and
- c) the inclusion of the following condition which was said to have been agreed in the earlier (unsuccessful) 2014 application:

The Concessionaire must avoid erecting any transmission tower at the switchyard and bury the transmission lines for no less than 200m downstream of the powerhouse.

685) The DOC Legal Memorandum also commented that, in relation to kayaking, it is not possible to entirely address an adverse effect by reference to the agreement of one group (WWNZ), and certainly not a group that cannot possibly speak for all whitewater kayakers.²⁸⁵

Comments received from invited parties

686) Poutini Ngāi Tahu stated that the Waitaha Valley makes up a small proportion of the back-country remote area on the West Coast, and that recreation matters had been addressed to their satisfaction.

687) The Minister for the South Island and Hunting and Fishing suggested that measures could be implemented to minimise disruption to species important for recreational hunting and fishing.

688) DOC's s.53 comments covered similar issues to those in their s.51 Report referred to above. Additional matters raised were that:

- a) the mitigation measures are not sufficient to address the adverse effects on recreational opportunities and values, and the introduction of artificial structures and activity would be a fundamental change to Waitaha Valley's character and values as a backcountry-remote setting;
- b) the proposed "opt out" provisions associated with the no-take days in the WWNZ agreement means that the effects are being addressed through financial compensation rather than mitigation to reduce the scale of adverse effects on the kayaking opportunity;
- c) the residual effects to kayaking opportunities and further recreational experiences remain high due to a significant change to the nature of the river; and
- d) the proposed condition associated with the contribution toward track and hut maintenance in addition to being inadequate, is also unclear and unworkable as it

²⁸⁴ The methodology for this calculation is set out in Appendix 2 of the DOC Recreation Report.

²⁸⁵ DOC s.51 Report, 10 December 2025, Appendix F - Legal Memorandum, at [15].

does not specify who would receive this payment, adding considerable uncertainty to its effectiveness as compensation.

- 689) The DOC comments conclude that Westpower has sought to address the effects on recreational opportunities and values identified through various mitigation measures, consideration of design elements, and engagement with relevant user groups. However, DOC does not agree with Westpower's assessed scale of residual effects (as outlined in the s.51 Report). Therefore, although various methods to avoid, remedy, mitigate or compensate for the adverse effects are proposed, many of the measures remain inadequate and the effects remain significant from DOC's perspective.
- 690) DOC goes on to state that should the Panel be minded to grant the approvals sought, the following measures should be adopted to reduce adverse effects of the Project on recreational values:
- a) The original track to Kiwi Flat along the true left of the river should be reinstated and maintained for the life of the Project, rather than the alternative track proposed by Westpower.
 - b) The transmission lines should be buried for at least 200m from the Power Station and no transmission tower should be erected at the switchyard to mitigate effects of the new transmission lines from the Power Station site to the substation.
 - c) The conditions should be amended to remove the "opt out" (monetary compensation) provisions so there absolutely must be provided four no-take days every year as mitigation.
 - d) The value of compensation should be adequate to address residual adverse effects on recreation, and be based on the loss of recreational values over a 20-year period. DOC's recommended sum is \$16,000 p.a. over 20-years or a \$315,000 one off payment.
 - e) The funding should be paid directly to DOC as administrator of the land, be CPI adjusted, and should be required as a condition of a concession such that it is administered and enforceable by DOC. This is because DOC is the responsible landholding and regulatory authority managing the area affected. It is not considered appropriate that the recreation compensation be administered by a local authority or any other group.
- 691) NZCA agreed with DOC that recreational opportunities would be adversely affected by the proposed Scheme both in terms of availability and value. They considered that the proposed Scheme is inconsistent with the recreational setting in the Waitaha Valley, and the net effect after mitigation measures are introduced would continue to either be high or significant. They state that for many users, the Waitaha is valued as a continuous, unmodified river journey; breaking that experience with industrial structures and regulated flows represents a high residual effect, not a low to moderate one in the upper Waitaha Gorge and Kiwi Flat Reach.
- 692) NZCA comments include a statement that they have been advised by FMC that there are a number of factual inaccuracies in the Recreation Report. The comments go onto detail these which include the foot access situation into the Waitaha Valley, moving the access track and the swing-bridge, the assessment of the effect on the West Coast

kayaking community as low, incorrectly ascribing maintenance of the Valley’s huts to Permolat and relying on visitor number statistics in hut book entries.

- 693) NZCA consider that the measures proposed to avoid, remedy and mitigate effects on recreation values do so to a degree but there remain significant effects on those recreation values. They are of the view that the measures offered do not address the fundamental loss of natural character, solitude, and remoteness that underpin the valley and objectives of the Backcountry-Remote Zone.
- 694) NZCA consider the adverse effects on the recreation values at the local scale cannot be mitigated and that the residual adverse effects are such that the Application is not consistent with a number of objectives and policies of the CGP and the CMS.

Peer Review

- 695) As noted earlier in this Decision, we engaged Paul Wilson to undertake a peer review of Mr Greenaway’s Recreation Report, the subsequent responses from DOC and the s.53 parties, and to provide us with advice on recreation matters.
- 696) Mr Wilson considered Mr Greenaway’s Recreation Report to be a comprehensive assessment of the likely effects of the Project on recreation. He noted that the assessment of recreational use relies largely on hut book entries, interviews, and historic data and that while these are valuable, there is no evidence of recent systematic user surveys or intercept surveys that may identify new users of the area. However, he considered the analysis of the available data (and the scarcity of data) supports the assessment that use by all user groups is relatively low.
- 697) Mr Wilson noted that the Recreation Report considered the effects of the construction and operation of the Project on the full range of current recreational users of the area as well as the significance of those effects. This was undertaken regardless of current levels of use, through a structured activity by activity assessment primarily using the author’s professional judgment and expertise. He acknowledged that there is no nationally accepted methodology for determining the significance of recreational values in New Zealand.
- 698) Mr Wilson noted clarification was required in relation to the scale used to assess effects. Paragraph 3.3 of the Recreation Report stated that a five-point scale had been applied, however, Table 1 (Paragraph 4.1) appeared to apply a seven-point scale.
- 699) In summary, Mr Wilson’s review of the Recreation Report:²⁸⁶
- a) Agrees with Mr Greenaway’s conclusions that: “Low recreational use is a natural and preferred quality of the backcountry-remote management of the setting and not a reflection of low value. The primary recreational values of the area are its high-quality whitewater and backcountry-remote characteristics. For both values, the Waitaha contributes to a large West Coast backcountry-remote recreation setting.”
 - b) Agrees with Mr Greenaway’s conclusion that the “scheme has the potential to affect the quality and nature of the recreation experience in the Waitaha Study

²⁸⁶ Recreation Assessment Peer Review: Appendix 28, Waitaha Hydro, by Paul Wilson of Xyst Ltd, 27 January 2026, p.17, at [3.17]; and p.24, at [5.1] and [5.6].

Area” through changes to the backcountry-remote characteristics of the area, altered flow regimes and introduction of infrastructure both below and above Kiwi flat. Mr Wilson considers this includes the introduction of flow monitoring infrastructure at Scamper Torrent and Moonbeam Hut, the effects of which, were not in his view adequately considered in Mr Greenaway’s assessment.

- c) Broadly agrees with Mr Greenaway’s conclusion that: “For the rest of the Upper Waitaha Valley, the effect on the values will be low – moderate (and nil for those who solely traverse the top of the catchment).”
 - d) Agrees with Mr Greenaway’s assessment that: “Within the abstraction reach and at Kiwi Flat, the change to the backcountry-remote characteristics of the setting (the recreation values) due to the placement of structures will be high after mitigation (as it imposes a fundamental change) – more so at Morgan Gorge and Kiwi Flat where the weir structures are visible and visitors have the potential to be affected by maintenance activities.”
 - e) Considered that mitigation measures proposed are focused on reducing the potential for interaction by recreationists with Scheme infrastructure by realignment of access routes. He said that while these measures will reduce the effects of the Scheme, they will also reduce the quality of the recreational experience as described by Mr Greenaway: “Kiwi Flat is a core feature of the recreational experience in the lower section of the Upper Waitaha Valley. The entrance to Morgan Gorge is a key element of that, with the swing-bridge passing directly over the site of the proposed weir, and the access track to Kiwi Flat Hut passing via the broad riverbed immediately adjacent. The introduction of the weir structure at Morgan Gorge, along with the lowered flow and periodic maintenance, will change the visual and aural experience at and near the swing-bridge, and at the entrance to the Gorge as experienced from the river flats.”
 - f) Considered that wider engagement with other user groups on potential mitigation measures may yield more beneficial mitigations for recreational users.
- 700) Mr Wilson also provided comment on the DOC Recreation Report prepared by Ms Sidley as part of DOC’s s.51 response. He noted that Ms Sidley uses the same five point effects scale as Greenaway but focuses more on visitor groups and experience outcomes than assessing effects primarily at regional and local scales for specific recreation activities.
- 701) Mr Wilson agreed with Ms Sidley’s assessment that effects above Morgan Gorge would not merely be perceptual. In his view the proximity and visibility of weather monitoring infrastructure to recreation users, along with the frequency of activity to maintain and service the infrastructure, will determine the significance of those effects on recreation users above Morgan Gorge. He considered the level of effect in the Upper Waitaha Valley (above Kiwi Flat) to be **low** when no maintenance activity is occurring and **moderate** when maintenance operations are taking place.
- 702) Mr Wilson also agreed with Ms Sidley that the effect on downstream activities were **low-moderate** as opposed to Mr Greenaway’s **nil** for angling and jet boating and that the presence and operation of the excavator at Kiwi Flat to undertake river works will be **high-moderate** when in operation.

- 703) Mr Wilson noted Ms Sidley proposes the reinstatement and maintenance of the original track on the true left of the Waitaha River to reduce the effects of the Project by routing track users away from most of the Power Station infrastructure and that Mr Greenaway also notes that transferring access to the true left of Morgan Gorge would give “better access to the hot springs and views into the Gorge, and reducing interaction with the Scheme Headworks at Kiwi Flat”. Mr Wilson said relocation of the track to the true left would require a significant bridge to be constructed over the Waitaha River at the Alpha Burn and acknowledged that while this was not part of the Project, he would support further investigation of this proposal, including consultation with users, to enhance access and address the impacts of the Project.
- 704) Finally, in response to the comments of NZCA, Mr Wilson said he disagreed that the effects of the Scheme are high for the entire setting, considering the effects on the Upper Waitaha Valley to be low to moderate.

Applicant response to comments, DOC s.51 Report and peer review

- 705) In response to the DOC Recreation Report, Mr Greenaway said his assessment still stood, and his response aimed to further clarify for the Panel some matters addressed in his report given the comments in the DOC Recreation Report.
- 706) Mr Greenaway said the DOC Recreation Report appears to have, in its conclusions, missed his distinction between recreation opportunities and recreation values, but rather uses various ‘effect types’ to formulate an analysis. He went on to provide examples of this and point out where there were differences between himself and Ms Sidley and where they were aligned. Key points were that:
- a) The no-take days are not exclusive to WWNZ members in the proposed conditions.
 - b) Both he and Ms Sidley find that there is a high unavoidable operational effect arising from the Scheme. However, Mr Greenaway clarifies in his assessment that this effect is at the local level and relating to recreation values only.
 - c) The body of the DOC Recreation Report does not clarify an assessment of effect at the regional level, but notes that the “Waitaha Valley is recognised as a regionally significant backcountry setting,” which Mr Greenaway agrees with.
 - d) Mr Greenaway accepted that he had not reviewed the effects of weather stations proposed in his assessment but considers them very normal elements of a tramping experience – pointing to the example at Ivory Lake (which he described as the “most remote part of the catchment”).
 - e) Mr Greenaway clarified that in terms of his finding that the operational Scheme infrastructure would have **high** effects on the backcountry remote experience, it was more appropriate to start at the boundary of the DOC estate at Macgregor Creek rather than at the Power Station site. He also clarified that in his opinion the effects remain **low-moderate** for the transmission component leading to the Power Station.
 - f) Mr Greenaway said it was not correct that his report recommends a \$25,000 compensation package and he said he had not been involved in any financial assessments.

- g) Mr Greenaway said he found the DOC compensation methodology generally confusing and that he was not familiar with a 'Time Valuation Method' and could not find any relevant academic references online to that. However, he said he was familiar with the 'Travel Cost Method', which has been attempted many times in non-market valuations for recreation – but he avoided it since it relies on too many assumptions, and he would not be prepared to defend it in the Environment Court.
- h) Mr Greenaway said the reinstatement and maintenance of the original track to Kiwi Flat on the true left of the river would require the construction of an entirely new track (he confirmed the old route is well overgrown), with the associated ecological impacts, and the development of a high maintenance bridge from which a view of the Power Station is likely.
- i) Mr Greenaway said he was aware that Permolat has communicated with Westpower that they do not want to see the relocation of the existing bridge above the proposed weir.

707) Mr Greenaway also provided a response to the NZCA (and FMC) comments:

- a) In relation to foot access, he considered his report remains an accurate description of the existing environment and that for improved access in the Valley, the key issues affect land that is privately owned.
- b) He continued to see value in moving the access track and 'Kiwi Flat' swing-bridge as a future method to minimise views of the structures in the river.
- c) He noted that his proposal for compensation options included DOC, Permolat, WWNZ, FMC 'or others' as possible recipients, but that compensation proposals have been determined by Westpower.
- d) In relation to hut book entries, he noted that DOC used a much-reduced figure of 133 annual visitors per year but considered that the more conservative (higher) figure of 300 he used, remains appropriate. He also noted that while front country hut books are not well-used (and so underrepresent the number of visitors), backcountry hut books are relatively well-used for several reasons, including safety for intrepid recreationalists in remote areas, that visitors are predominately New Zealand domestic users, and pride of the visitor having achieved the destination.

708) Mr Copeland also commented on DOC compensation methodology, stating that the approach to calculating the loss of recreational values is arbitrary and that he did not consider it is a reasonable methodology that assists the Panel. Nevertheless, he went on to describe what he considered should be taken into account in any consideration of compensation. Mr Copeland concluded by saying in his view the Time Valuation Method calculation in DOC's Recreation Report should be disregarded.

Response to Peer Review

- 709) In response to Mr Wilson's review, Mr Greenaway said the review was largely in agreement with the broad findings of his own assessment.
- 710) Mr Greenaway noted that Mr Wilson agreed with DOC that construction effects will be 'significant'. He said, using his definition of significant, this would result in the loss of

ability to use the affected areas for recreation and the displacement of all or most visitors, but he noted that he had used this term inconsistently in his own report – as had been pointed out. For clarity, Mr Greenaway said his findings in his Table 1:4.1 was his preferred conclusion.

- 711) Mr Greenaway went on to say that while there may be discrete and brief exclusion areas depending on what stage the construction is at, access to the upper and lower Valleys will not be curtailed or significantly limited. He said there will, however, be very high effects on the visitor experience in the Kiwi Flat area during the construction period (as set out in his technical report).
- 712) Mr Greenaway agreed with Mr Wilson’s finding of ‘moderate’ scale effects on recreation values in the Upper Waitaha Valley when maintenance activities are underway and low effects the remainder of the time but noted that maintenance activities will be very infrequent above Kiwi Flat, and relate to three weather stations at three huts and at the bottom end of the Waitaha Gorge. He retained his contention that a small weather station in the vicinity of a hut is a quite minor issue and considering the low level of maintenance required, maintained that there was a low level of effect on recreation values above Kiwi Flat, with no effect on recreation opportunity.

Joint empanelment

- 713) During the joint empanelment, the Panel asked some specific questions around the use of the excavator for channel maintenance.
- 714) Dr Clunie confirmed that the five to 15 days per annum was an indicative range based on the expected frequency of large floods (in excess of 250m³/s). He accepted that there could potentially be more than 15 days when the excavator was working in or alongside the river.
- 715) Mr Griffiths confirmed that the excavation work could not be confined to weekdays only. He said Westpower cannot control when events might occur, and that they had to be prepared to respond to the event whenever it happens. He noted it was more likely to be on a weekday than a weekend, purely because of the number of days involved.
- 716) Mr Jackson said a maximum number of days could be prescribed as a condition; however, he did not think that was warranted in this case given the confidence the team had on the effects and the ability for the Scheme to pass bedload sediment.²⁸⁷

Response to Minute #8 and the joint empanelment

DOC

- 717) Ms Sidley said the evidence presented at the joint empanelment and subsequent correspondence between the Applicant and DOC²⁸⁸ highlighted the uncertainty regarding both the frequency of excavator operations within the Kiwi Flat environment and the likelihood that visitors may encounter such activity.²⁸⁹ She said the potential for digger activity exceeding 15 instances per year, combined with limited clarity regarding the timing or triggers for these interventions, made it difficult to assess recreation

²⁸⁷ Joint Empanelment Transcript, Part 2, 13 February 2026.

²⁸⁸ DOC Memorandum, 19 February 2026, Attachment 1.

²⁸⁹ Statement of Shelley Sidley in response to Minute #8, 19 February 2026.

effects with confidence. She considered activity at this scale is likely to materially reduce naturalness through mechanical noise that travels along the valley, visible disturbance, and a diminished sense of backcountry character—particularly if extraction occurs during weekends or peak visitor periods.

- 718) Ms Sidley went onto say that a central concern is that visitors will be unable to reliably predict whether machinery may be operating when planning their trips and that this uncertainty alone is likely to influence how people perceive the valley and whether they choose to visit. She said the prospect of arriving to find active excavation—without any reliable way to avoid it—constitutes an effect in its own right.
- 719) Ms Sidley recommended that, if the Project is approved, conditions be imposed requiring measures that maximise public information and provide the greatest practicable advance notice of planned excavation activities. She considered that improved forecasting, transparent scheduling, and clear communication channels will not mitigate the presence of machinery in a backcountry setting, but they would help reduce the unpredictability that would otherwise exacerbate impacts on recreation values.
- 720) Ms Sidley also supported Dr Tunnicliffe’s recommendation for a maintenance condition requiring annual reporting on the frequency, duration, and spatial extent of in-channel maintenance works, with provisions for consent review if maintenance frequency exceeds predicted levels.

Applicant

- 721) Mr Staples addressed concerns regarding the audibility of the excavator.²⁹⁰ He said that a typical 20-tonne excavator produces around 75dB L_{Aeq} at 10m, on average. Beyond this distance, the noise level typically reduces by 6 dB per doubling of distance, e.g. 69dB L_{Aeq} at 20m, 63 dB L_{Aeq} at 40m, etc. Mr Staples noted that the Noise Report had estimated noise levels within 10m of the river to be 65-75 dB L_{Aeq} during relatively low flow conditions. He said that noise from the river typically reduces by 3dB per doubling of distance, e.g. 62-72 dB L_{Aeq} at 20m, 59-69 dB L_{Aeq} at 40m during low-flow conditions and that river noise is broadband (contains sound across all frequencies), making it ideal for masking other noise.
- 722) Accordingly, Mr Staples said noise from the excavator is likely to be similar to river noise levels within 20-40m of the excavator during low-flow conditions and that during high-flow or flood conditions, river noise will be louder than excavator noise. He considered taking this into consideration, and given that the excavator is only anticipated to operate five to 15 days per year, the potential adverse noise effects on recreational users would be negligible.
- 723) In terms of the maintenance, Mr Griffiths reiterated that outside more extreme natural events (landslips, earthquakes etc), the use of channel maintenance by the excavator is anticipated to primarily respond to long-lasting floods greater than 250m³/s, but noted that not all such events will require maintenance.²⁹¹

²⁹⁰ Westpower Memorandum #13, 23 February 2026, Attachment C - Statement of Aaron Staples.

²⁹¹ Westpower Memorandum #13, 23 February 2026, Attachment A - Statement of Rodger Griffiths.

- 724) Mr Griffiths explained that a 20-tonne excavator is preferred because it has a longer arm and can minimise in stream/river works. He said in-stream works would only occur as a last resort when the digger could not reach the required area and that Westpower will rely on its cameras and real-time flow monitoring to determine the extent of the blockage and whether an excavator is required.
- 725) Mr Griffiths confirmed that the excavator operator would drive to the Site through the access tunnel to where the excavator is parked. The excavator operator will then travel down the tunnel to beside the river and move boulders or shift any built-up bedload that has blocked the channel intake. Then after a few hours, the excavator operator will return the machinery to its parking spot within the access tunnel and return via the access road. He noted that the Application includes provision for the excavator operator to travel by a helicopter trip in emergency circumstances.
- 726) Mr Jackson,²⁹² in response to Ms Sidleys' suggestion that a condition be imposed requiring measures that maximise public information and provide the greatest practicable advance notice of planned excavation activities, noted that a new condition had been proposed in the Appendix A of Westpower Memorandum #12 which required:

Following the Commencement of Generation, the consent holder must implement and maintain a communication method, via a website, that provides the public with information on times when the physical excavation of bed material is being undertaken above or adjacent to the Headworks.

- 727) Mr Jackson considered that the obligation set out in the above condition was a practicable response to mitigate the concerns raised by Ms Sidley. He went on to say that given it is not possible to predict with certainty when manual excavation will be required, all Westpower can do is use all reasonable endeavours to provide and make this information available to the public as soon as reasonable. He proposed some additional wording to the condition to address this aspect as follows:

The consent holder must use all reasonable endeavours to ensure information is promptly available to the public via the website following any decision being made to physically excavate bed material above or adjacent to the Headworks.

- 728) Mr Jackson also responded to Ms Sidley's request that the monitoring and reporting of the maintenance activity should also be linked with a review if the frequency of excavation events exceeds predicted levels as recommended by Mr Tunnicliffe. He said Westpower has accepted linking the monitoring and reporting requirements to a potential "action". He considered that rather than align it to a consent review as mentioned by Ms Sidley, a specific review provision tied to the SOMP review is most effective and efficient and proposed the following:

In-stream Works Review Report

If, for each consecutive 5 year period following the Commencement of Generation, the average annual frequency of in-stream sediment excavation work events undertaken above the Headworks exceeds 15, then, as part of the 5-yearly review of SOMP required by condition 23, the consent holder must prepare an In-stream Works Review Report and provide it to WCRC and WDC for their certification no later than three months following the end of the relevant 5 year SOMP review period. The purpose of the In-stream Works Review Report is to identify practicable measures for minimising the frequency of in-stream sediment excavation work events. As a minimum, the In-stream Works Review Report must include the following:

- (a) A detailed analysis of the likely root causes for all in-stream sediment excavation events recorded within the 5 year SOMP review period;

²⁹² Statement of Mason Jackson in response to Minute #8 of the Expert Panel, 23 February 2026

- (b) If the root causes are not considered "unique" to the preceding 5-year period, a detailed review of the Headworks operating procedures set out in the SOMP to identify potential operational and/or set-point changes that could reduce the average frequency of in-stream sediment excavation events;
- (c) A summary of other options considered to reduce the average frequency of in-stream sediment excavation events; and
- (d) Any recommended changes to the operating procedures set out in the SOMP and/or any recommended physical changes to the headworks structure including any technical information to support any recommendations made.

Following the certification of the In-stream Works Review Report, any related amendments made to the SOMP must be separately certified in accordance with Condition 11 of Part B of these conditions and any related changes to the headworks structure must be certified in accordance with Condition 4 of Part C9 of these consents.

729) Mr Greenaway also addressed these issues and responses, stating:²⁹³

- a) There are good indicators that overlap between visitors at Kiwi Flat and channel maintenance will be infrequent. Long-lasting high flows (greater than 250m³/s) that are most likely to cause blockages of the intake will also create challenging conditions for visitors. Canyoners and kayakers need low or moderate flows to safely do their activities. Trampers and hunters may be more minded to visit soon after severe weather or high flows. However, they will do so by foot and need to be able to safely cross various waterbodies, including Whirling Water to access Kiwi Flat Hut.
- b) His assessment in respect of the level of effects on recreational values at Morgan Gorge remained unchanged (noting it was, in any event, already assessed as a 'high' effect and 'significant' in that vicinity).
- c) He considered notifying channel maintenance on a website with a possibility of linking to the DOC website related to Kiwi Flat Hut to be a reasonable and sufficient method to inform potential visitors about activities in the Valley before they embark on a trip. He acknowledged that some visitors would not check the websites. He did not consider signage notifying them of an excavator being in use would markedly alter their perception of naturalness when they arrive by the weir.

730) In response to queries regarding his assessment scales, Mr Greenaway acknowledged there may be confusion between his Table 1 and Appendix F which use different scales of effects (a seven-point scale and a five-point scale). He clarified that Table 1 includes his preferred assessment conclusions which uses the seven-point scale which he confirmed aligns with the landscape scale at p.73 of the Landscape Report.²⁹⁴ He also noted he had in Table 1 used "nil" (which means no adverse effect); and "nil or very mildly-positive" (which reflects the ability for the project to deliver some positive recreational outcomes).

731) Mr Greenaway key conclusions are that the residual levels of effects are:

- a) during construction, on recreational opportunities and values, **very high** and **significant**; and

²⁹³ Westpower Memorandum #13, 23 February 2026, Attachment B – Statement of Rob Greenaway.

²⁹⁴ This scale is reproduced in Subpart F19 above.

- b) during operation, on recreation values (on the managed backcountry remote experience in the abstraction reach, Morgan Gorge and Kiwi Flat - altered flows and visible infrastructure), **high** and **significant**.

Comments on conditions

732) The only comments on conditions of relevance to recreation matters, were provided by WCRC, DOC and the Applicant. These comments related to four key matters:²⁹⁵

- a) The recreation access track condition: with DOC seeking, and the Applicant opposing, an approval role for DOC in terms of the location and design of the track. DOC considers the Power Station would remain visible from the proposed alignment, meaning the realignment would not achieve any appreciable reduction in visual or experiential effects for walkers.
- b) Recreation compensation: with DOC seeking an increase in the amount (opposed by the Applicant), that it be paid to DOC (not opposed by the Applicant) and be for the purpose of offsetting effects on recreational users in the Waitaha Valley (Applicant proposed it be used for maintenance and upkeep of tracks and huts in Waitaha Valley). The Applicant also sought that the condition be moved to the land use consent conditions.
- c) WWNZ compensation payment conditions: WCRC sought (and the Applicant opposed) the deletion of these conditions.
- d) In-stream works: WCRC sought (and the Applicant opposed) a limit of 12 excavations per annum and a review more frequently than 5 years. DOC sought (and the Applicant opposed) capping the number of excavations to 15 per annum with a maximum duration of 4 hours and yearly review.

733) A fuller summary of the changes sought and the party positions and rationale is set out in **Appendix G2** to this Decision.

Evaluation and findings

734) Like the landscape effects, the Panel consider the recreational effects of the Scheme are a key issue for our consideration.

735) As discussed above, the Panel does not agree that the landscape effects assessment carries more weight than the recreation effects assessment as suggested by Mr Jackson.²⁹⁶ We view these as two separate matters, noting that in our view recreation is more about the experience whereas landscape is about the visual values.

Assessment

736) The Panel acknowledge that Mr Greenaway's assessment concluded that there would be significant adverse effects on recreation values. These comprised locally significant adverse effects within the abstraction reach, Kiwi Flat and Morgan Gorge. This was due

²⁹⁵ DOC Comments on Draft Conditions, 27 March 2026 (Table); Westpower Memorandum #18, 27 March 2026, Appendix 1 – Resource Consent Conditions, and Appendix 2a Lease Licence Concession Conditions; and Westpower Memorandum #19, 7 March 2026, at [11]-[13], Appendix 1 Resource Consent Conditions, and Appendix 3 – Response to DOC Comments on Concession and Wildlife Approval Conditions.

²⁹⁶ AEE, Section 7.1.3.1.

to the change to the backcountry-remote characteristics of the setting – more so at Morgan Gorge and Kiwi Flat where the weir structures are visible and visitors have the potential to be affected by maintenance activities.

- 737) While we acknowledge the statement by FMC (included within NZCA’s comments) regarding the possible inaccuracy of recreational numbers in Mr Greenaway’s assessment, given his conclusion as to the effects being ‘significant’ at the key Kiwi Flat/Morgan Gorge location we do not consider any changes in recreational numbers could make any difference to that assessment. In other words, there is no threshold higher than significant. We also note, as Mr Wilson commented, that Mr Greenaway’s assessment was undertaken regardless of current levels of use, through a structured activity by activity assessment primarily using his professional judgment and expertise. We have no reason to question that judgment and expertise.
- 738) We also note that some of the FMC claimed inaccuracies, are in fact not inaccuracies but are decisions by the Applicant not to pursue recommended mitigation measures proposed by Mr Greenaway.
- 739) We agree with Mr Greenaway that there is a reasonable degree of alignment between himself and Ms Sidley on the key areas of effects and that the differences between them are simply the terminology used in some cases. For example, Mr Greenaway’s high or very high based on his seven point system (which is based on the landscape systems identified earlier) is equivalent to Ms Sidley’s significant in RMA terms. Unfortunately, however, both Mr Greenaway and Ms Sidley had initially muddled the seven point system with the RMA effects terminology which has made it more difficult to reconcile their positions. The Panel also notes that Mr Wilson conclusions on these key effect areas aligned with Mr Greenaway and Ms Sidley.
- 740) Having clarified the various positions of the experts, the Panel accept the evidence that the effects on recreational values of the construction activities at the Headworks site and the Power Station site will be significant. Notwithstanding these findings, we note that construction will be for a finite period and that for the Power Station in particular the ability for recreational users to visibly see and/or perceive the construction activity will be very limited. We also note that a specific condition is proposed to manage the effects on recreation during the construction period.
- 741) The Panel also accept the post construction effects on recreational values will be significant in the lower reaches of Kiwi Flat particularly associated with the weir structure, the reduced flow in Morgan Gorge and at times when the excavator is operating. We acknowledge that there will be recreation users who perceive these aspects of the Scheme as imposing upon their recreational experience (and thus values), in what they might otherwise expect to be a ‘wilderness’ type environment largely devoid of human intervention.
- 742) We have addressed the issue regarding the burial of transmission lines in Subpart F19 above.
- 743) In terms of the recreation access track, we do not accept DOC’s reasoning or proposal that a condition should be inserted allowing it to approve the location and design of the track. The evidence from Mr Bentley was that the newly aligned part of the track, prevented opportunities for close up views of the Power Station to be obtained. Mr Head did not dispute that. Further, the track was included in the Application before us and formed part of the recreation and landscape effects assessment. There are also

indigenous vegetation clearance limits tied to location of the track in the resource consent conditions. We find it would be inappropriate to impose a condition of the type sought by DOC, and accordingly we have not done so.

- 744) We do not agree with WCRC that the condition providing for payment to be made in lieu of no-take days should be deleted. We understand that the condition reflects the agreement reached between the Applicant and WWNZ, and is intended to ensure that there is a mitigation if for some reason a no-take day is cancelled.
- 745) In terms of the excavator, we note that the significant effects associated with its operation, which we consider is more an effect on recreational values rather than landscape values given the intermittent and non-permanent nature of the activity, will be limited to those recreational users who are in the vicinity of the lower reaches of Kiwi Flat at the times it is operating. This has been indicated to be relatively infrequent both in terms of number of days and hours (approximately 4 hours). We note that the Applicant had initially estimated that this would occur five times in a good year, and 15 times in a volatile year. However, during the joint empanelment, Dr Clunie in answer to a question from the Panel, said that this occurrence could potentially be greater than 15 times per year. This was supported by counsel for the Applicant in responses to DOC when it was indicated "flexibility for maintenance works is required".
- 746) We also questioned the Applicant at the empanelment as to whether a condition could be imposed that such maintenance activity not be undertaken on weekends and public holidays. Mr Griffiths responded that the excavation work could not be confined to weekdays only as Westpower could not control when events might occur, and that they had to be prepared to respond to the event whenever it happens. He noted it was more likely to be on a weekday than a weekend, purely because of the number of days involved. We accept Mr Griffiths' response on this matter.
- 747) As a result of the above, a condition was proposed by Mr Jackson requiring a review of the excavator operations over a five-year period, and providing notice of when maintenance maybe occurring via a website. We accept that condition as being appropriate, with some amendments. We address DOC and WCRC's proposed amendments to the in-stream works condition as part of our discussion on conditions in Part L.
- 748) In terms of the broader recreational effects on the Upper Waitaha Valley we agree that the effects will generally be low-moderate (minor) including the effects of the flow monitoring infrastructure at Scamper Torrent and Moonbeam Hut, and that at a regional level any effects will be low (less than minor).
- 749) In terms of recreational opportunities, the Panel accept the conclusions reached by Mr Greenaway that kayaking in Morgan Gorge would be impacted to a very high (significant) degree without the proposed four 'no-take' days to enable kayaking which has been included as a condition. While we acknowledge that condition relates specifically to WWNZ in terms of offering the no-take days, there is no restriction in the conditions on only WWNZ members benefiting from no-take days.
- 750) In all other respects we agree that the impact on recreational opportunities will be minimal.

Compensation

751) The Panel acknowledge that financial compensation payments are proposed to address aspects of the effects on recreational values.²⁹⁷ These include:

- a) operational effects on biodiversity \$35,000 per annum (**p.a.**) for 25 yrs;
- b) effects on kayakers \$15,000 p.a. for 35 yrs; and
- c) effects on recreational visitors, single payment of \$25,000.

752) We consider that the compensation in relation to biodiversity will enhance to some extent the experience of recreational users within Waitaha Valley and therefore the recreation values. The compensation equates to some \$875,000 (ex CPI adjustments) over 25 years.

753) The Panel acknowledges the financial compensation related to kayaking is directed towards WWNZ, however we accept Mr Greenaway's contention that for kayakers who are not members of WWNZ, there is no sensible financial compensation route – although the WWNZ funds are intended to support kayak training and access, which is of benefit to all kayakers.²⁹⁸ The payment equates to \$525,000 (ex CPI adjustments) over 35 years and there is provision for further payments in relation to the no-take days should they not be used. We accept that the latter is appropriate in the event that the no-take day(s) are unable to be utilised.

754) Finally, there is the proposed single payment of \$25,000 for effects on recreational visitors, which appears to be where the most contention arises with DOC, who are alternatively seeking a one-off financial payment of \$315,000, a payment within a range of \$252,000 to \$378,000, or \$16,000 p.a. over a 20-year period. We note that Mr Greenaway and Mr Copeland have been critical of the methodology used by DOC to reach their figure, and that Mr Wilson also held a similar view, stating:²⁹⁹

I am not aware of the application of the methods used by Ms Sidley as an accepted and reliable method to calculate the loss of recreation value at a particular location with the limited data available and therefore support the view that the Time Valuation Method calculation in DOC's Recreation Report should be disregarded.

755) Having acknowledged that criticism we also find the basis for the Applicant's own \$25,000 is unclear, although we note their contention is they do not support making financial contributions to a walking track and recreation asset development fund as further access development conflicts with the backcountry-remote setting experience that the area promotes. In this context we note that Mr Wilson said:³⁰⁰

Given the life of the Project, and the largely permanent change to recreational setting, the one-off payment of \$25,000 proposed by the Applicant appears minimal.

²⁹⁷ We note that there are other compensation payments proposed but these are specifically directed at addressing effects on bats, whio, and indigenous vegetation clearance (the latter in certain circumstances).

²⁹⁸ Westpower Memorandum #7, 21 January 2026, Attachment 10 - Statement of Rob Greenaway, at [9].

²⁹⁹ Recreation Peer Review, 27 January 2026, at [69].

³⁰⁰ Recreation Peer Review, 27 January 2026, at [49].

756) The two figures are some distant apart and it is regrettable that the two parties have not been able to agree on an appropriate outcome as it is difficult for the Panel then to reach an acceptable and evidence-based conclusion on this. In the end we have chosen to consider the three financial compensation payments as a whole and on that basis, we have concluded that the total amount (with built in CPI adjustments) to be appropriate.

Overall conclusions

- 757) The Panel considered the ongoing effects on recreational values of the Scheme will be significant in the area of the Headworks/Morgan Gorge due to the nature of the infrastructure and changes to the river impacting on people’s remote recreational experience. We agree with NZCA that the measures proposed to mitigate effects do so to a degree but there remain significant effects on those recreation values in this area. We do not consider under the circumstances of the Scheme there are other measures that could mitigate the situation further.
- 758) Notwithstanding the above, we consider that these effects are essentially localised to Morgan Gorge, the swing-bridge and the lower reach of Kiwi Flat and we note that this is not an overly high trafficked area in terms of recreational use.
- 759) Outside of this specific area we consider the effects on recreational values are limited and can be considered minor or less than minor in RMA terms with changes to the alignment of the Kiwi Flat track in particular helping to mitigate the impact of the Power Station.
- 760) We consider the effects on kayakers has been sufficiently addressed in terms of the impact upon recreational opportunities associated with the reduced Morgan Gorge flow with the inclusion of no-take days. In this context we note that kayaking of the Gorge has not been a frequent occurrence.
- 761) The Panel accepts that the compensation proposed overall is appropriate, however that does not in itself eliminate the significant adverse effects referred to above. From a purely recreation effects perspective therefore, we do not see the Scheme as being appropriate. However, these effects need to be considered in the context of the RMA approvals framework which we do in Part H below.
- 762) Finally, the Panel notes that the reinstatement of the track into Kiwi Flat to the true left bank of the Waitaha River is referred to by both Mr Greenaway and Ms Sidley. While this might well be seen as a preferred solution, particularly in accessing the hot springs, it does not form part of the proposed Scheme and is therefore beyond the scope of what we can consider.

F21: Public safety

Introduction

763) The AEE and associated specialist reports break the issue of public safety down to two specific timeframes - during construction and during the operational phase.³⁰¹

³⁰¹ AEE, Section 6.22.

- 764) During the construction phase the AEE states that public safety will be carefully managed so that people can continue to enjoy recreational activities within the Waitaha Valley while remaining safe. This is to be achieved through:
- a) appropriately located site signage warning people of construction activities occurring, their locations and associated hazards;
 - b) subject to DOC's agreement, establishing alternative walking track access on the true right of the Waitaha River so that recreational visitors can avoid the Power Station site construction area (but will need to cross the access road);
 - c) where appropriate, erecting barriers (or similar) and restricting public access to specific demarcated construction activity areas where associated hazards could result in harm to members of the public; and
 - d) enforcing temporary short-term closures of parts of the walking track during high-risk construction activities such as during above-ground blasting.
- 765) The AEE proposes that the Applicant will also establish relevant lines of communication with local residents to ensure they are aware of construction activities, and in particular, any periods of expected high construction traffic.
- 766) Once the Scheme is operative the Applicant proposes to minimise the disruption to public visitors to the area and make them aware of site related dangers and hazards so they can protect their own health, noting that the Waitaha Hydro Scheme will be incorporated into Westpower's certified management system for public safety.
- 767) The initiatives identified in the AEE to keep people safe once the Scheme is operational include:
- a) installing and maintaining appropriately located site signage warning people of the Scheme's operational hazards;
 - b) subject to DOC's agreement, retaining an alternative walking track access on the true right of the Waitaha River so that recreational visitors avoid the Power Station Site;
 - c) where appropriate, erecting barriers (or similar) around hazardous Scheme components - e.g. a safety barrier will be constructed above the Scheme's intake, and climb-proof fencing will be installed around the Power Station tail-bay to mitigate the risk of falling from height;
 - d) adoption of a relatively low startup and shutdown ramping rate (no more than $0.5\text{m}^3/\text{s}$ per minute during river flows less than $40\text{m}^3/\text{s}$), thereby reducing the rate of flow and water level change downstream of the weir and the tailrace which, in turn reduces downstream public safety risk;
 - e) installing a bypass valve to mitigate potential adverse public safety effects associated with sudden river flow changes occurring immediately following an unplanned Power Station trip event;
 - f) installing sirens to warn the public of potential sudden river flow changes within the abstraction reach and at the Power Station, associated with a trip event;

- g) following the Scheme’s final design, undertaking a full safety risk assessment and preparing a Public Safety Risk Report for submission to the councils; and
- h) making available through their website, live Waitaha River flows and any other relevant information on any specific risks and safety requirements associated with the Scheme.

768) The Public Safety Risk Report, while recommending the above measures, considers that the joint probability of an emergency shutdown occurring concurrently with a person being in the Waitaha River downstream of the weir, including the hot pools, is exceedingly small. With respect to planned Power Station shutdown and startup events it concludes that these can be managed by use of a bypass valve and ramping the flow change to reduce the effect on river safety and ensure visitors and specific river user groups are made aware of potential flow and river level changes.

769) The AEE concludes that any adverse effects on public safety during construction and operation will be negligible and these effects can be reduced even further through the proposed Public Safety Risk Report process once the Scheme’s design has been finalised, and through the proposed ramping-rate trials following the Scheme’s operation.

Comments received from invited parties

770) WDC noted that public access and safety conditions included in the Applicant’s proposed conditions may sit outside matters that WDC is able to monitor or enforce.

Applicant response to comments

771) In response to WDC’s feedback, the Applicant proposed shifting the public access and safety conditions to the regional consent conditions.³⁰²

RFI#7 and response

772) In RFI#7 we sought further information about the number of sirens to be installed and their audibility.

773) In its response to RFI#7 the Applicant clarified that there would be two warning sirens: one at the Power Station and one at the Headworks/intake. As per the Noise Report, these sirens are to be designed and directed in a way that ensures 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 for wildlife. The Applicant indicated that the audibility of the sirens would not reach the full abstraction reach.³⁰³

Evaluation and findings

774) The Panel generally concurs with the findings of the Public Safety Report and the conclusions reached by the AEE.

775) The Panel notes that the conditions associated with public safety include the preparation of a Public River Safety Risk Report to identify any public river safety risks

³⁰² Westpower Memorandum #7, 21 January 2026, at [3.3(a)(iv)].

³⁰³ Westpower Memorandum #11, 13 February 2026, at [4]-[9].

that may arise from the exercise of the consents and methods to appropriately minimise these risks. We note that that Report is required to address potential hazards that may arise from rapid changes in water flows and levels, the use of the bypass valve and the need for signage and audible sirens at the Power Station and Headworks.

776) The Panel also notes that additional safety measures have been introduced through conditions associated with the provision of information via a website (covered in the Recreation Section) around maintenance work being undertaken.

777) On the basis of the above, the Panel considers that public safety has been adequately addressed and that it not a bar to granting the approvals sought.

PART G: REGIONAL OR NATIONAL BENEFITS | WĀHI G: NGĀ PAINGA Ā-ROHE, Ā-MOTU RAINI

G1: Approach to determining regional or national benefits

778) When taking the purpose of the FTAA into account for an approval sought, s.81(4) requires a panel to consider the extent of the Project's regional or national benefits.

779) The term "regional or national benefits" is not defined in the FTAA, and neither is the term "significant regional or national benefits" (which is used in the FTAA purpose statement). However, the term "significant regional or national benefits" is used for referral applications and there are a range of matters specified in s.22(2) that a Minister may consider when determining whether such applications will have significant regional or national benefits:

- (2) For the purposes of subsection (1)(a), the Minister may consider—
 - (a) whether the project—
 - (i) has been identified as a priority project in a central government local government, or sector plan or strategy (for example, in a general policy statement or spatial strategy), or a central government infrastructure priority list:
 - (ii) will deliver new regionally or nationally significant infrastructure or enable the continued functioning of existing regionally or nationally significant infrastructure:
 - (iii) will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment (within the meaning of policy 1 of the National Policy Statement on Urban Development 2020):
 - (iv) will deliver significant economic benefits:
 - (v) will support primary industries, including aquaculture:
 - (vi) will support development of natural resources, including minerals and petroleum:
 - (vii) will support climate change mitigation, including the reduction or removal of greenhouse gas emissions:
 - (viii) will support climate change adaptation, reduce risks arising from natural hazards, or support recovery from events caused by natural hazards:
 - (ix) will address significant environmental issues:
 - (x) is consistent with local or regional planning documents, including spatial strategies:

780) While noting these factors, in determining whether significant regional or national benefits exist, we adopt the approach taken by the expert panel in *Maitahi Village* that:³⁰⁴

This list of factors which may be taken into account by the Minister in assessing the criteria for accepting a referral application provides some useful guidance to a panel as to the nature of a project which falls within the purpose section of the FTAA. However, at best for a panel deciding whether a particular project is a project with significant regional or national benefits, s 22(2) can only provide a flavour of, or guide to, what is required. The question of whether a project is indeed one with significant regional or national benefits remains an intensely factual determination turning on the particular circumstances of the Application.

781) We also note that significance is not to be determined by reference to whether it will appreciably change national or gross domestic product, or annual government tax revenue, but rather it is an indication of scale.³⁰⁵

G2: Regional or national benefits of the Scheme

782) The Application states the Scheme will deliver significant benefits for the local district, region and wider New Zealand community through the following:³⁰⁶

- a) It will offer a clean and reliable energy solution that supports the nation’s emissions reduction and electrification goals and strengthens climate change resilience. Assuming the Scheme produces 129 GWhs per year of renewable electricity, this is equivalent to annually offsetting 129,000 tonnes of CO₂ from thermal electricity production or to removing approximately 69,000 internal combustion engine cars from New Zealand roads.
- b) It will improve security of electricity supply against threats and hazards (such as weather events or issues caused by human error/attacks) impacting the regional electricity supply, which is currently provided via a 550km long transmission link to the wider energy network. The Waitaha Scheme will be able to operate as an islanded generation node if the local network is cut-off from the wider transmission network. It, together with Westpower’s Amethyst Scheme, will form part of the smaller power stations on the West Coast able to restart in the absence of power from the National Grid. This will minimise disruption of supply to the community, and support disaster response and essential services (like hospitals, emergency management centres and services). Given the rainfall levels on the West Coast, it will contribute to mitigation of dry year energy supply risks across New Zealand. It is also strategically located, being close to the largest single load on the network (Westland Milk Products) and the second largest centre of population (Hokitika).
- c) It will significantly contribute towards meeting the forecast future electricity demand as a result of growth, decarbonisation and electrification projects – especially given the rapid reduction in gas supply across the sector.
- d) It will also contribute (other) economic benefits to the Westland District and West Coast Region through increasing employment, incomes and expenditure during construction and operation. For the Region, direct and indirect effects of

³⁰⁴ *Maitahi Village Decision*, 18 September 2025, at [515].

³⁰⁵ *Waihi North Decision*, 18 December 2025, Part F, at [843].

³⁰⁶ AEE, Sections 2.3 and 6.2.

construction are predicted to comprise 121 additional jobs (71 being directly related), \$14.8 million in additional wages and salaries and \$52-64 million per annum in additional expenditure. During operation there will be one additional employment position as well as income and expenditure associated with this additional position. In addition, there will be cost savings to the extent the costs of generation from the Scheme are less than generation and transmission costs elsewhere.³⁰⁷

783) The Applicant's Economic Report also noted that the Scheme would result in some economic disbenefits, which it assessed as follows:³⁰⁸

- a) Reduced tourism expenditure for the local tourism industry: This was assessed as being negligible, due to the current low level of recreational use; the range of alternative locations on the West Coast; the ability for all land-based activities to continue with only visual and perceptual effects; and due to the limited number of kayakers that possess the skills necessary to paddle this stretch of the Waitaha River (with most portaging the Morgan Gorge section).³⁰⁹
- b) Utility costs: No utility costs were expected due to Westpower being required to directly fund road safety and road rehabilitation works as a result of heavy traffic using the local road network.³¹⁰
- c) Road congestion costs: Congestion costs were expected to be non-significant, due to Westpower adopting traffic recommendations to reduce congestion.³¹¹

784) The Economic Report also acknowledged that the Scheme would result in intangible effects, which could include loss of biodiversity, landscape and recreational values, but indicated it was better for these to be assessed separately rather than attempting to estimate monetary values for these effects. Accordingly, the scale of those effects were left to be assessed in other technical reports appended to the AEE.³¹²

G3: DOC s.51 Report

785) The DOC s.51 Report noted that of the various regional and national benefits listed in the Application, the only benefit relevant to concessions is the contribution to New Zealand's renewable energy strategy. This was an effect DOC assessed as "small" given the Scheme would only contribute 23 MW to the 926MW that is indicated as being necessary to meet increasing demand by 2030.³¹³

³⁰⁷ AEE, Appendix 15, Section 4.

³⁰⁸ AEE, Appendix 15, Section 5.

³⁰⁹ Noting that the effects noted here were drawn from the AEE, Appendix 28 - Recreation Report.

³¹⁰ Noting that the effects noted here were drawn from the AEE, Appendix 30 - Traffic Report.

³¹¹ Noting that the effects noted here were drawn from the AEE, Appendix 30 - Traffic Report.

³¹² AEE, Appendix 16 – Economic Report, at [5.5] and [5.6].

³¹³ DOC s.51 Report, Appendix C – Concessions Report, at [6.3.10.4].

G4: Comments received

786) Comments were received from various Ministers regarding the Project’s expected benefits:

- a) The Minister for RMA Reform & Infrastructure supported projects like Waitaha that would deliver positive outcomes for New Zealand. While he referred to the Project as representing “a relatively small amount of additional renewable energy generation”, he also noted it would assist with meeting the renewable energy target.³¹⁴
- b) The Minister for Regional Development noted that the Project would result in important economic benefits for the West Coast region during construction, even though the overall Scheme output was considered “modest” in relation to other hydro schemes like the Clyde Dam. The Minister also noted there may be an impact on visitation to the area, albeit the economic impact is likely to be low given visitation numbers are not significant.³¹⁵
- c) The Minister for Rural Communities noted that the Project is anticipated to provide significant regional or national benefits and improve outcomes for the rural community through providing new renewable energy generation, 70 jobs during construction, would help to lower wholesale power prices and reduce carbon emissions, and would assist with building electricity resilience in an isolated region.³¹⁶
- d) The Minister for Energy and Climate Change considered the Project would have significant national and regional benefits in terms of climate adaptation and significant regional benefits through:³¹⁷
 - i) providing sufficient power to meet approximately half of the West Coast’s annual electricity needs;
 - ii) contributing to climate change targets (through reducing use of thermal fuels and supporting electrification of sectors);
 - iii) improving security of energy supply through both increased generation and geographic diversity of energy generation closer to energy users; and
 - iv) downward pressure on wholesale electricity prices (supporting more affordable energy).

787) Poutini Ngāi Tahu commented that the Scheme will provide benefits to the West Coast community by providing:³¹⁸

³¹⁴ Minister for RMA Reform and Infrastructure Comments on Substantive Application, 17 December 2025, p.2.

³¹⁵ Minister for Regional Development Comments on Substantive Application, 18 December 2025, p.2.

³¹⁶ Minister for Rural Communities Comments on Substantive Application, 17 December 2025.

³¹⁷ Minister for Energy and Climate Change Comments on Substantive Application, 19 December 2025.

³¹⁸ Poutini Ngāi Tahu Comments on Substantive Application, 12 January 2026, at [2.4]-[2.7].

- a) greater electrical resilience through green-renewable energy which would help to address climate change;
- b) comparatively cheaper power and line charges; and
- c) significant investment in the region supporting existing and new industries to grow.

788) McLean Company Ltd considered that the Scheme would have huge benefits to the West Coast Economy and provide a new long-term source of power to the region.³¹⁹

789) DOC, consistent with the comments in its s.51 Report, acknowledged that the Project would make a positive contribution to renewable energy but categorised the contribution as “small and regional in scale” and “a small fraction” of the increased generation required to meet increasing demand. DOC also recognised that the Scheme would provide a “regional benefit” through increased resilience to the West Coast electricity supply network, but cautioned these benefits needed to be weighed against the adverse effects of the “activity at place”.³²⁰

G5: Applicant’s response

790) The Applicant provided a detailed response to comments, noting where comments supported the benefits as assessed in the AEE, providing further information in relation to certain benefits and contextual information regarding the scale of some of those benefits. In particular, the Applicant in its response to:

- a) The Minister of RMA Reform and Infrastructure’s comment about the “relatively small” nature of the generation, submitted that (in summary):³²¹
 - i) the Scheme had a high (60-67% capacity factor);
 - ii) providing energy for 12,000 homes on the West Coast and energy security/reliability for the entire West Coast is demonstrably significant; and
 - iii) the NPS-REG requires the Panel to recognise and provide for the importance of “enabling cumulative increases of REG capacity at any scale”.
- b) The Minister for Regional Development comment about the modest scale and potential impacts on visitation numbers:³²²
 - i) reiterated its comments above about the size of the Scheme and submitted that “almost every energy project will be ‘modest’ when compared to the Clyde dam” – given it is the biggest scheme in New Zealand; and
 - ii) pointed to Mr Greenaway’s Recreation Report which assessed (unmitigated) effects on tourism as being low due to the small scale of the Scheme, the

³¹⁹ McClean Company Ltd Comments on Substantive Application, 11 January 2026.

³²⁰ DOC Comments on Substantive Application, 14 January 2026, at [62].

³²¹ Westpower Memorandum #7, at [3.15]; Attachment 9, at [40]; and Attachment 16, at [6].

³²² Westpower Memorandum #7, at [3.20]-[3.22].

high number of alternatives, and the relatively low level of use of the Kiwi Flat area, and to Mr Copeland’s comments that economic impact would be “very low and significantly outweighed by the benefits of the Scheme”.

- c) Noted the support of Poutini Ngāi Tahu, the Minister for Energy and Climate Change, the Minister for Rural Communities and the McLean Company Ltd, and submitted that:
 - i) these comments illustrate how a “carefully selected 23MW Scheme can create a significant regional benefit”;³²³ and
 - ii) in relation to resilience benefits, Mr Westergaard had quantified the economic impact of a recent outage on the West Coast (as being between \$860,000 to \$1,370,000); and Mr Griffiths had provided information about how similar outages could be avoided with the Scheme in operation (as a lifeline utility).³²⁴

791) While the Applicant did not respond directly to DOC’s s.53 comment, the above responses already address issues of scale.

G6: Evaluation and findings

- 792) We accept that the Scheme will have a range of benefits, generally as described above. We note that no party contested that the Scheme would have these benefits. However, as noted above, views differed on the scale.
- 793) In terms of scale, and while we agree that the Scheme output itself can be described as “modest” in a national context, we find that the contribution it makes regionally is significant - given it is equivalent to meeting approximately half of the West Coast Region’s energy needs and given the increased electricity resilience and security of supply it provides to the Region.
- 794) In terms of national benefits, we acknowledge that the Scheme will also help to lessen dry year energy supply risks and contribute to national climate change targets and climate adaption. However, given the scale of the Scheme and the scale of the national renewable energy targets (as noted in DOC’s submission), and in the absence of any specific evidence to the contrary, we consider it unlikely that these benefits would reach a nationally significant level.
- 795) However, we are mindful that the requirement in s.81(4) is for regional “or” national benefits, not regional “and” national benefits. In other words, regionally significant benefits are sufficient to be consistent with the purpose of the FTAA.
- 796) In terms of economic disbenefits, and in the absence of any evidence to the contrary, we accept the Applicant’s evidence that any such disbenefits will not be significant, can be addressed through the incorporation of expert recommendations (via conditions) and that intangible effects are best left to assessing separately – to avoid “double counting” or methodological critiques.

³²³ Westpower Memorandum #7, at [3.1] and [3.9].

³²⁴ Westpower Memorandum #7, at [3.12]; Attachment 16, at [6]; and Attachment 9, at [28]-[30].

797) Overall, and after taking account of the economic disbenefits, we find the Scheme will have at least regionally significant benefits.

PART H: EVALUATION OF RMA RESOURCE CONSENTS | WĀHI H: TE AROTAKE O NGĀ WHAKAAETANGA-Ā-RAWA

H1: Introduction

798) The Applicant seeks a range of resource consents to authorise the Waitaha Hydro Scheme. A summary of the types of consent sought is included in Subpart B2 above, and a list of all of the resource consents sought (and granted) is set out in **Appendix A** to this Decision.

H2: Assessment criteria

799) The relationship of the FTAA with the RMA is outlined in Sch.5. This provides a bespoke consent application process rather than the standard RMA process.

800) The provisions relating to the Panel's decision are set out in cls.17 to 28.

801) Clause 17 is the key decision-making clause. The relevant parts of it state:

17 Criteria and other matters for assessment of consent application

- (1) For the purposes of section 81, when considering a consent application, including conditions in accordance with clauses 18 and 19, the panel must take into account, giving the greatest weight to paragraph (a),
 - (a) the purpose of this Act; and
 - (b) the provisions of Parts 2, 3, 6, and 8 to 10 of the Resource Management Act 1991 that direct decision making on an application for a resource consent (but excluding section 104D of that Act); and
 - (c) the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991.
- (2) For the purpose of applying any provisions in subclause (1),—
 - (a) a reference in the Resource Management Act 1991 to Part 2 of that Act must be read as a reference to sections 5, 6, and 7 of that Act; and
 - ...
 - (c) to avoid doubt, for the purposes of subclause (1)(b), when taking into account section 104(1)(c) of the Resource Management Act 1991, any Mana Whakahono ā Rohe or joint management agreement that is relevant to the approval is a relevant matter.
- (3) Subclause (4) applies to any provision of the Resource Management Act 1991 (including, for example, section 87A(6)) or any other Act referred to in subclause (1)(c) that would require a decision maker to decline an application for a resource consent.
- (4) For the purposes of subclause (1), the panel must take into account that the provision referred to in subclause (3) would normally require an application to be declined, but must not treat the provision as requiring the panel to decline the application the panel is considering. ...
- (6) For the purposes of subclause (1), the provisions referred to in that subclause must be read with all necessary modifications, including that a reference to a consent authority must be read as a reference to a panel.
- (7) Sections 123 and 123A of the Resource Management Act 1991 apply to a decision of the panel on the consent.

802) Clause 18 is procedural and directs that in setting conditions, the provisions of Parts 6, 9 and 10 of the RMA apply, subject to any necessary modifications to reflect the FTAA. We discuss conditions in Part L of this Decision.

803) None of remaining decision-making clauses (cls.19-28) are relevant to this Application, other than cl.26 which notes that a decision document may specify the date on which an approval lapses unless given effect to.

Evaluation and findings

804) The Panel has considered cl.17 and concluded that the relevant matters we must take into account comprise the purpose of the FTAA, and RMA ss.5-7, 104, 105, 107, 108-108A, 123B and 125. We address these provisions in the subparts that follow.

805) We note that while the Scheme includes NC activities, the effect of cl.17(1)(b), is that the so-called 'gateway' tests in s.104D do not apply. We also note that the Application does not include any activities which are 'prohibited' under the RMA and therefore cl.17(4) is not relevant.

806) In terms of approach, and consistent with our comments in Part D above, we accept the Applicant's submissions that in undertaking our analysis, we must consider the purpose of the FTAA as well as the relevant RMA provisions on their own, and then subsequently conduct an overall balancing exercise, giving greatest weight to the purpose of the FTAA.³²⁵

H3: Purpose of the FTAA

807) The purpose of the FTAA is to "facilitate the delivery of infrastructure and development projects with significant regional or national benefits".

808) The AEE assessed the Scheme as achieving that purpose as:³²⁶

On different but interconnected levels the proposed Waitaha Scheme represents a strategically important development and demonstrably achieves the purpose of the FTAA by delivering significant benefits for the local district, region and the wider New Zealand community. It will deliver much needed energy resilience and economic benefits while also contributing to the nation's efforts to decarbonise and, in turn, deliver a range of other consequential environmental, social and cultural improvements.

809) No party contested that the Scheme was a development which would have benefits. However, as noted earlier, in terms of the scale of those benefits, there was some divergence in views, with DOC considering the level of benefit may be "small and regional in scale".

Evaluation and findings

810) At the outset we note that the Scheme is a "development" as that term is used in the FTAA purpose clause. No party contested that.

811) In terms of the scale of the benefits, we have found in Part G above, that the Scheme would have at least significant regional benefits. It follows that we accept granting the RMA resource consents will facilitate the delivery of the Scheme and its significant (regional) benefits. We return to consider the purpose and benefits when we undertake our overall evaluation in Part M below.

³²⁵ Westpower Memorandum #1, 7 November 2025, at [40], in reliance on *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541, [2019] 2 NZLR 501, at [52]–[53].

³²⁶ AEE, Section 2.3.

H4: Relevant RMA provisions

Part 2

812) The AEE included a detailed assessment of Part 2 of the RMA as is required by cl.5(1)(g) of Sch.5 to the FTAA. That assessment identified ss.5, 6(a) to (e) and (h), and s.7(a) to (d), (f), (g), (i) and (j) as being relevant, and concluded that:³²⁷

Based on the technical assessments that have been commissioned by Westpower, it is considered that the proposal, in accordance with appropriate management controls, will promote the sustainable management of natural and physical resources and, therefore meets the purpose of the RMA set out in Section 5.

813) The Poutini Ngāi Tahu letter included with the Application also provided “unequivocal confirmation” that all relevant effects on them, their takiwā and taonga had been carefully and appropriately addressed.³²⁸

Comments

814) WDC agreed with the Applicant’s assessment.³²⁹

815) The Minister for the Environment commented that s.6 of the RMA and national direction, particularly the NPS-IB were of particular relevance. The Minister suggested changes to the AMP, BMP, and LizMP to improve the Project’s consistency with the government’s ‘no net loss biodiversity goal’.

816) No other party commented on these matters.

Applicant response

817) The Applicant, in its response to the matters raised by the Minister for the Environment, noted that:³³⁰

- a) while RMA s.6 is an important consideration it must be applied considering the FTAA;
- b) the NPS-IB is not applicable to this Project given the exemption in cl.1.3 of that document for renewable electricity generation projects; and
- c) it did not agree with the changes sought by the Minister given they were unsupported by evidence, differed from what Westpower’s experts recommended, and given there did not appear to be any current relevant government ‘no net loss biodiversity goal’ requiring consideration.

Evaluation and findings

818) We acknowledge, as we have elsewhere in this Decision, the effect the FTAA has on the degree of consideration required to be given to these RMA provisions. In reaching our decision we must ‘take into account’ the extent to which the purpose of the RMA will be achieved, the s.6 RMA matters of national importance have been provided for, and the s.7 RMA other matters have been given particular regard. However, unlike under the

³²⁷ AEE, Section 7.1.15.

³²⁸ AEE, Appendix 8, at [14].

³²⁹ WDC Comments on Substantive Application, 13 January 2026, Section 2.

³³⁰ Westpower Memorandum #7, 21 January 2026, at [3.33]-[3.36].

RMA, these matters are not necessarily determinative of the Application. The weight to be accorded to these matters is for us to determine based on the evidence before us.

819) We consider that overall, the Scheme will achieve the sustainable management purpose of the RMA and has given appropriate consideration to the matters of national importance and other matters as:

- a) it is a “green” renewable energy run of river Scheme which will provide significant regional benefits in terms of security of supply, electricity resilience, and jobs;
- b) Poutini Ngāi Tahu has confirmed that the Project has appropriately addressed all cultural and environmental matters and will be of significant benefit to them;
- c) specific consideration has been given, and measures proposed to ensure public safety;
- d) conditions and management plans have been proposed in order to avoid, remedy, or mitigate effects on the environment and to safeguard the life-supporting capacity of the river and whenua impacted as well as the ecosystems they each support; and
- e) while not all effects have been able to be mitigated to a minor level, for those areas where more than minor or significant residual effects remain (i.e., local landscape and recreation effects), the Applicant has offered offsetting/compensation which with the changes we have recommended, we have found to be appropriate.

820) Accordingly, we find that overall Part 2 considerations do not weigh materially against the grant of the RMA resource consents.

Other relevant RMA provisions

821) In terms of the other relevant RMA provisions:

- a) Section 104 requires the consideration of any actual or potential effects of allowing the activity, any offsetting or compensation measures, and any other matters we consider relevant and reasonably necessary to determine the Application. The AEE and subsequent information from the Applicant and parties addressed these matters in detail as noted in other Parts of this Decision.
- b) Section 105 relates to discharges and requires the consideration of the nature of the discharge, the sensitivity of the environment, the Applicant’s reasons for their choice and any alternative methods of discharge. The AEE noted that the discharges are either temporary (related to construction) or intermittent, are directed to land where possible, the technical assessments have not identified any concerns with discharge methods or receiving environments, and there are no other practicable alternatives available.³³¹ No other party commented on this section or contested the AEE conclusion.
- c) Section 107 restricts the grant of a discharge permit if after reasonable mixing the discharge would give rise to certain effects in the receiving waters. The AEE

³³¹ AEE, Section 7.1.16.

opined that provided the conditions of consent are complied with the Scheme will not give rise to any of the listed effects, and therefore does not pose any restriction to the granting of the consents.³³² No other party commented on this section or contested the AEE conclusion on this matter.

- d) Sections 108-108A relate to conditions and bonds. The parties' respective positions on these matters are outlined in other Parts of this Decision, particularly Part L.
- e) Section 123B provides a 35-year term for renewable energy and long-lived infrastructure unless the Applicant requests a shorter term. As noted in Part L below, the Applicant requested that the default 35-year term apply.
- f) Section 125 relates to lapsing of consents which we also address in Part L below.

Evaluation and findings

- 822) Our findings in relation to the above provisions are generally set out in other Parts of this Decision. We rely on those findings and do not repeat them here.
- 823) The only matters not fully addressed in other Parts of this Decision are ss.105 and 107 relating to discharges. In relation to these matters, we are satisfied that the Application has appropriately addressed s.105 matters and accept the Applicant's uncontested evidence that there are no other practicable alternatives available. We also accept the Applicant's uncontested evidence that the discharge will not give rise to the effects listed in s.107. Our findings in Subpart F5 above that the Scheme will not give rise to more than minor water quality effects are also relevant in this regard.
- 824) Overall, we find that while the Scheme may have some more than minor effects in some areas (such as landscape and recreation), the conditions and restrictions we have imposed (including compensation requirements), appropriately address the relevant RMA provisions.

H5: RMA statutory instruments

- 825) The AEE addressed the relevant RMA statutory documents and identified relevant provisions. Rather than repeat all of that, this section addresses the documents of particular relevance to the Application and the comments received. We also rely on our conclusions on effects and the conditions we have decided to impose in support of the conclusions reached on the relevant planning provisions.

National Policy Statements

- 826) The relevant National Policy Statements (**NPSs**) were listed and assessed in Section 7.7 of the AEE and updated via the Applicant's response to RFI#3 following the release by the Government of new and updated NPSs on 18 December 2025.³³³

Applicant's view on relevant NPSs

- 827) The Applicant identified the following as the relevant NPSs:

³³² AEE, Section 7.1.17.

³³³ Westpower Memorandum #7, Attachment 6.

- a) National Policy Statement for Renewable Electricity Generation (**NPS-REG**);
- b) National Policy Statement for Freshwater Management (**NPS-FM**);
- c) National Policy Statement for Urban Development (**NPS-UD**); and
- d) National Policy Statement for Electricity Networks (**NPS-EN**).

828) The Applicant assessed the Scheme as being consistent with all of these NPSs for the following (summarised) reasons:³³⁴

- a) NPS-REG:³³⁵ This NPS recognises the national significance of renewable electricity generation activities with relevant policy direction set out in Policies A, B, C1, C2, D and E. The Scheme involves renewable electricity generation, it will make a significant contribution to achieving New Zealand’s climate change aspirations, it is located where the renewable energy resource is plentifully available, effects will be addressed via various management methods, it provides for mitigation, adaptive opportunities, as well as offsetting and compensation. The amendments to the NPS-REG introduced several other elements, which the Project fully achieves. As a consequence, the Project is now “even more consistent” with this NPS.
- b) NPS-FM: The NPS-FM manages freshwater through Te Mana o te Wai which recognises the importance of water and of protecting the health of freshwater for the health and wellbeing of the wider environment. The NPS policies are applicable to varying degrees. The Scheme:
 - i) avoids contributing to greenhouse gas (**GHG**) emissions that would otherwise adversely affect the health and wellbeing of water bodies and freshwater systems;
 - ii) will protect the health of the freshwater in the area and the health and wellbeing of the wider environment through providing electricity to run facilities like hospitals, water treatment plants or pumping stations for drinking water;
 - iii) allows people to provide for their social, economic and cultural wellbeing;
 - iv) will result in positive cultural impacts that will outweigh the adverse cultural impacts, as assessed by Poutini Ngāi Tahu;
 - v) supports New Zealand’s quest to decarbonise and strengthens energy security and resilience (including climate change resilience) particularly for the West Coast region;
 - vi) through the conditions proposed by Westpower, will ensure that effects will be managed; and

³³⁴ AEE, Section 7.1.7.1; and Westpower Memorandum #7, 21 January 2026, Attachment 6, Sections 5 and 6.

³³⁵ The Applicant noted at p.320 of the AEE that the RPS was promulgated after the NPS-REG but that it was still relevant to consider its overarching directives.

- vii) while the Scheme may not be entirely consistent with each and every provision of the NPS-FM, it does not have to be, and overall it can be considered to be consistent.
- c) NPS-UD: The NPS-UD recognises the national significance of: a well-functioning urban environment that allows people to provide for their wellbeing; providing sufficient development capacity; and ensuring urban environments support reductions in GHG emissions. The Scheme will provide electricity from a renewable source that enables people to provide for their wellbeing, and will play a key role in supporting and enhancing the resilience and security of the power supply to industry and urban environments on the West Coast. It also responds to the projected increases in demand from the electrification of industrial process heat, which is essential to support reductions in GHG emissions.
- d) NPS-EN: The NPS-EN seeks that the national significance of the electricity network (electricity transmission and electricity distribution) is recognised, protected and provided for. The Scheme is consistent with:
 - i) Objective 1(a) as the Scheme involves an expansion of the electricity network and upgrade of transmission lines and the Waitaha substation, it will be carried out in partnership with Poutini Ngāi Tahu and will provide significant benefits in terms of electricity resilience and security of supply enabling people to provide for their wellbeing;
 - ii) Objective 1(b) given the forecasted growth in demand over the next 10 years, and given the adverse effects have been assessed as being acceptable;
 - iii) Objective 1(c) given the Project supports the achievement of New Zealand’s climate change mitigation and renewable energy targets;
 - iv) Policy 1 as the Scheme involves electricity network activities which will provide ongoing benefits to the West Coast, and its adverse effects have been assessed as acceptable;
 - v) Policy 2 as the Scheme provides for the wellbeing of people and communities, electricity is a lifeline facility, the Scheme will increase electricity resilience in the West Coast, is located closer to end users, and it supports climate change and the electrification of the economy as it involves new renewable energy generation;
 - vi) Policy 3 as Poutini Ngāi Tahu are project partners and have confirmed that the effects of the Project are acceptable;
 - vii) Policy 4 as it is for Westpower to determine the design and corridor alignment which the Panel is to assess on the merits;
 - viii) Policy 5 given that future routine electricity network activities (e.g. maintenance) will result in de minimis effects;
 - ix) Policy 6 as the Application is only required to “seek to avoid” adverse effects on ONLs, ONFs, and areas of high natural character and high

recreation value and amenity, and this policy needs to be considered in the context of Policies 7 and 8;

- x) Policy 7 as there is a functional need for the Scheme to be located in the Waitaha River and to traverse the Alpine Fault and an operational need for it to connect to the electricity network;
- xi) Policy 8 as the chosen route minimises its overall length by connecting to existing lines and landowner impacts by utilising existing road reserve, it minimises or avoids indigenous vegetation loss in ONLs, and otherwise appropriately minimises adverse effects through the Project design and conditions, with any residual effects an unavoidable consequence of achieving the benefits of the Project;
- xii) Policy 10 as numerous options were considered but these each had greater adverse natural character effects and vegetation loss; and
- xiii) Policy 14 will be achieved through the conditions proposed.

Applicant's view on NPSs which are not relevant

829) The Applicant submitted that the following NPSs were not relevant:³³⁶

- a) the NPS for Natural Hazards - as it does not apply to "infrastructure", which as defined in the RMA expressly includes facilities for the generation of electricity, and lines and supporting structures;
- b) the NPS for Infrastructure – as it expressly excludes renewable generation activities and assets and electricity transmission network and electricity distribution activities and assets managed under separate NPSs;
- c) the NPS-IB - given it (still) excludes renewable electricity generation activities (albeit Westpower has sought to avoid, remedy or mitigation effects on indigenous biodiversity and where this is not possible has proposed offsetting/compensation); and
- d) the amendments to the NPS-FM - given they relate to quarrying and mining.

Comments received from invited parties

830) WCRC and WDC took no issue with the Applicant's assessment of these policy documents in the original AEE,³³⁷ and agreed with the updated assessment following the release of the new and updated national direction instruments.³³⁸ No other party commented on the assessment.

³³⁶ Westpower Memorandum #7, 21 January 2026, Attachment 6, at [3.3].

³³⁷ WCRC comments on Substantive Application, 12 January 2026; and WDC Comments on Substantive Application, 13 January 2026.

³³⁸ WCRC Response to RFI#5, 9 February 2026; and WDC Response to RFI#6, 9 February 2026.

Evaluation and findings

831) The Panel accepts the uncontested evidence of the Applicant that the Scheme is consistent with the relevant NPSs for the reasons summarised above.

National regulations

832) In terms of national regulations, the AEE identified the following as being relevant:³³⁹

- a) the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**); and
- b) the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 (**Water Take Regs**).

833) The AEE confirmed that consents were being sought under the NES-F as a DIS activity, and that no consent was required under the Water Take Regs as the water diverted through the Scheme was a non-consumptive take.

834) The Applicant's response to RFI#3 noted that the amendments to the NES-F were not relevant as the changes focused on quarrying and mining activities.³⁴⁰

835) WCRC and WDC took no issue with the Applicant's assessment of these regulations,³⁴¹ and agreed that the changes to the NES-F were not relevant.³⁴² No other party commented on the assessment.

Evaluation and findings

836) We accept that the Applicant has correctly identified the applicable national regulations and note that no party contested that.

837) We also accept the Applicant's analysis that a DIS activity consent is required under the NES-F and no consent is required under the Water Take Regs.

West Coast Regional Policy Statement

838) Section 7.1.8 of the AEE contained a summary of the Applicant's assessment of the relevant provisions of the RPS, with the detailed assessment being contained in Appendix 51. In summary, that assessment:

- a) noted that the RPS is the highest ranking and most recently prepared operative planning document for the West Coast Region;
- b) indicated that the Waitaha Hydro Scheme is classified as regionally significant infrastructure (**RSI**) under the RPS; and

³³⁹ AEE, Section 7.1.6.

³⁴⁰ Westpower Memorandum #7, 21 January 2026, Attachment 6, at [3.3(d)].

³⁴¹ WCRC comments on Substantive Application, 12 January 2026; and WDC Comments on Substantive Application, 13 January 2026.

³⁴² WCRC Response to RFI#5, 9 February 2026; and WDC Response to RFI#6, 9 February 2026.

- c) considered the Scheme to be highly consistent with the objectives and policies of the RPS.

839) In particular, the assessment opined that:

- a) the resource management issues of significance to Poutini Ngāi Tahu were achieved given their involvement in the Scheme, the contribution the Project will make to their cultural wellbeing and ability to exercise kaitiakitanga and tino rangatiratanga thus aligning with Treaty principles;
- b) the Scheme would fully achieve the RPS objectives and policies relating to resilient and sustainable communities given the Scheme's benefits,³⁴³ its consistency with the objectives and policies of the NPS-REG as well as the NPS-UD (through providing electricity to support urban development);
- c) the Scheme would also achieve a number of the RSI objectives and policies given it provides security of supply, it is an efficient and sustainable use, it integrates with existing infrastructure, has minimal conflict with other uses, involves Poutini Ngāi Tahu, and provides a compensation package;
- d) while the Scheme cannot provide total protection for natural resources, the RSI policies recognised that would not always be possible, and the balance struck was appropriate;
- e) the Scheme is consistent with the policy guidance around managing natural character, natural features and landscapes, as the development is not inappropriate, it has a functional need to be located on the Waitaha River, the area will retain its outstanding natural landscapes/features even with the Scheme in place, while not all adverse effects are avoided the mitigation means there are no significant adverse effects and an appropriate balance has been struck;
- f) the Scheme will maintain the life supporting capacity of freshwater while promoting wellbeing; and
- g) the design adopts highly conservative risk factors which adequately address natural hazards.

840) WCRC and WDC had no issue with the Applicant's assessment of the RPS.³⁴⁴ No other party commented on the assessment.

Evaluation and findings

841) There was no evidence contesting the Applicant's assessment of the RPS. However, we note that while the assessment referred to there being no 'significant' adverse landscape effects,³⁴⁵ this statement is at odds with the Applicant's Landscape Report which finds that "during construction, there would be 'high' adverse levels of effects to the landscape values, the natural character condition and visual amenity at the local

³⁴³ Those benefits are canvassed above in Part F in our assessment of the positive effects of the Scheme as well as Part G which assessed the regional or national benefits.

³⁴⁴ WCRC comments on Substantive Application, 12 January 2026; and WDC Comments on Substantive Application, 13 January 2026.

³⁴⁵ AEE, p.332.

level”.³⁴⁶ As we described earlier in this Decision ‘high’ equates to significant in terms of the seven-point scale contained in the Landscape Report.

- 842) Further, we note that Landscape Report also reaches a conclusion that “due to the range of adverse effects, it is considered that overall, the adverse effects would therefore be ‘more than minor’ in the RMA context at the local scale and to some values (notably remote) at the broader scale”.³⁴⁷
- 843) The Panel has considered the relevant provisions of the RPS detailed in Appendix 51 of the AEE and we generally agree with the conclusions reached, as summarised above, that the Scheme, overall, is consistent with the various objectives and policies including the ONL provisions. We also acknowledge as discussed earlier in this Decision, that construction effects are temporary, which means that the weighting we apply in this context in relation to objectives and policies is somewhat reduced.
- 844) However, notwithstanding our comments above, and while it does not change our overall finding of consistency, we consider there are provisions within the Natural Character section of the RPS with which the Scheme is inconsistent given the findings of the Landscape Report. In particular we consider there is inconsistency to varying degrees with Policies 2, 3 and 4, noting in particular that Policy 4 to “Allow activities which have no more than minor adverse effects on natural character” reaches, in our view, the contrary threshold. We find it difficult to see how a conclusion of ‘consistent’ could be reached in the AEE (as regards these specific policies) and we consider the greater focus on the broader scale as opposed to the local scale in the assessment of these policies was incorrect.

West Coast Regional Land and Water Plan and West Coast Regional Air Quality Plan

- 845) The AEE assessed these plans in the same section (7.1.9), with a detailed assessment of the degree of alignment of the Scheme with the relevant objectives and policies contained in Appendix 51.
- 846) In summary, the AEE found that overall the Scheme is consistent with these Plans as:
- a) it is a non-consumptive use, which maintains the life-supporting capacity of water and appropriate residual flows within the abstraction reach;
 - b) it protects kōaro, is equipped to withstand natural hazards, is supported by Poutini Ngāi Tahu, and results in acceptable residual adverse effects;
 - c) land management objectives and policies will be achieved through Scheme design, management plans and compensation;
 - d) it is designed to avoid mapped wetlands and effects on riverbeds are limited to construction and intermittent short duration maintenance activities;

³⁴⁶ AEE, Appendix 27 – Landscape Report, p.70.

³⁴⁷ AEE, Appendix 27 – Landscape Report, p.70.

- e) it will maintain water quality through the temporary, intermittent and short-term nature of stream works and through the suite of management plans; and
- f) it achieves relevant air quality provisions and will displace high GHG emitting generators.

847) WCRC and WDC had no issue with the Applicant's assessment.³⁴⁸ No other party commented on the assessment.

Evaluation and findings

848) We accept the Applicant's assessment and note that it is consistent with our findings in Part F above that effects on kōaro and water quality will be less than minor and can be appropriately addressed by conditions (including fish passage). Accordingly, we find that overall, the Scheme is consistent with the objectives and policies of these regional plans.

Operative Westland District Plan

849) Section 7.1.10 of the AEE contains an overview of the Applicant's assessment of the WDP, with full details of the assessment set out in Appendix 51.

850) In short, the assessment concludes the Scheme is consistent with the objectives and policies of the WDP as the Scheme:

- a) responds to the WDP objective of enabling people to provide for their wellbeing while meeting the principles of sustainable management;
- b) involves green energy generation and therefore achieves the WDP's desire to recognise and promote Westland's clean, green image;
- c) is a local hydro development and the WDP recognises the need for Westland to be less energy dependent on the rest of New Zealand and notes that hydro generation could represent a viable option;
- d) has involved an iterative design process which ensures potential adverse effects have been appropriately recognised and managed;
- e) seeks to enable increased local renewable electricity generation;
- f) is consistent with provisions relating to the natural environment as noted in the assessment of the RPS and West Coast Regional Plans; and
- g) ensures that the visual effects will be reduced to the greatest degree possible so that it appropriately sits within the environment, with the landscape maintaining its outstanding classification.

³⁴⁸ WCRC comments on Substantive Application, 12 January 2026; and WDC Comments on Substantive Application, 13 January 2026.

851) WCRC and WDC had no issue with the Applicant’s assessment.³⁴⁹ No other party commented on the assessment.

Evaluation and findings

852) Given our findings (set out in other parts of this Decision) that most effects will be able to be appropriately managed with the conditions we have imposed, we generally accept the Applicant’s conclusion that overall, the Scheme is consistent with the WDP for the reasons stated (and summarised by us above). We note that no party contested that evaluation.

853) However, similar to our discussion of the RPS above and notwithstanding our overall conclusion on consistency, we consider the Applicant’s assessment of the WDC Amenity provisions (Part 4.4) has not appropriately taken into account the landscape and recreational effects. In particular, we note that the latter effects are considered by the recreation experts to be significant and are more than just the effects on kayaking opportunities. Given our findings with regards to landscape and recreation effects, we consider there is a high degree of inconsistency with Policy A which requires that activities with significant adverse effects on amenities and the well-being of residents to generally be avoided, remedied or mitigated.

Te Tai Poutini Plan

854) The AEE included an assessment of the Scheme against the TTPP (as notified) in Section 7.1.11 and Appendix 50. This assessment concluded that a number of the planning provisions cannot be fully achieved by the Scheme but that as these provisions create conflict with the operative RPS, it was anticipated these would get resolved through the TTPP process, and, notwithstanding these issues, “in the round” the Scheme is consistent with the TTPP.

855) On 17 November 2025, following the release of the TTPP decisions-version, the Applicant filed an updated TTPP assessment, and replacement Tables 7 and 8 for Appendix 50.³⁵⁰ This assessment noted that:

- a) some activities now have a more permissive activity status, new consents are triggered for some activities,³⁵¹ and the overall activity status for the Scheme under the TTPP has changed from NC to DIS; and
- b) additional noise and landscape assessment has been undertaken for some activities where the change in the TTPP necessitated it.³⁵²

³⁴⁹ WCRC comments on Substantive Application, 12 January 2026; and WDC Comments on Substantive Application, 13 January 2026.

³⁵⁰ Westpower Memorandum #2, 17 November 2025, Attachment 1C – Mitchell Daysh Memorandum, 14 November 2025.

³⁵¹ Including for certain earthworks, structures, the transmission line and Waitaha Road upgrades.

³⁵² Westpower Memorandum #2, 17 November 2025, Attachment 2A – Boffa Miskell Memorandum, 17 November 2025; and Attachment 2B – Marshall Day Letter, 13 November 2025.

- 856) On 10 December 2025, as part of its response to RFI#1, Westpower filed a memorandum which addressed the issue of scope for the new consents required under TPPP – submitting that:³⁵³
- a) The FTAA allows for changes during the Application process, the changes made by Westpower are within the scope of the Sch.2 Project listing and the Application as lodged with the EPA.
 - b) The key legal tests are whether:
 - i) there is sufficient information about the change and its impact;
 - ii) the change remains fairly and reasonably within the scope of the Substantive Application including the Project’s Sch.2 listing; and
 - iii) there is any prejudice that cannot be remedied through the process.
 - c) The changes here meet those legal tests as:
 - i) there is sufficient information before the Panel - including the updated assessments noted above;
 - ii) the new transmission line fairly and reasonably relates to the Scheme’s listing in Sch.2 of the FTAA and is explicitly listed;
 - iii) there are no new matters raised in the TPPP that were not included and assessed in the Substantive Application – the only consideration is an updated assessment of activities against provisions now in legal effect; and
 - iv) there is no prejudice as the information was available to us at the time we were making our decision on parties to be invited to comment.
- 857) The Westpower Memorandum also attached an updated planning assessment from Mr Jackson which concluded that:³⁵⁴
- a) The Project fully achieves the energy chapter’s policy direction to the extent it is considered either consistent or highly consistent with the relevant individual provisions set out within it.
 - b) The Project is generally consistent with the ecosystems and indigenous biodiversity provisions, notwithstanding, some provisions still include protection directives, which the Project cannot practicably achieve given its nature and location.
 - c) Although there will be adverse effects on values which contribute to the ONL status of ONL18 and ONL22, the Landscape Report confirms that the landscape, including Morgan Gorge,³⁵⁵ will remain outstanding even with the Scheme in place. To this extent, the values that qualify these areas as ONLs will be

³⁵³ Westpower Memorandum #5, 10 December 2025.

³⁵⁴ Westpower Memorandum #5, 10 December 2025, Attachment 5 – Statement of Mason Jackson.

³⁵⁵ Noting that Morgan Gorge is not a feature identified in Sch.6.

maintained, the Project is not considered inappropriate within its setting and it follows that the overall desired outcome of these provisions will be achieved.

- d) The Project achieves most of the natural character and margins of waterways provisions for similar reasons to those discussed above in relation to indigenous biodiversity provisions. Despite this, some wording seeks the “preservation” of the natural character of lakes and rivers and requires that the Scheme’s “form and scale will not adversely affect the natural character of the riparian area”. These directive provisions cannot be fully achieved by the Scheme given it has a functional and operational need to be located on a river.
- e) Provisions of the open space and recreation chapter are designed to avoid conflict with the functions and values of open space areas and the surrounding environment. While recognising that open space may accommodate other activities including renewable electricity generation and transmission, some provisions conflict with this outcome by requiring that natural values within this zone are protected and/or enhanced.
- f) The Project is considered to be consistent with all relevant rural zone objectives and policies largely because the bulk of the activities occurring in this zone are temporary and related to the construction phase.
- g) The Project is considered consistent with all climate change and resilience provisions of the plan.
- h) Although the Scheme will result in some unavoidable adverse effects on the natural environment, and accordingly, cannot fully achieve the “protection” wording of objective NENV-01; supporting policy NENV-P2 conflicts with this objective by recognising the functional or operational need for RSI to sometimes be located in significant and/or outstanding natural environment areas.
- i) Poutini Ngāi Tahu have confirmed that cultural effects and the effects on the environment, wildlife, and taonga species (including fish) have been appropriately addressed to their satisfaction.

858) The Westpower Memorandum noted that overall, the planning assessment conclusion remains unchanged; that is that the Project remains consistent with the TTPP. It also noted that as over 30 appeals on the TTPP had been filed, it was likely most if not all of TTPP could be regarded as being subject to appeal.³⁵⁶

859) WCRC raised no issue with, and WDC indicated that they agreed with, the Applicant’s assessment of the TTPP.³⁵⁷ Neither council commented on the scope issue. No other party commented on the assessment (or the scope matter).

Evaluation and findings

860) The Panel firstly acknowledge that the weighting to be applied to the TTPP is somewhat reduced due to the stage in the plan process it has reached.

³⁵⁶ Westpower Memorandum #5, 10 December 2025, at [39] and [57].

³⁵⁷ WCRC comments on Substantive Application, 12 January 2026; and WDC Comments on Substantive Application, 13 January 2026.

- 861) We accept the joint position of the Applicant and WDC that the Application is generally consistent with the objectives and policies of the TTPP. We note in particular that renewable electricity generation activities are given a specific carveout in terms of the ecosystems and indigenous biodiversity provisions, that the natural character provisions provide for activities which have a functional need to locate in the margins of rivers, and similarly, the natural features and landscape provisions provide for new renewable electricity generation activities where there is a functional need to be located in those areas.
- 862) Renewable electricity generation is also specifically provided for in terms of the open space and recreation zone provisions although it is on the basis that natural values can be protected. Given the landscape assessment, we consider there would be a degree of inconsistency with this provision. We also consider there is inconsistency with the activities on the surface water provisions which require that structures not create more than minor adverse effects on amenity values, ecological values, natural character and other recreational uses.
- 863) We accept that the Scheme is consistent with the energy provisions and the strategic directions associated with climate change and resilience as well as the provisions of relevance to Poutini Ngāi Tahu. We also accept that any degree of inconsistency with the natural environment strategic provisions is limited given the specific reference to the functional or operational need for RSI to sometimes be located in significant and/or outstanding natural environment areas and features.

H6: Iwi planning documents

- 864) An application for a resource consent must include an assessment of the activity against any relevant provisions of a planning document recognised by a relevant iwi authority and lodged with a local authority.³⁵⁸
- 865) The AEE noted the existence of the Ngāti Mahaki o Makaawhio and Ngāti Waewae Pounamu Management Plans and indicated that special pounamu discovery conditions had been proposed to address those matters.³⁵⁹
- 866) The Poutini Ngāi Tahu letter of support included with the Application confirmed that the Project is consistent with “relevant documents”.³⁶⁰
- 867) No further comments were provided by any party on iwi planning documents, although Te Minita Whanaketanga Māori, encouraged engagement with Ngāi Tahu on how best to manage the effects of construction and maintenance activities on pounamu.³⁶¹
- 868) In its response to comments the Applicant noted that the matters raised by Te Minita were already addressed through its partnership with Poutini Ngāi Tahu and its proposed conditions regarding pounamu.³⁶²

³⁵⁸ FTAA, Sch.5, cls.5(1)(h) and 5(2)(g).

³⁵⁹ AEE, Section 7.1.12.2.

³⁶⁰ AEE, Appendix 8, at [11].

³⁶¹ Te Minita Whanaketanga Māori Comments on Substantive Application, 17 December 2025.

³⁶² Westpower Memorandum #7, 21 January 2026, at [3.7].

Evaluation and findings

- 869) We are satisfied that the Scheme is consistent with the relevant iwi management plans given Poutini Ngāi Tahu’s confirmation that the Scheme is consistent with relevant documents,³⁶³ and we find accordingly.
- 870) In relation to Te Minita’s comment, given Poutini Ngāi Tahu’s involvement as a Project partner, and the conditions included in relation to pounamu discovery, we are satisfied that such engagement has occurred, will continue to occur, and there are mechanisms in place which address pounamu.

H7: Other relevant documents

- 871) The AEE identified six further documents as also being relevant considerations under s.104(1)(c) of the RMA and assessed them as follows:³⁶⁴
- a) He Rautaki mō te Huringa o te Āhuarangi: Te Tāhū of te Whāriki (Te Rūnanga o Ngāi Tahu Climate Change Strategy): The Poutini Ngāi Tahu letter of support confirmed that the Project is consistent with this Strategy given the security of supply the Scheme offers and given Poutini Ngāi Tahu regard renewable energy as part of the solution to climate change.
 - b) Ngāi Tahu Statutory Acknowledgement Areas: There are no statutory acknowledgements or nohoanga entitlements relevant to the land and natural resources associated with, or in the vicinity of the Scheme.
 - c) Final Climate Change Commission Report: The Scheme is consistent with and supports the findings of the Commission, noting the Report reiterates the importance of renewable electricity generation in meeting New Zealand’s climate change aspirations.
 - d) Emissions Reduction Plan: The Scheme is consistent with meeting the recommendations of this Plan in that it will contribute towards achieving the GHG emissions reduction target.
 - e) National Adaptation Plan: Increasing the renewable electricity generation capacity through the development of projects like Waitaha Hydro is one of the foundations for New Zealand’s adaptation to climate change effects.
 - f) West Coast Renewable Energy Strategy 2022: The Waitaha Scheme is expressly referred to as a key component of this Strategy.
- 872) No other party expressly commented on these documents, although WDC confirmed that it agreed with the Applicant’s assessment with the relevant statutory framework.³⁶⁵

Evaluation and findings

- 873) We accept the Applicant’s uncontested evidence that the six documents identified above are relevant considerations and that the Scheme is consistent with them, for the

³⁶³ AEE, Appendix 8, at [11].

³⁶⁴ AEE, Section 7.1.12.

³⁶⁵ WDC Comments on Substantive Application, 13 January 2026.

reasons stated in the AEE (and summarised briefly by us in the paragraph above). We find accordingly.

H8: Decision as to RMA resource consents

- 874) In evaluating whether the RMA resource consents should be granted we have taken into account all of the relevant assessment criteria (cl.17 of the FTAA) and set out our evaluation and findings on iwi and Treaty settlement considerations (in Part E), the Scheme’s potential effects (in Part F), its potential benefits (in Part G) and the relevant statutory provisions and instruments (in this Part H).
- 875) While acknowledging the significant regional benefits and positive effects of the Project, our findings on landscape (where initial post-construction effects are very close to being significant at the Headworks), and our findings on recreation (where there will be ongoing significant adverse effects in the area of the Headworks/Morgan Gorge), mean that solely from an effects perspective, the decision as to whether consents should be granted is somewhat finely balanced. However, when the policy framework is considered, and in particular our finding that overall, the Project is not inconsistent with the relevant provisions and noting there are no specific ‘avoid’ provisions that would influence that judgment, the balance clearly shifts in favour of a grant.
- 876) Turning to Part 2 of the RMA, we do not consider s.6 matters are offended by the Project based on the evidence before us. However, we do accept that there are some s.7 matters, notably ss.7(c), 7(d) and 7(f), with which the Project can be considered inconsistent; as well as some, such as ss.7(b) and 7(j), with which it is entirely consistent. To the extent that s.8 is a relevant consideration, we have found the Project is consistent with it. Turning to s.5, we ultimately agree that the Project would promote sustainable management even though adverse effects are not able to be entirely avoided, remedied or mitigated.
- 877) We note that had the Application been brought under the RMA (as opposed to the FTAA), then overall things may have been more finely balanced. However, and as we have sought to make clear in this Decision, the FTAA is not the RMA, and it is the FTAA that we are charged with applying. We therefore find that subject to the imposition of clear and certain conditions of consent, the resource consents sought by the Applicant can be granted, and that doing so would best give effect to the purpose of the FTAA.
- 878) We discuss conditions of consent in Part L of this Decision.

PART I: EVALUATION OF CONCESSIONS | WĀHI I: TE MĀTAI I NGĀ ĀHUATANGA O NGĀ WHAKAAETANGA-Ā-ATAWHAI

I1: Introduction

- 879) The Applicant initially sought short and long-term lease, license and easement concessions for construction and operation of the Scheme on conservation land. Most of the Scheme is located on conservation land, with a small portion located within marginal strip areas.
- 880) A summary of the concessions sought is contained in Subpart B2 above and a list of all the concession activities is set out in **Appendix C** to this Decision.

I2: Overview of criteria

- 881) The mandatory and discretionary criteria for the assessment of concession applications are set out in cl.7(1) of Sch.6, with the greatest weight to be given to the purpose of the FTAA.
- 882) In considering these matters the Panel must take into account that ss.17U(5) and (6), and ss.17W(1) and (3) of the Conservation Act may normally require a decision maker to decline a concession application, but cl.7(2) of Sch.6 of the FTAA makes it clear that a panel must not treat these provisions as requiring consideration of discretionary documents, or the decline of an approval. Clause 7(3) sets out the mandatory decline criteria.
- 883) We evaluate each of the relevant criteria separately in the subparts that follow, noting any relevant issues raised by the parties in that regard. We do not repeat our findings on relevant effects (set out in Part F), but confirm those findings are also applicable to similar effects raised here. Accordingly, in this Part we generally only mention where there are further or other effects raised by the parties.

I3: Purpose of the FTAA

- 884) Clause 7(1) requires that the purpose of the Act be taken into account and given the greatest weight. We have quoted that purpose in an earlier part of this Decision, and noted that the AEE assessed the Scheme as achieving that purpose.³⁶⁶
- 885) DOC in its s.51 Report noted the requirement to take into account the purpose of the FTAA, and provided submissions on the approach to weighting.³⁶⁷ However, DOC did not expressly comment on whether the Scheme would achieve the purpose of the FTAA.
- 886) No other party provided comment on the FTAA purpose in the context of the concessions sought.

Evaluation and findings

- 887) Consistent with our earlier findings in Part G that the Scheme would have at least significant regional benefits, it follows that granting the concessions will facilitate the delivery of the Scheme and its benefits. We return to consider the FTAA purpose and Scheme benefits when we undertake our overall evaluation in Part M below.

I4: Conservation Act - Part 3B

- 888) Clause 7(1)(a)(ii) requires the Panel to take into account:

Part 3B of the Conservation Act 1987 (except sections 17SB and 17U(3) of that Act)
as if the application were an application for a concession under Part 3B

- 889) The AEE identifies ss.17S, 17U, 17V, 17W, 17X and 17Z as the relevant provisions of Part 3B.³⁶⁸ DOC in its s.51 Report also identified these provisions, but added ss.17Q,

³⁶⁶ AEE, Section 2.3.

³⁶⁷ DOC s.51 Report, 10 December 2025, Covering Report - Appendix A; and Appendix C - Concessions Report, at [6.3.4].

³⁶⁸ AEE, Section 7.2.1.

17R, and 17Y to the list of relevant provisions.³⁶⁹ No other party commented on or contested the provisions identified collectively by the Applicant and DOC. Accordingly, each of these provisions is assessed in turn below.

Section 17Q

- 890) Section 17Q provides that the Minister of Conservation may grant concessions in the form of a lease, licence, permit or easement in respect of any activity – but that an easement cannot be granted if the Minister considers a different type of concession is more appropriate.
- 891) The AEE does not mention this section. The DOC s.51 Report notes that Westpower is seeking an easement for an access road and for the rights to convey electricity and telecommunications over transmission lines, and that it would not be more appropriate for these to be authorised by other concessions since these activities are usually granted via an easement. The s.51 Report therefore finds that the Application is consistent with s.17Q.³⁷⁰
- 892) No other party commented on this matter.

Evaluation and findings

- 893) In the absence of any evidence to the contrary, we accept DOC's view and reasons that the Application is consistent with s.17Q.

Section 17R

- 894) Section 17R(2) restricts a person from applying for a concession if the application would be inconsistent with a process the Minister has initiated.
- 895) The AEE does not mention this section. The DOC s.51 Report states that the Minister has not initiated any such process, and therefore the Application is consistent with this provision.
- 896) No other party commented on this matter.

Evaluation and findings

- 897) In the absence of any evidence to the contrary, we accept DOC's view and reasons that the Application is consistent with s.17R.

Section 17S

- 898) Section 17S sets out the required contents of the Application. Schedule C of Part A of the Application notes where in the Application that information can be found. The DOC s.51 Report agrees that the AEE and its appendices contain all the required information.³⁷¹
- 899) No other party commented on this matter.

³⁶⁹ DOC s.51 Report, Appendix C – Concessions Report, Section 6.

³⁷⁰ DOC, s.51 Report, Appendix C – Concessions Report, at [6.9.2].

³⁷¹ DOC s.51 Report, Appendix C – Concessions Report, at [6.9.4].

Evaluation and findings

- 900) We accept the uncontested evidence that the Application contains all the required concession information and find it is consistent with s.17S.

Section 17U

- 901) Section 17U sets out the matters to be considered by the decision-maker. Other than s.17U(3) which is expressly disapplied,³⁷² the other considerations remain generally relevant, and are set out as follows:

17U Matters to be considered by Minister

- (1) In considering any application for a concession, the Minister shall have regard to the following matters:
 - (a) the nature of the activity and the type of structure or facility (if any) proposed to be constructed:
 - (b) the effects of the activity, structure, or facility:
 - (c) any measures that can reasonably and practicably be undertaken to avoid, remedy, or mitigate any adverse effects of the activity:
 - (d) any information received by the Minister under sections 17S, 17SD, and 17SE:
 - (e) any relevant environmental impact assessment, including any audit or review:
 - (f) any relevant oral or written submissions received as a result of any relevant public notice issued under section 49:
 - (g) any relevant information which may be withheld from any person in accordance with the Official Information Act 1982 or the Privacy Act 2020.
- (2) The Minister may decline any application if the Minister considers that—
 - (a) the information available is insufficient or inadequate to enable him or her to assess the effects (including the effects of any proposed methods to avoid, remedy, or mitigate the adverse effects) of any activity, structure, or facility; or
 - (b) there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility.
- (4) The Minister shall not grant any application for a concession to build a structure or facility, or to extend or add to an existing structure or facility, where he or she is satisfied that the activity—
 - (a) could reasonably be undertaken in another location that—
 - (i) is outside the conservation area to which the application relates; or
 - (ii) is in another conservation area or in another part of the conservation area to which the application relates, where the potential adverse effects would be significantly less; or
 - (b) could reasonably use an existing structure or facility or the existing structure or facility without the addition.
- (5) The Minister may grant a lease or a licence (other than a profit à prendre) granting an interest in land only if—
 - (a) the lease or licence relates to 1 or more fixed structures and facilities (which structures and facilities do not include any track or road except where the track or road is an integral part of a larger facility); and
 - (b) in any case where the application includes an area or areas around the structure or facility,—
 - (i) either—

³⁷² FTAA, Sch.6, cl.7(1)(a)(ii).

- (A) it is necessary for the purposes of safety or security of the site, structure, or facility to include any area or areas (including any security fence) around the structure or facility; or
 - (B) it is necessary to include any clearly defined area or areas that are an integral part of the activity on the land; and
- (ii) the grant of a lease or licence granting an interest in land is essential to enable the activity to be carried on.
- (6) No lease may be granted unless the applicant satisfies the Minister that exclusive possession is necessary for—
- (a) the protection of public safety; or
 - (b) the protection of the physical security of the activity concerned; or
 - (c) the competent operation of the activity concerned.
- (7) For the purposes of subsection (6), the competent operation of an activity includes the necessity for the activity to achieve adequate investment and maintenance.
- (8) Nothing in this Act or any other Act requires the Minister to grant any concession if he or she considers that the grant of a concession is inappropriate in the circumstances of the particular application having regard to the matters set out in this section.

AEE

902) The AEE assessed these matters as follows:³⁷³

- a) s.17U(1): The Application complies with this section as the Application includes all of the relevant information about the activity, its effects, measures to address those effects and environmental assessments.
- b) s.17(2): The discretionary power to decline the Application does not apply as there is sufficient information to assess the effects of the activity and its mitigation measures, and there are adequate and appropriate methods to address the effects which are included in the Application. These comprise design measures (such as limiting the operational footprint, utilising underground tunnels, adopting a low weir design, minimising visual presence), and a suite of measures in conditions and management plans designed to avoid, remedy, mitigate, offset or compensate effects.
- c) s.17(4): In terms of alternative locations, all feasible locations were located within or partly within the conservation estate. Those other locations were assessed but discounted because of significant environmental impacts. The Scheme was selected as it provides sufficient generation while avoiding the environmental impacts that would occur elsewhere. It is not reasonable to locate the Scheme elsewhere and therefore this subsection does not restrict the grant of concessions for the Scheme.
- d) s.17U(5) to (7): In terms of the restrictions on granting leases or licences, exclusive possession is necessary to ensure public safety, security of infrastructure, and operation and maintenance of the Scheme. It is also consistent with concessions granted for the Amethyst Hydro Scheme (amongst others). Further, while these restrictions on granting leases or licences must be

³⁷³ AEE, Section 7.2.1.2.

considered, the Panel is not required to decline an approval if the restrictions are not met.³⁷⁴

- e) s.17U(8): In terms of assessing the appropriateness of the grant, there is sufficient and adequate information to assess effects, there are adequate methods to address effects, it is not reasonable to locate the Scheme outside conservation land or waters, exclusive possession of lease and licence areas is reasonably required, and the Panel is required to give most weight to the purpose of the FTAA which is supportive of grant.

DOC s.51 Report

903) The DOC s.51 Report contained a detailed assessment of each of these provisions – with the exception of s.17U(8).³⁷⁵ In summary:

- a) s.17U(1): DOC agreed that the Application included a description of the activities. DOC also agreed that at a high level it broadly agreed with Westpower regarding the assessed level of effects and methods of managing them to an acceptable level. The key areas of difference, related to the scale of the regional and national benefits (as noted in Part G above) and the landscape, natural character, visual and recreation effects (as noted in Part F above).
- b) s.17U(2): Based on its assessment of effects, DOC concluded that the methods for avoiding, remedying or mitigating the adverse effects of the Scheme on natural character, landscape values and recreation values are inadequate, not agreed, or cannot be calculated. DOC also opined that Westpower had omitted to separately consider temporary effects on landscape and natural character which the High Court had found to be required in *Trilane Industries*.³⁷⁶
- c) s.17U(4): DOC was satisfied with the assessment of alternatives and that the proposed Scheme could not be reasonably undertaken in another location with significantly less potential adverse effects.
- d) s.17U(5): DOC considered the proposed leases and licences are consistent with the requirements of this section.
- e) s.17U(6) and (7): DOC concluded that leases for the substantive Scheme structures, including the Power Station, tunnels, weir and intake structure are required for public safety, physical security and competent operation of the Scheme.

Comments received from invited parties

904) In its s.53 comments, DOC did not expressly revisit its assessment of s.17U matters, but reinforced its concerns regarding the impacts on landscape and recreational values as follows:³⁷⁷

³⁷⁴ FTAA, Sch.6, cl.7(2)(a).

³⁷⁵ DOC s.51 Report, Appendix C – Concessions Report, at [6.3.2]-[6.3.18].

³⁷⁶ DOC s.51 Report – Appendix F, at [7], citing *Trilane Industries Ltd v Queenstown Lakes District Council* [2020] NZHC 1647, at [60].

³⁷⁷ DOC Comments on Substantive Application, 14 January 2026, at [7]-[10].

- a) the Waitaha Valley has ecological, landscape and recreational values of local, regional, national and international significance;
 - b) measures additional to those proposed by Westpower could be taken to further avoid, remedy, mitigate or compensate adverse effects on the values present at the Site – but significant residual effects on both landscape and recreational values will remain;
 - c) the Scheme will result in the fundamental loss of natural character, solitude and remoteness that underpin the Waitaha Valley back country-remote zone; and
 - d) the Scheme’s positive contributions to renewable energy and energy resilience in the region must be weighed against the adverse effects of the Scheme – including the very high natural character and landscape values, the regionally significant backcountry setting and the internationally significant kayaking experiences.
- 905) NZCA did not expressly address the s.17U criteria but made similar comments to DOC, noting that while Westpower had made appropriate efforts to address effects:³⁷⁸
- a) the methods for avoiding, remedying or mitigating the Scheme’s adverse effects on natural character, landscape and recreation values, are inadequate, not agreed on or cannot be calculated; and
 - b) the Scheme inherently detracts from the current very high natural character and landscape values, which cannot be fully remedied, mitigated, avoided, compensated for or offset.

906) No other party commented on these matters.

Applicant response

- 907) The Applicant provided a detailed response to DOC and NZCA’s concerns in relation to the level of landscape and recreation effects, as noted in Part F. Key amongst that response was that the expert witnesses for Westpower and DOC were not that far apart in terms of the level of assessed effects.³⁷⁹ While the Applicant accepted a number of DOC’s recommended mitigation measures for landscape effects, there still remained disagreement as to a number of measures for landscape, recreation and other effects, including appropriate compensation levels. These matters are addressed in detail elsewhere in this Decision.
- 908) In relation to the issue of temporary landscape effects, the Applicant submitted that:
- a) its landscape expert had amended his assessment to make the assessment of such effects clearer;
 - b) in any event the *Trilane Industries* did not restrict a holistic approach to assessment in this case given the Panel is dealing with the Substantive Application not a RMA notification assessment as it was in *Trilane*:

³⁷⁸ NZCA Comments on Substantive Application, 14 January 2026, p.14.

³⁷⁹ Westpower Memorandum #7, 21 January 2026, pp.8-10, and 48; and Attachments 7 and 10.

- c) for concessions the Panel must have regard to both effects and measures to address those effects;
 - d) while there were a few residual effects which cannot be avoided, they are mitigated as far as practicable which satisfies s.17U(2);
 - e) the discretion to decline under s.17(U)(2) is subject to stricter limitations under the FTAA; and
 - f) the greatest weight must be given to the purpose of the FTAA.
- 909) The Applicant otherwise did not revisit its s.17U assessment in its response.

Evaluation and findings

Section 17U(1)

- 910) In terms of s.17U(1), we have addressed all matters other than sub-criterion (g) in other Parts of this Decision, in particular in Parts B, C, F, G and L.
- 911) In relation to sub-criterion (g) we note that:
- a) any redactions in the Application as lodged were carried out by the EPA prior to our appointment;
 - b) we transferred the Applicant's request to withhold (on confidential and commercial sensitivity grounds) its proposed long-term concession fee level and valuation information to the EPA for consideration for the reasons noted in Subpart C10 above; and
 - c) we nevertheless took into account the information which was withheld/requested to be withheld in reaching our Decision as is required by this sub-criterion.
- 912) Overall, and consistent with our findings in other Parts of this Decision we find that:
- a) the Application has addressed all of the relevant s.17U(1) criteria; and
 - b) with the exception of recreation, the effects of the Scheme can be appropriately addressed by the conditions we have imposed which include compensation for those areas where residual effects are more than minor; and
 - c) the residual recreation effects, while significant, are localised, and do not warrant the refusal of approvals under the FTAA.

Section 17U(2)-(8)

- 913) In terms of the remaining sub-sections of s.17U, we find as follows:
- a) Section 17U(2): We accept that a holistic approach to assessing effects is possible for the reasons given by Westpower above (i.e., this is the substantive consideration of the Application and the FTAA does not involve a separate notification decision process like that mentioned in *Trilane* under the RMA). In terms of the nature and scale of effects, taking into account the Application and all of the information we have received throughout the process from the parties, we have sufficient information to enable us to assess effects, and there are

adequate methods available for addressing effects (including compensation) for the reasons noted by the Applicant and summarised by us in Parts F and L of this Decision.

- b) Section 17U(4): Based on the evidence of the Applicant and DOC, the proposed Scheme could not reasonably be undertaken in an alternative location with significantly less adverse effects.
- c) Section 17U(5), (6) and (7): Based on the evidence of the Applicant and DOC, leases and licences (and the exclusive possession that they provide) are required for public safety, physical security and competent operation and maintenance of the Scheme.
- d) Section 17U(8): Having regard to our findings on the matters covered in this subpart, it is appropriate to grant the concessions sought.

Section 17V

- 914) Section 17V imposes restrictions on concessions being granted for marginal strips if they are to be used for farming, forestry or associated purposes; and on leases being granted for marginal strips.

Marginal strips affected

- 915) The AEE noted that the Scheme may affect marginal strips on the true right bank of Macgregor Creek, and the true right bank of Waitaha River below the confluence with Macgregor Creek.³⁸⁰ Westpower subsequently updated its AEE to also add reference to marginal strips either side of Allen Creek.³⁸¹

Scope

- 916) In response to RFI#1, Westpower confirmed that there was scope to add the marginal strips either side of Allen Creek as:³⁸²
- a) the Panel has sufficient detail to understand the nature of the Project as it relates to activities in those areas;
 - b) the relevant activities that may affect those marginal strips are in the Substantive Application and assessed in the technical reports;
 - c) the change is within the Sch.2 listing and fairly and reasonably relates to the Substantive Application; and
 - d) there is no prejudice to parties invited to comment because the activities and locations were otherwise included in the Application.

DOC s.51 Report and comments received from invited parties

- 917) The DOC s.51 Report did not comment on the issue of scope but confirmed it considered the Application is consistent with s.17V, since Westpower is not seeking

³⁸⁰ AEE, Section 7.2.1.2, p.362.

³⁸¹ Westpower Memorandum #2, 17 November 2025, at [4(b)].

³⁸² Westpower Memorandum #5, 10 December 2025, at [45].

exclusive use of the marginal strips, and nor are they seeking to use them for farming or forestry purposes.³⁸³ DOC's s.53 comments did not address these matters further.

918) No other party commented on this matter.

Evaluation and findings

919) We accept there is scope to include marginal strips along Allen Creek for the reasons given by Westpower (and summarised by us above).

920) We agree with DOC and find that the Application is consistent with s.17V given Westpower are not seeking exclusive use of a marginal strip or to use such a strip for forestry or farming purposes.

Section 17W

921) Section 17W sets out the relationship between concessions and conservation management strategies and plans. Ordinarily it restricts a concession from being granted unless the grant is consistent with the relevant strategy or plan. However, the effect of this provision has been modified by cl.7(2)(a) of the FTAA, the relevant part of which states:

For the purposes of subclause (1), the panel must take into account that the following provisions would or may normally require a decision maker to decline an application for a concession, but must not treat the provisions as requiring the panel to consider the documents referred to in subclause (1)(b) or to decline the approval the panel is considering:

(a) sections 17U(5) and (6) and 17W(1) and (3) of the Conservation Act 1987:

922) The documents referred to in cl.1(b) include any policy statement or management plan – other than a strategy or plan which has been co-authored, authored or approved by a Treaty settlement entity.

AEE

923) The AEE noted that there are no conservation management plans relevant to the Scheme.

924) The AEE, while noting that the CMS had not been co-authored, authored or approved by a Treaty settlement entity,³⁸⁴ considered that the CMS was a mandatory consideration under cl.7(1)(a)(ii) and therefore set out a detailed assessment of the Scheme's consistency with the CMS in Appendix 52. In determining consistency the AEE submitted that:³⁸⁵

- a) consistency must be assessed on a holistic basis;
- b) applying such an assessment, the Scheme is consistent with the CMS;
- c) even if the Panel did not agree with the Applicant's assessment of consistency the purpose of the FTAA must be given greater weight; and

³⁸³ DOC s.51 Report, Appendix C – Concessions Report, at [6.9.1].

³⁸⁴ AEE, Section 2.5.1.2.

³⁸⁵ AEE, Section, Section 7.2.1.2, pp.362-363.

- d) a finding of inconsistency does not require the Panel to decline the approval.

DOC s.51 Report

925) The DOC s.51 Report acknowledged the CMS had not been co-authored, authored or approved by a Treaty settlement entity, and agreed with Westpower that it was a mandatory consideration under cl.7(1)(a)(ii).³⁸⁶ DOC however disagreed with Westpower’s holistic approach and the relevance of RMA case law on the basis of its view that, conservation planning documents do not “pull in different directions” like RMA planning documents do. DOC opined that if the Scheme is inconsistent with “some key provisions” of the CMS, then it is inconsistent with the CMS.³⁸⁷ DOC assessed the Waitaha Scheme as being inconsistent with the following sections of the CMS (primarily due to recreation and landscape effects) and therefore inconsistent with the CMS as a whole:³⁸⁸

- a) Section 3.3.4.3 Management of geodiversity and landscapes:

Objective 1. To protect geodiversity and landscapes from adverse effects of human use or management.

Policy 2. Landscape assessments should be conducted on an as-needed basis, e.g. when considering proposals to develop utilities on public conservation land.

- b) Section 3.5 Authorised uses of public conservation lands:

Objective 3. To protect recreational opportunities from adverse effects of authorized uses of public conservation lands.

- c) Section 3.6.1.1 Provision and management of recreational opportunities:

Objective 1. To provide a comprehensive range of recreational opportunities that enable people with different capabilities and interests to enjoy and appreciate West Coast Te Tai o Poutini public conservation lands, whilst protecting natural, historical and cultural heritage from adverse impacts of recreational use.

Objective 2. To avoid or minimise conflicts between different users, including people undertaking different types of activities in the same location.

Objective 3. To raise awareness of the value (including physical, mental and cultural value) of outdoor recreation for the health of people and communities.

Policy 1. The Department’s recreational zoning framework should be used to identify and manage an appropriate range of recreational opportunities within the Conservancy’s public conservation lands and to minimise conflicts between different types of recreational uses.

Policy 2. The Department’s recreational zoning framework and appropriate restrictions on mechanised access and use should be implemented in order to safeguard natural, historical and cultural heritage and the ability of the public to experience solitude, peace and natural quiet in public conservation lands.

Policy 3. Recreation opportunities that are based on the special character and features of West Coast Te Tai o Poutini public conservation lands should be provided, taking into account existing opportunities available elsewhere in the country, both within and outside of public conservation lands.

- d) Section 3.6.1.4 Backcountry-remote zone:

Objective 1. To provide access to a range of recreational opportunities via facilities that enable people to enjoy challenging natural settings in the backcountry.

³⁸⁶ DOC s.51 Report, Appendix C – Concessions Report, Section 6.5.

³⁸⁷ DOC s.51 Report, Appendix C – Concessions Report, at [6.5.42].

³⁸⁸ DOC s.51 Report, Appendix C – Concessions Report, at [6.5.44].

Objective 2. To enable people to access extensive natural settings where:

- a) facilities are provided but a considerable degree of physical challenge, self-reliance and isolation is involved;
- b) groups of recreational users are generally small and encounters with other groups are infrequent (except on a limited number of high-use tracks and rivers);
- c) huts and tracks provide the opportunity for solitude for those who seek a greater sense of isolation and challenge, but still need the security of some facilities; and
- d) overnight use is more intensive at some sites and at certain times of the year.

Policy 1. The backcountry-remote zone should be managed to meet the desired outcomes described in Part 4 of this CMS and in any relevant management plans, providing facilities and services that cater principally for the needs, interests and abilities of most backcountry comfort seekers and backcountry adventurers....

e) Section 3.7.2 Activities on or in beds of rivers or lakes:

Policy 1. When assessing applications for any activity on or in the bed of a river or lake, consideration should be given to (but not limited to) the following guidelines:

- a) Adverse effects on freshwater and terrestrial species, habitats and ecosystems, historical and cultural heritage values, public access, recreation opportunities and amenity values should be avoided or otherwise minimised;
- ...
- e) The natural character within the setting of the activity should be maintained.

f) Section 4.1.1 Desired outcome for the West Coast Tai Poutini Conservancy in 2020:

Within public conservation lands, natural, historical and cultural heritage is protected, maintained and enhanced. People highly value this heritage, understand the need for its protection and are able to enjoy and appreciate this heritage in appropriate ways.

....management undertaken by the Department focuses on ... identification, conservation, protection and restoration of natural, historical and cultural heritage values; and provision for appropriate recreation, use and enjoyment of public conservation lands... Business opportunities and provision of public goods or services that are consistent with conservation outcomes are enabled.

g) Section 4.1.1.6 Recreational use and enjoyment of public conservation lands in 2020:

People appreciate and enjoy public conservation lands and receive in full measure the inspiration, enjoyment, recreation and other benefits that may be derived from them, where these are not inconsistent with the protection of natural, historical and cultural heritage. ... increasing use is made of backcountry facilities and remote zones.

Comments received from invited parties

926) DOC did not revisit its CMS assessment in its s.53 comments, but simply noted its view that the compensation offered towards track and hut maintenance did not address the permanent loss of naturalness and experiential values central to the recreational experience in the backcountry-remote setting that the CMS objectives and policies seek.³⁸⁹

927) NZCA did not support Westpower’s view that the CMS should be considered “in the round”. Their view, which aligned with DOC’s, was that to be consistent with the CMS, the Scheme needed to be consistent with *all* objective and policies. NZCA also agreed

³⁸⁹ DOC s.53 Comments on Substantive Application, 14 January 2026, at [13(g)].

with DOC that the Scheme is not consistent with several CMS objectives and policies due to the identified recreation and landscape effects.³⁹⁰

Applicant response

928) The Applicant provided a detailed response which addressed both its view on the proper approach to determining consistency with the CMS and DOC's assessment of the relevant CMS provisions.³⁹¹ While the response was primarily addressed to DOC's comments, the Applicant noted that given NZCA had raised similar matters, its response was equally applicable to the matters raised by NZCA as well.³⁹²

929) We summarise the key points of Westpower's response as follows:³⁹³

- a) DOC has not provided any case law in support of its proposed approach and Westpower has been unable to find any specific judicial guidance on the proper approach to assessing consistency of the CMS.
- b) The CMS contains no reference to "key provisions" which override all others, but does contain a note which indicates that topics and lists in the CMS are not presented in any priority order unless otherwise indicated.
- c) The CMS should be read as a whole as this is in line with RMA case law as well as CMS Interpretation Policy 2 which states that "each operative part of this CMS will be considered in conjunction with all other relevant sections of this CMS".
- d) When interpreting the CMS it is also relevant to take into account the context, which here includes that:
 - i) a large amount of land within the region is conservation land; and
 - ii) the circumstances of the Project which include climate change mitigation.
- e) Like the RMA, there are provisions in the CMS that do "pull in different directions" and seek to achieve potentially inconsistent outcomes (e.g. hut/track infrastructure and biodiversity).
- f) DOC in its assessment of consistency failed to distinguish between provisions which require strict adherence and those where there is a strong expectation or flexibility in compliance.
- g) DOC's approach is inconsistent with the CMS interpretation cl.1.4 which explains the difference between provisions using the terms 'will' (strict adherence), 'should' (strong expectation), and 'may' (which provides flexibility).

³⁹⁰ NZCA Comments on Substantive Application, 14 January 2026.

³⁹¹ This response comprised a Memorandum from legal counsel, a detailed statement from Mr Kennedy (planner) and a statement from Mr Jackson (AEE author and planner) confirming he agreed with Mr Kennedy's views: Westpower Memorandum #7, 21 January 2026, at [2.17]; Attachment 13; and Attachment 15, at [2.2].

³⁹² Westpower Memorandum #7, 21 January 2026, at [3.41].

³⁹³ Westpower Memorandum #7, 21 January 2026, at [2.17]; and Attachment 13, at [4.2]-[4.5], [4.7], [4.9]-[4.10], and [6.2]-[6.4].

- h) DOC's assessment also:
 - i) fails to consider that the activity does not occur within a national park and is not in an area subject to a conservation management plan;
 - ii) does not assess some relevant policies;
 - iii) conflates the meanings of the terms 'mitigate' and 'minimise';
 - iv) takes a 'nil' residual adverse effects approach which is not consistent with the expectations in relevant policies;
 - v) misapplies some policy wording; and
 - vi) inconsistently applies assessments made elsewhere in the DOC s.51 Report.

930) The Westpower response concluded that when all the relevant provisions are considered as intended, the Project can, subject to conditions, be considered consistent with the CMS as a whole.

Evaluation and findings

- 931) In evaluating this matter, it is important to emphasise that the decision-making criteria we are required to take into account are set out in the FTAA. While these incorporate cl.17W, the degree of consideration and effect is different to the standard concession process, and as noted above, we are not required to decline in the event of any inconsistency. Further, and while it is not completely clear, nor does it appear we are *required* to consider the provisions of the CMS itself under cl.7(1)(a)(ii) – since it is not a strategy that has been co-authored, authored or approved by a Treaty settlement entity. Instead, it appears that we have a discretion to take it into account under cl.7(1)(b)(i). While not determinative, we note that the expert panel in *Waihi North* came to a similar conclusion. However, irrespective of whether there is a strict requirement to do so, we confirm we have taken the CMS into account.
- 932) In terms of the approach to interpreting the CMS, we do not accept DOC and NZCA's submissions that to be consistent with the CMS (or other policy document or management plan) the Scheme needs to be consistent with every single objective and policy. That is not what s.17W says. It refers to being "consistent with the strategy or plan". In our view, imposing a gloss on the wording of the section, is neither required nor appropriate. We prefer the Applicant's approach that a holistic approach should be taken, and consider that aligns better with the actual wording of the section, and the CMS itself – particularly when consideration is taken of the interpretation section and the meaning accorded to the terms, 'will', 'should' and 'may'.
- 933) However, even if we are wrong in this view, and consistency means consistency with every single objective and policy, we note that a finding of inconsistency is not determinative given cl.7(2)(a); and given that the degree of consideration required under the FTAA is simply to take into account the degree of consistency. In other words, inconsistency with the CMS in any respect is not an automatic bar to the grant of the concessions sought.

- 934) In terms of the degree of consistency or inconsistency, we accept, as Mr Kennedy also appeared to (at least in relation to Objective 1 of Section 3.3.4.3),³⁹⁴ that when certain objectives and policies are read in isolation, the Scheme could be considered to be inconsistent with them. We also consider the Scheme could be considered inconsistent with Objective 3 of Section 3.5 (to protect recreational opportunities from adverse effects of authorised uses of public conservation lands), and Policy 1 of Section 3.7.2 (that adverse effects on ... recreation opportunities and amenity values should be avoided or otherwise minimised; and the natural character within the setting of the activity should be maintained). We do not however, accept that the Scheme is inconsistent to the extent assessed by DOC, and as noted, we prefer the approach of reading the objectives and policies in context.
- 935) To the extent any inconsistencies remain, given our conclusions on landscape and recreation matters (in Part F above), and given the measures we have imposed through conditions, we are satisfied that overall, any such inconsistencies are generally discrete and for the most part localised. Therefore, we conclude overall that the Scheme is consistent with the provisions of the CMS.
- 936) Further in terms of the weight to be given to residual inconsistencies, we consider it is relevant (but not determinative) that:
- a) the CMS is relatively dated given it was made operative in 2010 (and is currently being reviewed);
 - b) the land remains stewardship land following a recent reclassification review, and has not been reclassified to a stronger conservation status (as noted in both the Conservation Board and Poutini Ngāi Tahu comments);
 - c) the CMS was not co-authored, authored or otherwise approved by Poutini Ngāi Tahu;
 - d) the Valley makes up a relatively small proportion of the backcountry remote area on the West Coast; and
 - e) Poutini Ngāi Tahu as the relevant iwi authority considers that landscape and recreation matters have been satisfactorily addressed.³⁹⁵
- 937) Accordingly, while we find that the Scheme may be inconsistent with some provisions of the CMS when read individually, any such inconsistencies are discrete, and overall the Scheme is consistent with the CMS.

Section 17X

- 938) Section 17X provides a decision maker with a broad power to impose “such conditions as he or she considers appropriate for the activity, structure or facility”. However, as noted elsewhere in this Decision, the FTAA imposes two restrictions on this power such that:

³⁹⁴ As noted above, this Objective seeks to protect geodiversity and landscapes from adverse effects of human use or Management.

³⁹⁵ Poutini Ngāi Tahu Comments on Substantive Application, 12 January 2026, at [3.6].

- a) any conditions required by DOC to be imposed under s.78 are mandatory and the Panel has no discretion to amend those conditions (refer to the discussion under s.17Y below for more on this issue); and
- b) any condition which the Panel has a discretion to impose must be no more onerous than necessary and the greatest weight must be given to the purpose of the FTAA.³⁹⁶

939) The AEE and the DOC s.51 Report both provided sets of conditions and noted that discussions were continuing and that an updated set of conditions would be provided once those discussions had concluded. DOC provided further comments on conditions in its s.53 comments,³⁹⁷ and the Applicant provided a full updated set of concession conditions in its response to comments.

940) We address where those discussions got to and any outstanding issues in relation to conditions in Section 17Y (concession fees), Section 17Z (concession term) and Part L (conditions) below.

Evaluation and findings

941) Our evaluation and findings on the concession conditions are set out in Part L below. We adopt and do not repeat that discussion here.

942) We are satisfied that the conditions we have imposed:

- a) incorporate the mandatory s.78 conditions as advised by DOC (which we discuss further in the next section);
- b) are not more onerous than necessary to address the reasons for which they have been set; and
- c) give the greatest weight to the purpose of the FTAA by enabling the Scheme (subject to appropriate controls) which will allow the benefits of the Scheme to be realised.

Section 17Y

943) Section 17Y, as modified by the FTAA,³⁹⁸ establishes that the Panel may impose conditions requiring the concessionaire to pay rents, fees or royalties and levies or charges, and must impose conditions that DOC considers relevant to manage risks to, and potential liabilities of, the Crown arising from the grant of the concession.³⁹⁹

AEE

944) The AEE noted that discussions were continuing with DOC regarding a suitable concession fee, and submitted that:⁴⁰⁰

³⁹⁶ FTAA, s.83, and Sch.6, cl.7(1)(a)(i).

³⁹⁷ DOC Comments on Substantive Application, 14 January 2026.

³⁹⁸ FTAA, Sch.6, cl.8.

³⁹⁹ FTAA, s.78; and Sch.6, cls.4(2) and 9.

⁴⁰⁰ AEE, Section 7.2.1.2, pp.364-366.

- a) The fee must be at a level that allows for the Project to be built – if the fee is set too high the Project will be unable to proceed.
- b) A reduction in the concession fee may be justified by:
 - i) the compensation Westpower is proposing for adverse effects of the activity on the concession land; and
 - ii) the non-commercial public benefit the Scheme will provide in terms of decarbonisation, combatting climate change, increased electricity security to the West Coast and lower electricity costs.

DOC s.51 Report

- 945) The DOC s.51 Report confirmed that discussions were ongoing regarding fees and included legal comment on the ability of the Minister to require a fee to be imposed, and the approach to setting concession activity fees. In relation to this issue, DOC submitted that:⁴⁰¹
- a) The Minister of Conservation has the power to require the Panel to impose a condition requiring a concession fee at a level set by the Minister where it is imposed to manage risks to, and potential liabilities of, the Crown under s.78(2) and cl.9 of Sch.6 to the FTAA.
 - b) Where a fee is required by the Minister under cl.9, there is no need for a Panel to set a fee covering the same matter and no discretion remains for the Panel under cl.8 to vary the fee set by the Minister.
 - c) It would be inappropriate to reduce the concession fee to take into account financial compensation provided by Westpower given:
 - i) there is no compensation element in the fee – it is a rental for the privilege of occupying Crown land;
 - ii) the compensation is not proposed to be paid to DOC;
 - iii) there are significant levels of unmitigated adverse effects; and
 - iv) the nature of the activity is to permanently restrict public access from an aspect of the conservation estate.

Comments received from invited parties

- 946) DOC did not comment further on the issue of the concession fee in its s.53 comments, and no other party provided comments on this issue.

⁴⁰¹ DOC s.51 Report, Appendix F – DOC Legal Memorandum, at [29]-[40].

Westpower response to comments

- 947) Westpower provided a detailed response to DOC’s comments, the key points of which we summarise as follows:⁴⁰²
- a) the FTAA expressly provides for the Panel (not the Minister) to set the concession fee and gives the Panel a discretion as to whether to impose such a fee;
 - b) while the Minister can specify conditions that must be imposed by the Panel under s.78 these only relate to conditions the Minister considers are appropriate to manage risks to, and potential liabilities of, the Crown arising from the grant of a concession;
 - c) a concession activity fee is not a condition which manages risks and potential liabilities of the Crown – it is instead intended to be a payment for the privilege of operating commercial activities on public conservation land – and is therefore not within the scope of what s.78 conditions may cover;
 - d) the meaning of legislative provisions are to be ascertained from their text and in light of the purpose and context of the legislation – here the purpose of the FTAA is to be given the greatest weight when setting conditions and that purpose is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits; and
 - e) Parliament intended to give the panel discretion to ensure a project with significant regional or national benefits would not become unviable due to a concession fee being set too high.
- 948) In its response to RFI#5, the Applicant confirmed that agreement had been reached with DOC for the short-term concession fee, but that discussions regarding the appropriate level for the long-term concession fee were still ongoing.⁴⁰³
- 949) On 23 February 2026, the Applicant advised that agreement had not been reached on the long-term concession fee. It provided the Panel with further information about its view on the appropriate level for the fee (including a valuation report) and requested that we set the fee.⁴⁰⁴ The key points made were as follows:⁴⁰⁵
- a) The level of the (long-term) concession fee could have a very real impact on whether the Project will be constructed with each additional percentage point of the concession fee increasing the economic challenges in constructing the Project.
 - b) The valuers engaged by Westpower and DOC while agreeing as to the physical details associated with the Scheme, took different approaches to valuation which resulted in different concession fee levels being recommended.

⁴⁰² Westpower Memorandum #7, 21 January 2026, at [2.12]-[2.13], [2.20]-[2.33]; Attachment 10 – Statement of Rob Greenaway, at [27]-[29]; and Attachment 11 – Statement of Michael Copeland, at [7]-[11].

⁴⁰³ Westpower Memorandum #11, 13 February 2026, at [41] and [43].

⁴⁰⁴ Westpower Memorandum #14, 23 February 2026, at [2]-[5].

⁴⁰⁵ Westpower Memorandum #12, 23 February 2026, at [8]; Appendix 1, p.2; Appendix 3, and Statement of Rodger Griffiths, 23 February 2026, at [4]-[6].

- c) Westpower’s valuer criticised the approach taken in the DOC valuation on the bases that (unlike his valuation):
 - i) the DOC assessment was based primarily on the evidence of other hydro schemes within public conservation land where revenue-based concession fees had been applied, however:
 - (1) only a third of the hydro schemes noted in the DOC valuation paid revenue based fees;
 - (2) consideration should have also been given to the fees paid by other specialised land uses including wind farms, solar farms, holiday park ground leases and other permits and concessions; and
 - ii) the DOC valuation failed to take into account that each energy project is different and made no adjustments for the scale, capital cost, engineering complexity, construction risks, impact on the underlying land, mitigation measures and adverse effects payments proposed for the Waitaha Scheme.
- d) While Westpower “stood behind its valuation”, it considered a more appropriate concession fee level to be less than the level recommended by its valuer given:
 - i) the purpose of the FTAA;
 - ii) its view that the fee should be set at a level that strengthened the likelihood of the Scheme being built and the benefits realised;
 - iii) the DOC valuation has provided evidence of smaller, lower risk schemes paying a lower percentage of revenue; and
 - iv) during discussions DOC indicated a minimum (floor) concession fee which worked out to be less than the amount Westpower was proposing in percentage terms.

DOC response to RFI#8

950) On 5 March 2026, in response to RFI#8, DOC provided a memorandum of counsel, a statement from its valuer, a redacted copy of its valuation report, and a copy of the Minister of Conservation’s decision regarding s.78 conditions. In short, DOC submitted that the answers to the questions the Panel had asked in its RFI were moot as:⁴⁰⁶

- a) s.78 and cls.4 and 9 of Sch.6 operate as a code;
- b) the Minister of Conservation approved a proposed list of mandatory s.78 conditions to manage Crown risks and potential liabilities arising from the fast track land management approvals in July 2025 (last year);
- c) the Panel is required to imposed the s.78 conditions referred to by DOC in its s.51 Report – which include the bond, concession fee, concession fee review, other charges and costs conditions; and

⁴⁰⁶ DOC Memorandum, 5 March 2026 including Attachments 1 to 3.

- d) the Panel has no discretion to challenge and must impose the s.78 conditions exactly as presented by DOC.

951) In relation to the legal points that Westpower raised, DOC submitted that:

- a) The s.78 power to require conditions was inserted into the FTAA following Ministerial and cabinet approval of an options paper identifying the need for such a power to address risk through the imposition of conditions relating to fees, terms and risk management.
- b) The fact that there is a discretionary power for a panel to impose a fee condition under cl.7 of Sch.6 does not place any limitation on the Minister's power to set, and DOC's power to require, concession fee conditions under cl.9 of Sch.6.
- c) A Panel's discretionary power under cl.7 to impose a fee becomes redundant when DOC advises a panel that it must impose specified s.78 concession fee conditions.
- d) The s.83 requirement that conditions be no more onerous than necessary only applies to conditions that a panel has a discretion to set - it does not apply to mandatory s.78 conditions.
- e) There are several key risks the Crown has addressed by providing for fees through s.78 conditions:
 - i) a panel may not set a fee or may set it too low to ensure the Crown receives fair rental for the private use of public land;
 - ii) a panel might not have sufficient resources and expertise to determine appropriate level of the fee; and
 - iii) avoidance of disputes and delays regarding whether fees are too little or too onerous.
- f) Reserving the power to the Minister of Conservation to set fees and other non-environmental conditions under s.78 is consistent with the FTAA statutory scheme which provides for the Minister to be the final decision maker in fast track processes where there are risk and liability issues for the Crown (under ss.74, 75, 77 and also 78).
- g) As part of the select committee process, Westpower unsuccessfully 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.

952) While submitting the RFI questions were moot, DOC still provided a response to those questions, which we summarise (briefly) as follows:

- a) The valuation undertaken by its valuer, Mr Dunckley, did not take into account compensation offered by Westpower on DOC's instructions, and it is inappropriate and unlawful to reduce the fee given:
 - i) the fee is a payment for a right to occupy Crown land and the compensation package is intended to address adverse effects on the environment;

- ii) a substantial part of the compensation package relates to the construction phase which is irrelevant to the long-term concession;
 - iii) there is no indication that any of the adverse effects compensation package will be paid to DOC;
 - iv) Westpower is proposing that the compensation package be dealt with through resource consent conditions which is at arm's length from the concession conditions.
- b) The term of the concession was considered in reaching a conclusion on the appropriate fee level.
 - c) The purpose of the FTAA was not taken into account and it would be inappropriate to do so as the valuation is a market based assessment for the purpose of setting a concession rent/free.
 - d) The matters raised in Mr Griffith's statement did not change the valuer's view on the appropriate level.
 - e) DOC's valuer disagreed with Westpower's valuer regarding the appropriate comparators.

Westpower response to RFI#9

953) In response to RFI#9, Westpower provided a statement from its valuer, Mr Penrose, and a cover memorandum which clarified that:⁴⁰⁷

- a) its valuer had not taken into account the purpose of the FTAA and had not seen Mr Griffith's statement before he issued his previous statement but that he considered it may be appropriate for the Panel to apply a discount due to increased economic risk or to reflect the public good benefits of the Scheme; and
- b) Westpower sought that the Panel set a concession fee taking into account its valuation, the purpose of the FTAA, Mr Penrose's comments about a discount, that conditions are to be no more onerous than necessary, and the matters raised by Mr Griffiths in his earlier statement.

954) In response to the matters raised by DOC, Westpower:⁴⁰⁸

- a) reiterated its view that the legislation simply does not provide for the Minister to set a concession fee through a mandatory s.78 condition and if the legislation had intended that it would have said so;
- b) relied on its earlier arguments regarding the scope of s.78 and a concession fee not being to manage a risk and liability of the Crown;
- c) submitted that there is no evidence here that the background briefing papers have translated into statutory provisions and the Court of Appeal has previously

⁴⁰⁷ Westpower Memorandum #16, 5 March 2026; and Statement of Mike Penrose of CBRE, 5 March 2026.

⁴⁰⁸ Westpower Memorandum #17, 10 March 2026, at [6].

confirmed in other proceedings that such papers are of no real assistance in statutory interpretation;

- d) opined that the other arguments advanced by DOC such as the Minister’s ability to call-in the matter do not support the interpretation of unrelated provisions; and
- e) provided a further statement from its valuer which it submitted supported setting a lower concession fee.

Evaluation and findings

- 955) In terms of the fee to apply during the construction period (i.e., what the parties referred to as the short-term concession fee), we accept the joint position of the Applicant and DOC as to the appropriate level of that fee and have included that in the concession conditions.
- 956) With respect to the fee to apply once the Scheme is operational (i.e., what the parties referred to as the long-term concession fee), there was disagreement between the parties both as to our jurisdiction to impose a fee and the appropriate level of that fee.
- 957) In terms of the jurisdiction issue, we have carefully considered the submissions of both parties, and the text, purpose and context of the relevant provisions (as is required by the Legislation Act 2019). We prefer DOC’s submissions largely for the reasons it has provided (as summarised above). In our view a careful review of the relevant statutory provisions indicates that:
- a) the Minister has a discretion under s.78 to specify conditions that a Panel “may” be required to impose on approvals;
 - b) if a concession is granted, the Panel must impose any of the s.78 conditions that DOC indicates are relevant (cl.9 of Sch.6); and
 - c) DOC must specify those s.78 conditions in its s.51 Report or otherwise (cls.4 and 9 of Sch.6).
- 958) In other words, DOC has a discretion to determine which of the standard s.78 conditions it considers relevant, and once it has notified the Panel of those, those conditions must be imposed. DOC did that in its s.51 Report (and in comments on conditions),⁴⁰⁹ when it notified the Panel of which of the Minister’s standard conditions it required to be imposed.
- 959) While we acknowledge and agree with Westpower that the Minister’s power under s.78 is limited to specifying conditions appropriate to “manage risks to, and potential liabilities of, the Crown”, we consider that the question of whether the Minister exceeded his power in including concession fee conditions in his s.78 standard conditions is not a matter we are empowered to rule on. Instead, that appears to be a matter more appropriately litigated through a judicial review action. Accordingly, our view is that once DOC has identified which of the Minister’s standard s.78 conditions it

⁴⁰⁹ As discussed in Part L below, DOC added a further s.78 condition relating to the removal of structures in its comments on the Panel’s draft conditions.

requires to be imposed, we have to impose those conditions and we have no discretion to refuse to do so.

- 960) We also agree with DOC that the s.83 restraint on conditions being no more onerous than necessary does not apply to s.78 conditions, since it is prefaced by the words that “when exercising a discretion to set a condition under this Act”. Accordingly, where, like here, we have found there is no discretion, then s.83 has no application.
- 961) Further, as DOC’s s.78 conditions include concession fee matters, we tend to agree with DOC that our discretion under cl.8 of Sch.6 to impose a concession fee condition effectively becomes redundant, except perhaps to the extent we consider an additional fee of some sort is warranted. However, we have no need to determine that issue since here no party sought, and we received no evidence on, whether an additional fee should apply.
- 962) Our finding on jurisdiction (i.e., that we do not have jurisdiction to decline to impose the s.78 concession fee condition) means that we agree with DOC that the question of the appropriate level of the concession fee is one for the Minister. This also means that the disagreement between the valuers regarding appropriate considerations, comparators and other methodological issues are not matters we are required to determine.
- 963) We also note that due to our findings on jurisdiction, we have found it unnecessary to assess the reasoning for, and include the details of, the specific fee levels at issue in this Decision or in our conditions.
- 964) In summary, we have imposed the concession fee during the construction period agreed by the parties, and imposed the s.78 conditions required by DOC comprising the bond, operational concession fee, concession fee review, other charges and costs and removal of structures conditions, for the Scheme’s operation.

Section 17Z

- 965) Section 17Z relates to the term of a concession. It enables a lease, licence or easement to be granted for a term not exceeding 30 years, or where there are exceptional circumstances, a term not exceeding 60 years. The only exceptions are that right of way easements can be granted for longer where there is no other practical access, and public work easements can be for the reasonably foreseeable duration of that public work.

AEE

- 966) Westpower originally sought a 15-year concession for construction and a separate 49-year concession for operation of the Scheme – the latter to commence after construction is complete and generation has commenced. Westpower acknowledged that exceptional circumstances were required to justify a term of more than 30 years, and submitted that:⁴¹⁰

⁴¹⁰ AEE, Section 4.2.2 and Section 7.2.1.2 at p.366; and Westpower Memorandum #2, 17 November 2025, Attachment 7 – Buddle Findlay Memorandum, at [6]-[18].

- a) it is the role of the Panel to determine the appropriate duration of the concessions;
- b) the construction and operational concessions are separate;
- c) exceptional circumstances means something “out of the ordinary course”, “unusual”, “special or uncommon – an exception rather than the rule, but the circumstances do not need to be “extraordinary or unique”;⁴¹¹ and
- d) exceptional circumstances exist here given the scale of investment (over \$200 million), the extensive (3-4 year) construction period, the long-term nature of the infrastructure (which may still be running in 100-years’ time), and given a 49-year concession term was granted for the Amethyst Hydro Scheme in the same conservation area and involves a much smaller-scale investment.

DOC s.51 Report

967) DOC in its s.51 Report, agreed that it was for the Panel to determine the appropriate term, that Westpower had used a correct definition of “exceptional circumstances”; and that the proposed Scheme will involve a significant investment from Westpower. However, DOC submitted that:⁴¹²

- a) meeting the “exceptional circumstances” test is not sufficient on its own to justify a 49-year term, the term itself must still be appropriate when considering all the circumstances of the Application;
- b) Westpower has not provided evidence for why a 49-year term specifically is necessary as opposed to a shorter term (say of 35 years);
- c) significant capital expenditure alone does not justify an extended term – as the investment may be able to be recovered in a shorter period; and
- d) Westpower must establish that a shorter term is financially unviable.

968) Further, and in relation to Westpower’s proposal that separate and consecutive terms apply to construction and operational concessions, DOC submitted that:⁴¹³

- a) It is artificial to separate out the terms of the short and long-term concessions in determining the overall term, as:
 - i) in practice, the concessions will form a single continual interest over the land, particularly for those parts of the land where exclusive possession is required during both construction and operation stages;

⁴¹¹ In reliance on: *Wong v R* [2008] NZSC 29; *Treasury Technology Holdings Ltd v Commissioner of Inland Revenue* HC Auckland CP525, 25 May 1998 at 11; and *Milburn New Zealand Ltd v Commissioner of Inland Revenue* HC Wellington CP151, 28 October 1998 (HC), pp.5-6.

⁴¹² DOC s.51 Report, Appendix C – Concessions Report, at [6.8.5]-[6.8.12].

⁴¹³ DOC s.51 Report, Appendix C – Concessions Report, at [6.8.17]; and Appendix F – DOC Legal Memorandum, at [55]-[59].

- ii) the purpose of the concessions at a high level is the same – i.e., to authorise activities relating to the proposed Scheme; and
 - iii) the short-term concession will only have value if it is followed by a long-term concession authorising the ongoing operation of the Scheme.
- b) Splitting the short-term and long-term concessions so that one followed the other essentially provides Westpower with a 64-year term which is unlawful as it exceeds the maximum limits set out in s.17Z for both 'ordinary' applications (30 years) and those where there are 'exceptional circumstances' (60 years).
- c) Seeking to split the terms in this way also appears to be an attempt to avoid triggering the RFR held by TRONT (given it applies when a lease term of 50 years or more is sought).
- d) A written agreement from TRONT waiving their RFR is required if a total term of 50 years or more is sought – otherwise the Panel is required to decline the approval under cl.7(3)(c) of Sch.6 of the FTAA.
- e) As the area of the easement and long-term lease overlap significantly with the short-term lease area, a short-term lease/licence is only required to the extent that construction occurs on areas outside the long-term easement and lease areas.

Comments on Application

- 969) DOC did not comment further on this issue in its s.53 comments.
- 970) NZCA made the same point as DOC that Westpower had not provided an explanation for how the 49-year term had been arrived at and why it is necessary.⁴¹⁴
- 971) Poutini Ngāi Tahu in its comments confirmed that in their view granting the concessions for the terms sought by Westpower would not trigger the RFR as the short and long-term concessions are separate.⁴¹⁵

Westpower response to comments

- 972) The Applicant in its response to comments maintained its view that the exceptional circumstances test was met and that the 15-year short-term construction lease/licence and the 49-year long-term operational lease/licence concession are separate and discrete applications.
- 973) In relation to the exceptional circumstances test, the Applicant submitted that:⁴¹⁶
- a) DOC has agreed that the test for exceptional circumstances is something which is not regularly, routinely, or normally encountered, or something which is out of the ordinary course, unusual, special or uncommon;

⁴¹⁴ NZCA Comments on Substantive Application, 14 January 2026, Section 8, p.13.

⁴¹⁵ Poutini Ngāi Tahu Comments on Substantive Application, 12 January 2026, at [3.3].

⁴¹⁶ Westpower Memorandum #7, 21 January 2026, at [2.47]-[2.56].

- b) DOC has also agreed that the Scheme will involve significant investment from Westpower and is of a scale and scope that is “not common” for concession applications – which by logical consequence means the exceptional circumstances threshold is satisfied;
- c) there is no legislative requirement for the type of detailed financial analysis sought by DOC, nor a ‘minimum viable term’ approach;
- d) it is extremely difficult to predict what a minimum viable term would be – there are too many variables;
- e) there is no requirement under the RMA to justify the length of consent terms and it is accepted practice to apply for the longest terms possible; and
- f) a 49 year term best supports achievement of the FTAA purpose.

974) In relation to the separation of the concession into short and long-term concessions, the Applicant, submitted that:

- a) the splitting of the concessions into short and long-term concessions was suggested by DOC;
- b) the activities authorised by the two concessions are entirely different:
 - i) the short-term concession authorises a construction project with construction specific conditions;
 - ii) the long-term concession authorises the operation of the completed Hydro Scheme with operational specific conditions;
- c) the fact that short and long-term concessions were applied for at the same time does not mean they are one activity;
- d) it would be illogical for the operational concession to start at the same time as the construction concession since operations cannot commence then and nor can compliance with operational conditions;
- e) there is no legislative bar to the approach it has taken; and
- f) the terms do not trigger the RFR as neither is for longer than 50 years and this has been confirmed by Poutini Ngāi Tahu.

Response to RFI#7

975) In its response to RFI#7, the Applicant while maintaining its view (as summarised above), noted that:⁴¹⁷

- a) An alternative formulation for the short-term concession would be:
 - i) a 10-year lapse period; and

⁴¹⁷ Westpower Memorandum #11, 13 February 2026, at [12]-[13].

- ii) a 5-year concession term, commencing on the date that construction commences with the term to be triggered by a requirement on Westpower to give written notice.
- b) This alternative formulation would address DOC's concern about the total concession term (i.e., both the short-term and long-term concessions not exceeding 60 years), since it would fall to 54 years under this formulation.

Conference with Poutini Ngāi Tahu and following correspondence

- 976) At our conference with Poutini Ngāi Tahu we raised the concession term issue and sought their views on the appropriate approach if, contrary to their and Westpower's joint position, the TRONT RFR was triggered. Poutini Ngāi Tahu indicated that it would raise the issue with TRONT to seek their view and explore whether there was a possibility of providing a waiver.
- 977) On 5 March 2026, and in response to the issue raised at the conference with Poutini Ngāi Tahu, we received a letter from TRONT confirming that the RFR is vested in TRONT, it is a vitally important and hard-won right which is integral to their future aspirations, and that in their view, the (then) proposed concession arrangements *would* trigger the RFR under Part 9 of the Ngāi Tahu Settlement Act.
- 978) On 5 March 2026, we also received a memorandum from Westpower which:
- a) acknowledged there may be different views and some uncertainty as to whether the RFR is triggered in the context of the terms sought for the short and long-term concessions for the Project;
 - b) indicated it did not intend to trigger the RFR or to seek a waiver of the RFR; and
 - c) confirmed that in light of the uncertainty it considered the most appropriate and respectful step to take was to seek a reduced combined term of 49 years for both concessions.
- 979) It subsequently also clarified in email correspondence to the EPA that this meant that there would be one concession for a 49-year term covering both construction and operation and commencing on the date set out in cl.12 of Sch.6 (i.e., once the concession document is signed in accordance with cl.11 of Sch.6).

Evaluation and findings

- 980) We accept that exceptional circumstances are required to justify a term greater than 30 years for the concessions sought in the Application. We are satisfied that exceptional circumstances exist here for the reasons given by Westpower (as summarised above). We do not consider the degree of detail submitted by DOC in terms of financial viability is necessary, also for the reasons given by Westpower. We consider if such details were required that would have been made clear in the legislation.
- 981) In terms of whether the term sought triggers the RFR, we are cognisant that we are required to decline an approval if the granting of the proposed concession involves a lease of 50 years or more if the RFR has not been formally waived.⁴¹⁸ We acknowledge

⁴¹⁸ FTAA, Sch.6, cl.7(3).

and accept TRONT’s advice that the RFR is a hard-won right which is integral to Ngāi Tahu’s future aspirations. We also acknowledge and accept that, in light of TRONT’s advice and the potential legal uncertainty arising with the Applicant’s original proposal, it is appropriate to only grant one concession for a 49-year term covering both construction and operation as noted above. As explained later in the conditions section, for clarity, we have however split the concessions into a lease/licence concession, and an easement concession, both of which apply during the same time period.

982) Accordingly, and with the changes to the term outlined above, we find that the RFR and the s.17Z maximum term are not a bar to grant of the concessions.

I5: Conservation Act – Parts 3, 4, 4A, 5, and 5B

983) Clause 7(1)(a)(iii) requires the Panel to take into account:

any other relevant provisions of Parts 3, 4, 4A, 5, 5B, and 5C of the Conservation Act 1987 that direct decision making in relation to Part 3B of that Act

984) The AEE identified Part 4A relating to marginal strips as the only other potentially relevant provisions in this regard. However, it noted that the provisions in Part 4A generally relate to changes to marginal strips (in terms of size or ownership) and are therefore unlikely to be relevant for the Panel’s decision-making.⁴¹⁹ The DOC s.51 Report agreed, and noted that the purpose for which marginal strips are held and their status are addressed under separate criteria.⁴²⁰

985) DOC did not comment further on this in their s.53 comments, and no other party provided comment.

Evaluation and findings

986) We agree that Part 4A is not relevant for the reasons given by the Applicant and DOC (and as summarised by us above). We address the purpose and status of marginal strips below.

I6: Purpose for which land is held, status, ownership and administration

987) Clause 7(1)(a)(vi) requires the Panel to take into account the purpose for which the land is held, and cl.7(1)(a)(x) requires the Panel to take into account the status, ownership and administration of the land that would be subject to a concession.

988) The land over which Westpower has sought concessions is conservation land administered by DOC, the majority of which is stewardship land with a small amount being marginal strip. We set out the parties’ positions on each of these land categories separately, but combine our evaluation and findings into one section at the end of this section.

⁴¹⁹ AEE, Section 7.2.1.3.

⁴²⁰ DOC s.51 Report, Appendix C – Concessions Report, Section 7.

Stewardship land

AEE

- 989) The AEE noted that stewardship areas are to be managed to protect their natural and historic resources, with 'protection' meaning to maintain as far as practicable the resource in its current state, but includes augmentation, enhancement or expansion.⁴²¹ The AEE assessed the Scheme as being in keeping with the purpose for which stewardship land is held as:⁴²²
- a) so far as is practicable, Westpower is maintaining the environment in its current state, adverse effects will be avoided, remedied and mitigated, and appropriate conditions will ensure it is not inherently inconsistent with the purpose of the stewardship area;
 - b) the CGP, which guides the administration of conservation areas including stewardship land, contains specific guidance on the provision of utilities and confirms they can be permitted on conservation lands provided certain conditions are met; and
 - c) Part 3B of the Conservation Act recognises there can be uses of, and effects on, conservation land, with s.17U expressly requiring consideration of any measures that address adverse effects.

DOC s.51 Report

- 990) DOC in its s.51 Report, noted that as the Site involved conservation land it is relevant to consider the meaning of "conservation" as set out s.2 of the Conservation Act:⁴²³
- the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations
- 991) DOC submitted that the Scheme will not maintain the intrinsic values of land and water, and will diminish the recreational experience and opportunities for the public.⁴²⁴
- 992) Further, and in terms of the requirement to protect the natural and historic resources of stewardship land, DOC submitted that:⁴²⁵
- a) there are no historic resources that will be affected by the Scheme;
 - b) there will be adverse effects on "natural resources"⁴²⁶ (which include landscape and recreation values) that cannot be adequately avoided, remedied or mitigated through conditions; and

⁴²¹ Conservation Act, s.25 and the definition of "protection" in s.2.

⁴²² AEE, Section 7.2.1.4, p.367.

⁴²³ DOC s.51 Report, Appendix C – Concessions Report, at [8.3].

⁴²⁴ DOC s.51 Report, Appendix C – Concessions Report, at [8.7].

⁴²⁵ DOC s.51 Report, 10 Appendix C – Concessions Report, at [8.6]-[8.7].

⁴²⁶ Natural Resources is defined in s.2 of the Conservation Act as: "plants and animals of all kinds; the air, water and soil in or on which any plant or animal lives or may live; landscape and landform; geological features; and systems of interacting living organisms, and their environment; and includes any interest in a natural resource".

- c) due to the residual effects on natural resources, the Scheme may not be consistent with the purpose for which stewardship land is held.

Comments from invited parties

- 993) DOC did not comment further on the purpose of stewardship land in its s.53 comments.
- 994) No other party commented on the purpose of stewardship land. Although as noted above, both the Conservation Board and Poutini Ngāi Tahu confirmed that following a reclassification review, the land remained stewardship land.

Westpower response to comments

- 995) In its response to comments, the Applicant indicated it maintained its position, and also pointed to the Minister’s decision not to reclassify the land.

Marginal strips

- 996) Section 24C of the Conservation Act sets out the purpose for which marginal strips are held as follows:

24C Purposes of marginal strips

Subject to this Act and any other Act, all marginal strips shall be held under this Act—

- (a) for conservation purposes, in particular—
 - (i) the maintenance of adjacent watercourses or bodies of water; and
 - (ii) the maintenance of water quality; and
 - (iii) the maintenance of aquatic life and the control of harmful species of aquatic life; and
 - (iv) the protection of the marginal strips and their natural values; and
- (b) to enable public access to any adjacent watercourses or bodies of water; and
- (c) for public recreational use of the marginal strips and adjacent watercourses or bodies of water

AEE

- 997) The AEE did not separately assess the Scheme against the purpose for which marginal strips are held.

DOC s.51 Report

- 998) The DOC s.51 Report noted that the activities Westpower proposes over marginal strips relate to access and a right to convey electricity and telecommunications. DOC assessed the activities as being consistent with the purpose for which marginal strips are held as there will be no long-term loss of public access (short-term restrictions only applying during construction), no impact on adjacent waterbodies as the access road follows the path of an existing informal road, and no on the ground impact from the transmission lines (with lines located in the airspace above and no transmission poles within marginal strips).⁴²⁷

Comments from invited parties and Applicant’s response

- 999) DOC did not comment further on the purpose of stewardship land in its s.53 comments, and no other party commented on this matter.

⁴²⁷ DOC s.51 Report, Appendix C – Concessions Report, at [8.9]-[8.13].

1000) Westpower did not address this issue in its response.

Evaluation and findings

1001) In considering these matters, we are cognisant that there is no requirement for the Scheme’s activities to be consistent with the purpose for which the land is held – the requirement under the FTAA is simply that that purpose is taken into account. We have done that.

1002) Further, in terms of the concept of ‘protection’, we accept the Applicant’s submission that protection is not absolute under the Conservation Act, as otherwise there would be no need for a concession regime, or for the consideration of measures designed to address effects. Some use is clearly contemplated.

1003) In terms of stewardship land, we acknowledge that this type of land is subject to the least protection under the Conservation Act, and that following a review, it was determined by the Minister that it was appropriate for the land to stay within this category. Further, and as noted in other Parts of this Decision, while we agree with DOC that there will be residual recreation and landscape effects that cannot be entirely avoided, remedied or mitigated, we find that they are not such that would warrant the refusal of the approvals sought. We therefore find that with the conditions we have imposed; the Scheme will be consistent with the purpose of stewardship land.

1004) In terms of the marginal strips, we accept DOC’s assessment (as summarised above), and find that the Scheme will be consistent with the purpose for which such marginal strips are held.

I7: Conservation management strategies or plans

1005) Clause 7(1)(a)(vii) requires the following be taken into account:

(A) any conservation management strategies or conservation management plans that have been co-authored, authored, or approved by a Treaty settlement entity; and

(B) the views of the entity referred to in sub-subparagraph (A) on the proposed concession; and

1006) As noted above, there is no relevant conservation management plan.

1007) The AEE noted that the CMS was not co-authored, authored or approved by Poutini Ngāi Tahu. However, as consistency of the Scheme with the CMS remains a relevant consideration under cl.7(1)(a)(ii), it was assessed in the Application.⁴²⁸ DOC agreed with this position in its s.51 Report.⁴²⁹ Poutini Ngāi Tahu also confirmed this in their comments.⁴³⁰

1008) No other party commented on this issue.

⁴²⁸ AEE, Section 7.2.2.3.

⁴²⁹ DOC s.51 Report, Appendix C – Concessions Report, at [9.1].

⁴³⁰ Poutini Ngāi Tahu Comments on Substantive Application, 12 January 2026, at [3.6].

Evaluation and findings

1009) We accept the parties joint view that the CMS was not co-authored, authored or approved by a Treaty settlement entity. The logical consequence of this is that the CMS does not require consideration under this clause (cl.7(1)(a)(vii)).

1010) However, as mentioned earlier, irrespective of whether it is a mandatory consideration this clause or a discretionary consideration (under cl.7(1)(b)), we have taken it into account, with our evaluation and findings set out in Subpart I4 above.

I8: Existing arrangements

1011) Clause 7(1)(a)(xi) requires the Panel to take into account:

whether the land is subject to any existing arrangements that create obligations in relation to the land

1012) The AEE noted that DOC had confirmed there were two concessions of relevance in the areas where Westpower will construct and operate the Scheme (held by Westland Schist and Premier Group respectively), but that these other concessions did not give rise to any incompatible arrangements as:⁴³¹

- a) Westland Schist hold concessions for stone removal in Waitaha River and Macgregor Creek and have agreed (as per Appendix 6 to the AEE) that it will extract gravel for Westpower and will not exercise its concessions in the area simultaneously with Westpower; and
- b) Premier Group holds two concessions for stone removal from Macgregor Creek, but there will only be a small overlap with one concession (where Westpower is constructing an access road and transmission line) and Premier Group has confirmed it will not constrain or be incompatible with its activities (again as set out in Appendix 6 to the AEE).

1013) The DOC s.51 Report contained a list of all active permissions within the Waitaha River, Allen Creek, and Macgregor Creek marginal strip areas and within the Waitaha Forest. Uses ranged from helicopter and fixed wing landings; commercial activities; fishing; canoeing/kayaking; multi day walking; outdoor education camp activities; filming; mineral prospecting; collection of animals, flora or geological samples; geology; fauna; and capturing, handling release or killing of animals. DOC confirmed that these permissions do not create a formal "interest" in land, as that term is defined in the Conservation Act.⁴³²

1014) DOC did not comment further on these matters in its s.53 comments, and no other invited party provided comment.

Evaluation and findings

1015) In the absence of any contradiction by DOC, we accept the advice from the Applicant that the only two relevant concessions, are those held by Westland Schist and Premier Group. Given those concession holders have reached agreement with Westpower or confirmed that the Scheme is not incompatible with their concessions, we find that the

⁴³¹ AEE, Sections 5.10. 4 and 7.2.1.5.

⁴³² DOC s.51 Report, Appendix C – Concessions Report, Section 11.

interests of existing concession holders have been adequately addressed in the Application.

I9: Legal and financial liabilities

1016) Clause 7(1)(a)(xii) requires the Panel to take into account:

the legal and financial liabilities associated with decisions on leases, licences to occupy land, and easements

1017) The AEE noted that Westpower accepts that the use of the land is at its own risk, has agreed to take out insurance, has confirmed it will comply with all legislation, and has proposed conditions in the concessions to address these matters.⁴³³

1018) The s.51 Report noted that DOC considered the legal and financial liabilities are adequately covered in DOC's standard terms and conditions which the Applicant has incorporated into its conditions.⁴³⁴

1019) DOC did not comment further on these matters in its s.53 comments, and no other invited party provided comment.

Evaluation and findings

1020) We accept the advice of the Applicant and DOC that the relevant legal and financial liabilities have been appropriately addressed in conditions.

I10: Other policy statements or management plans

1021) Clause 7(1)(b)(i) sets out that the Panel may also consider:

any policy statement or management plan of the Crown (other than a strategy or plan referred to in paragraph (a)(vii))

1022) Clause 7(2) reinforces the discretionary nature of this consideration, noting that we are not to treat the provision as requiring us to consider any such document.

1023) As noted above, both the AEE and DOC s.51 Report identified the CGP as falling within the ambit of cl.7(1)(b)(i).

AEE

1024) The AEE noted that as the CMS had been prepared in accordance with the CGP, attendance to the objectives and policies in the CMS will provide for the majority of the policies in the CGP. The relevant policies/parts of policies identified by the AEE were:

a) Policy 1 – Interpretation of policies:

1(a) The policies in this General Policy will apply to all lands, waters and resources administered by the Department of Conservation, excluding national parks.

1(c) Each policy will be considered in conjunction with all other policies in this General Policy.

1(d) The words 'will', 'should' and 'may' have the following meanings:

⁴³³ AEE, Section 7.2.1.6.

⁴³⁴ DOC s.51 Report, Appendix C – Concessions Report, Section 12.

- i. Policies where legislation provides no discretion for decision making or a deliberate decision has been made by the Minister to direct decision-makers, state that a particular action or actions 'will' be undertaken.
 - ii. Policies that carry with them a strong expectation of outcome without diminishing the constitutional role of the Minister and other decision-makers, state that a particular action or actions 'should' be undertaken.
 - iii. Policies intended to allow flexibility in decision-making, state that a particular action or actions 'may' be undertaken.
- 1(e) Planned outcomes at places should be consistent with the intrinsic values of an area identified as a place in a conservation management strategy or plan.
- 1(h) Approved conservation management strategies and plans continue to have effect until they are amended or reviewed, except where they clearly derogate from General Policy.
- b) Policy 2 – Treaty of Waitangi responsibilities;⁴³⁵
- c) Policy 4.1 – Terrestrial and freshwater species, habitats and ecosystems:
 - 4.1(c) Restoration of habitats and ecosystems should use locally sourced indigenous species except where the presence of introduced species is required for the preservation of indigenous species or is consistent with the purposes for which the land is held.
 - 4.1 (i) The release of sports fish into waters in public conservation land should be authorised where:
 - i. sports fish of the same species are already present;
 - ii. release is consistent with the purposes for which the land is held;
 - iii. subject to the above criterion, the protection of the indigenous freshwater fisheries and their habitat is not adversely affected; and
 - iv. such releases are provided for in a sports fish management plan or, in its absence, an operational work plan approved by the Minister of Conservation.
- d) Policy 4.2 – Biosecurity management of threats to indigenous species, habitats and ecosystems:
 - 4.2(c) Biosecurity and pest management programmes should:
 - i. seek to maximise outcomes for the benefit of indigenous species, habitats and ecosystems;
 - ii. provide for either single or multiple species measures where required to protect specified places;
 - iii. take account of statutory pest management strategies; and
 - iv. be developed in collaboration with other relevant management agencies.
- e) Policy 4.5 – Geological features, landforms and landscapes:
 - 4.5 (b) Activities which reduce the intrinsic values of landscape, landform and geological features on public conservation lands and waters should be located and managed so that their adverse effects are avoided or otherwise minimised.
- f) Policy 4.6 – Ecosystem services:
 - 4.6 (a) Activities on public conservation lands and waters should be planned and managed in ways which avoid or otherwise minimise adverse effects on the quality of ecosystem services.

⁴³⁵ Policy 2 is not quoted here as the policies relate to DOC's responsibilities rather than the Applicant's.

- g) Policy 5 – Historical and cultural heritage;⁴³⁶
- h) Policy 8 – Natural hazards:
- 8(a) Management for natural hazards on public conservation lands and waters:
- i. should be undertaken with minimal interference to natural processes, natural resources, and historical and cultural heritage;
 - ii. should be consistent with the purpose for which the land is held; and
 - iii. will include an assessment of the risks to people, places and property.
- i) Policy 9.1 – Planning and management for people’s benefits and enjoyment:
- 9.1 (a) Recreational opportunities will be provided on public conservation lands and waters. Where provided, they should be consistent with the values of and outcomes planned for places.
- j) Policy 9.5 – The use of vehicles and other forms of transport:
- 9.5 (a) The use of vehicles and any other forms of transport should be compatible with the statutory purposes for which the place is held, or be necessary to enable the Department to perform its functions.
- k) Policy 9.6 – Animals:
- 9.6 (a) Animals (including pets) will not be permitted to be taken into public conservation lands and waters unless this is consistent with legislation and specifically provided for in conservation management strategies or plans.
- l) Policy 11.1 – Activities requiring specific authorisation:
- 11.1 (a) Any application for a concession or other authorisation will comply with, or be consistent with, the objectives of the relevant Act, the statutory purposes for which the place is held, and any conservation management strategy or plan.
- 11.1 (b) All activities on public conservation lands and waters which require a concession or other authorisation should, where relevant, avoid, remedy or mitigate any adverse effects (including cumulative effects) and maximise any positive effects on natural resources and historical and cultural heritage, and on the benefit and enjoyment of the public, including public access.
- 11.1 (c) The Department and all concession and other authorisation holders should monitor the effects of authorised activities on natural resources, historical and cultural heritage, and the benefit and enjoyment of the public, including public access, to inform future management decisions.
- 11.1 (d) Concession and other authorisation holders will be responsible for the safe conduct of their operations, including the safety of staff, clients, contractors, and the public, and compliance with relevant safety standards and legal obligations.
- m) Policy 11.3 – Utilities:
- 11.3 (a) Utilities may be provided for on public conservation lands and waters where they cannot be reasonably located outside public conservation lands and waters, or if specifically provided for as a purpose for which the place is held.
- 11.3 (b) When new utilities are installed or existing utilities are maintained or extended, they should be of a scale, design and colour that relates to, and is integrated with, the landscape and seascape.
- 11.3 (c) Public access to utilities may be denied where necessary for the protection of public safety or the security or competent operation of the activity concerned.
- 11.3 (d) Utilities should, wherever possible, be located in, or added to, an existing structure or facility and use existing access options.

⁴³⁶ These policies are not quoted as there are no identified historic or cultural heritage sites within the Scheme area.

11.3 (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.

1025) The AEE assessed the Scheme against these Policies and concluded that:⁴³⁷

- a) Policy 1 applied since the Scheme is not located within a national park and assessing the Scheme holistically as directed by this Policy meant that subject to the suggested conditions the Scheme is consistent with this Policy and the CGP.
- b) While Policy 2 applied to how DOC met its Treaty responsibilities, Westpower is working in partnership with iwi in developing the Scheme.
- c) In terms of Policy 4.1(c) and (i):
 - i) the Scheme will include rehabilitation of sites and redistribution of vegetation removed to ensure utilisation of local seed sources as far as possible; and
 - ii) it is an important feature of the weir design to ensure that trout and salmon continued to be excluded from above Morgan Gorge.
- d) The Scheme considered together with its conditions, is consistent with Policy 4.5(b) as the Landscape Report finds the landscape will remain an ONL with the Scheme in place, and the Scheme is not inappropriate to the location and landscape that it sits within.
- e) The outcomes of the ecosystem assessments have been factored into the design layout and suggested conditions (which included detailed design of and expert input into the fish passage), and subject to those conditions, the Scheme is consistent with Policy 4.6(a).
- f) Policy 8 is relevant as the Alpine Fault runs through the area to the north of the Scheme and given the flooding hazards. The Scheme is consistent with this policy as it has been located and designed with measures to appropriately address natural hazards, it includes ramping and emergency shutdown procedures, as well as measures to keep the public informed and safe during construction and operation.
- g) The Scheme is consistent with Policy 9.5, as helicopters and vehicles will be required for construction and maintenance, and such uses are recognised and provided for under the CMA through authorisation on a case by case basis.
- h) There will be consistency with Policy 9.6(a) since the CEMP proposes banning dogs – with the exception of those required for ecological monitoring purposes.
- i) While there will be residual effects from the Scheme with regard to landscape and recreation matters, these do not mean that the Scheme is inappropriate, and Policy 11.1 needs to be considered in conjunction with the utility activities provided for in Policy 11.3.

⁴³⁷ AEE, Appendix 52, pp.1-7.

- j) In terms of Policy 11.3, the Scheme is for a utility (as that term is defined in the CGP), which cannot reasonably be located outside public lands and waters, so is consistent with this Policy.
- k) Overall, the Scheme and concession, including design, location and suggested conditions is consistent with the CGP.

DOC s.51 Report

1026) The DOC s.51 Report noted that under the Conservation Act a CMS cannot derogate from the CGP and undertook its own assessment of what it determined were “key provisions” – namely Policies 2(e), 3(e), 4.5, 4.6, 9.1(a), 11, 13(e).

1027) DOC concluded that due to the level of recreation and landscape effects the Project is inconsistent with CGP Policies 4.5(b), 11.1(b) and 11.3(b), and therefore inconsistent with the CGP.

Comments from invited parties

1028) DOC did not provide further comment on this matter in its s.53 comments.

1029) NZCA agreed with DOC that the Scheme is inconsistent with CGP Policies 4.5(b), 11.1(b) and 11.3(b), and that as a result, the Scheme is inconsistent with the CGP overall.

Westpower response

1030) Westpower provided a detailed response to these issues comprising a legal memorandum and statements from both Mr Jackson and Mr Kennedy.⁴³⁸ The key points were that:

- a) The CPG contains no reference to “key provisions” which override all others.
- b) The objectives and policies should be read as a whole and in context rather than a policy-by-policy assessment in an isolated and decontextualised manner.
- c) This approach is reinforced by:
 - i) Policy 1(c) which directs that “each policy will be considered in conjunction with all other policies in this General Policy”; and
 - ii) the introductory commentary to the interpretation policies which expressly states that “each policy also needs to be considered in conjunction with all other policies”.
- d) While there does not appear to be any specific judicial guidance on assessing consistency of the CGP, a contextual holistic approach is consistent with RMA case law.

⁴³⁸ Westpower Memorandum #7, 21 January 2026, at [2.17]-[2.19]; Attachment 15, at [2.2]; and Attachment 13, Section 5.

- e) DOC's assessment failed to consider all relevant policies, notably not identifying the utilities policy amongst others.
- f) DOC's assessment misapplies some policy wording as:
 - i) it does not distinguish between provisions which require strict adherence ('will' provisions), those where there is a strong expectation of outcome ('should' provisions); and those where there is flexibility ('may' provisions) – which is inconsistent with interpretation cl.1(d);
 - ii) it does not recognise that several policies do not adopt a 'nil' adverse effects approach; and
 - iii) it conflates the meanings of the terms 'mitigate' and 'minimise' used within different policies.

1031) The Westpower response concludes that overall when all the relevant provisions are considered as intended, the Project can, subject to its conditions be considered consistent with the CPG as a whole.

Evaluation and findings

1032) At the outset we acknowledge that the CPG is not a mandatory consideration but is one which we have a discretion to consider. Given it provides guidance for the administration of lands, waters and natural and historic resources managed under the Conservation Act, and given that both the Applicant and DOC have provided an assessment of its provisions, we find it is an appropriate matter to consider for the purposes of this Application.

1033) In terms of the approach to consideration, and similar to our findings stated in Subpart I4 above, we do not accept DOC and NZCA's submissions that to be consistent with the CPG the Scheme needs to be consistent with every single objective and policy. Such an approach is inconsistent with the CPG interpretation section and the meaning accorded to the terms, 'will', 'should' and 'may'.

1034) However, even if we are wrong in this view, and consistency means consistency with every individual objective and policy, we note that a finding of inconsistency is not determinative given cl.7(2)(a) and given the degree of consideration required under the FTAA is simply to take into account the degree of consistency. In other words, inconsistency with the CPG in any respect is not an automatic bar to the grant of the concessions sought.

1035) In terms of whether there is inconsistency with the CGP objectives and policies, we have carefully considered the parties' respective assessments, evidence and submissions (as summarised above). We have also considered the text of each objective and policy to determine the degree of compliance required, ('will', 'should', or 'may'); and the extent to which effects need to be addressed (e.g. minimised, or mitigated, where relevant). We have focussed below in particular on those policies where DOC considers there are inconsistencies to assess whether they are determinative in an overall finding on consistency.

1036) We accept DOC's position that there is inconsistency with Policy 4.5(b), which is a 'should' policy, in relation to the reduction of the intrinsic values of landscape, landform and geological features due to the location of the Scheme and that its adverse effects

are unable to be fully avoided or otherwise minimised. This is reflected in the landscape assessment which categorises the localised effects of the Scheme, even after mitigation, as moderate-high or more than minor.

1037) We also agree that the Scheme has a degree of inconsistency with Policy 11.1(b), which again is a 'should' policy, given that the landscape and recreation effects are not able to be fully avoided, remedied or mitigated, and given that there are effects on the benefit and enjoyment of the public from a recreational perspective. The landscape and recreation assessments provide support for such a finding.

1038) We do not entirely agree with DOC that the Scheme is inconsistent with Policy 11.3(b) given the measures that have been taken to reduce the scale and design of the Scheme visually, the use of recessive colours on buildings and infrastructure in key areas, and the steps taken through the LMP to integrate it into the landscape.

1039) Overall, we do not consider the discrete policy inconsistencies identified above are sufficient to arrive at an overall finding that the Scheme is inconsistent with the CPG. In that context we agree with the Applicant.

1040) Further, and notwithstanding the above, we consider it is also relevant that:

- a) the CPG is over 20 years old and makes no mention of relevant matters such as climate change;
- b) the CPG was not co-authored, authored or otherwise approved by Poutini Ngāi Tahu; and
- c) Poutini Ngāi Tahu as the relevant iwi authority considers that landscape and recreation matters have been satisfactorily addressed.⁴³⁹

1041) Accordingly, and in summary, we have found that:

- a) it is appropriate to take into account the CPG (and we have done so);
- b) there are limited inconsistencies with the CPG which we have identified;
- c) the weight to be given to the CPG is tempered somewhat by its age and omissions; and
- d) when the CPG is interpreted consistently with its provisions, overall, the Scheme is not inconsistent with it.

I11: Grounds to decline

1042) As noted earlier, cl.7(3) sets out the grounds on which the Panel must decline an approval. The only potentially relevant grounds are whether:⁴⁴⁰

⁴³⁹ Poutini Ngāi Tahu Comments on Substantive Application, 12 January 2026, at [3.6].

⁴⁴⁰ The other mandatory decline ground in s.17U(3) (decline if an activity is contrary to the provisions of the Conservation Act or the purposes for which the land concerned is held), and discretionary decline ground in s.17SB (decline if obviously inconsistent with the Conservation Act, any relevant CMS or conservation management plan) are expressly disapplied by cl.7(1)(a)(ii) of Sch.6 of the FTAA.

- a) the approval would result in the conferral of an interest which is inconsistent with other existing interests; and
- b) the term sought by the Applicant would exceed 50 years giving rise to a RFR to Ngāi Tahu.

1043) The evidence we received on these matters is summarised in Subparts I4 and I8 respectively above.

Evaluation and findings

1044) Our findings on these matters are also set out earlier in those Subparts (I4 and I8). However, by way of brief summary, we have found that we are not required to decline approval as:

- a) the approval would not result in the conferral of an interest in land that is incompatible with an existing interest; and
- b) the amendment to the Application has meant that the concession term does not exceed 50 years.

I12: Decision as to concessions

1045) For the reasons set out above and giving the greatest weight to the purpose of the FTAA, we are of the view that the concessions sought should be approved but on appropriate terms.

1046) A list of the concessions is set out in **Appendix C** to this Decision. Our discussion of conditions is set out in Part L and the terms and conditions of the concessions are set out in **Appendices D1 (Lease and Licence)** and **D2 (Easement)**.

PART J: EVALUATION OF WILDLIFE APPROVALS | WĀHI J: TE MĀTAI I NGĀ ĀHUATANGA O NGĀ WHAKAAETANGA-Ā-MEA PUIHI

J1: Introduction

1047) As noted, the Applicant is seeking wildlife approvals to authorise catching, handling, salvage and relocation of native lizards; gently guide whio away from blasting and helicopter areas; capture, handle and relocate avifauna and long-tailed bats; and to incidentally harm or kill wildlife in certain circumstances and when undertaking certain activities.

1048) A fuller description of these activities is set out in Subpart B2 above.

J2: Overview of criteria

1049) The assessment criteria for wildlife approval applications are set out in cl.5 of Sch.7 as follows:

For the purposes of section 81, when considering an application for a wildlife approval, including conditions under clause 6, the panel must take into account, giving the greatest weight to paragraph (a),—

- (a) the purpose of this Act; and
- (b) the purpose of the Wildlife Act 1953 and the effects of the project on the protected wildlife that is to be covered by the approval; and

- (c) information and requirements relating to the protected wildlife that is to be covered by the approval (including, as the case may be, in the New Zealand Threat Classification System or any relevant international conservation agreement).

1050) We evaluate each of these matters in turn.

J3: Purpose of the FTAA

1051) The purpose of the FTAA is set out earlier in this Decision. The AEE assessed the Scheme as achieving that purpose.⁴⁴¹

1052) No party commented on that purpose in the context of the wildlife approvals.

Evaluation and findings

1053) Consistent with our earlier findings in Part G that the Scheme would have at least significant regional benefits, it follows that granting the wildlife approvals sought will facilitate the delivery of the Scheme and its benefits. We return to consider the FTAA purpose and Scheme benefits when we undertake our overall evaluation in Part M below.

J4: Purpose of the Wildlife Act and effects on wildlife

1054) The Wildlife Act does not include an express purpose clause. However, its purpose is discernible from its provisions which include the protection of species and particular wildlife populations that are at risk.

AEE

1055) In relation to the purpose, the AEE stated that:⁴⁴²

- a) while the Wildlife Act has a protective purpose, that is not its sole purpose, and which activities fall within the protective purpose will be fact and circumstance dependent; and
- b) the protective purpose is not absolute – it requires consistency with protection at a species level, not solely at an individual animal level.

1056) In relation to effects, and as noted in various Subparts of Part F above, the AEE assessed the Scheme as being consistent with the purpose of the Wildlife Act and the effects as being acceptable as:⁴⁴³

- a) the Scheme is extremely unlikely to have adverse effects at a population level on protected wildlife - each individual incidental harm or death (if that was to occur) does not have to be consistent with the protective purpose of the Wildlife Act; and
- b) the conditions Westpower is proposing (which require lizard salvage and relocation, gentle persuasion of whio, relocation of avifauna and long-tailed bats – if required, and offsite compensation/contributions to an ecosystem programme)

⁴⁴¹ AEE, Section 2.3.

⁴⁴² AEE, Section 7.3.2.1.

⁴⁴³ AEE, Section 7.3.2.3.

are designed to maintain the viability of wildlife populations and protect individual animals as far as practicable.

DOC s.51 Report

1057) DOC in its s.51 Report agreed that overall, and subject to its recommended conditions, the proposed activities are broadly consistent with the purpose of the Wildlife Act, and effects can be managed by conditions. DOC suggested specific amendments to conditions relating to lizards, West Coast green gecko, avifauna, bats, incidental killing, authorised personnel, and nest protocols for that purpose.⁴⁴⁴

Comments by invited parties

1058) DOC did not comment further on the purpose of the Wildlife Act in its s.53 comments, however, in terms of effects DOC:

- a) noted two additional matters for consideration in relation to avifauna (electrocution risk from structures like transformers on power poles and the potential presence of kiwi pukupuku);
- b) sought two changes to the AMP relating to whio nesting deterrent measures, and a requirement to pause works in the event of whio mortality or injury;
- c) recommended changes to the BMP to ensure the proposed measures are consistent with its Bat Roost Protocols and suggested effects could be further minimised by reducing the width of the permanent access road and moving transmission cables underground;
- d) sought changes to the LizMP to require information on transport options to the nearest wildlife vet, trigger levels for continuing salvage, predator control, and protection or predator proof rock refuges at West Coast green gecko release sites;
- e) requested a detailed contingency plan be prepared as an appendix to the LizMP or that a stop works condition be included if West Coast green gecko are discovered until such a plan is developed; and
- f) sought restrictions on timing and pre-clearance salvage prior to clearance of potential lizard habitats.

1059) NZCA noted that DOC had assessed the Scheme as being consistent with the purpose of the Wildlife Act in its s.51 Report, but provided no comment of its own on that issue. In terms of effects, NZCA indicated that it was satisfied that the systems agreed with DOC would satisfactorily mitigate any adverse impacts of the development.⁴⁴⁵

1060) The Conservation Board generally supported the recommendations made in the Applicant's terrestrial fauna, whio, and lizard reports, but:⁴⁴⁶

⁴⁴⁴ DOC s.51 Report, Appendix D – Wildlife Approvals, Section 2.

⁴⁴⁵ NZCA Comments on Substantive Application, p.14.

⁴⁴⁶ Conservation Board Comments on Substantive Application, 13 January 2026, at (ix)-(xi).

- a) sought minor changes to conditions to require reporting of harm or death for bats and avifauna; and
- b) noted that the feasibility of whio being relocated had not been assessed.

1061) Poutini Ngāi Tahu commented that effects on the wildlife and taonga species had been appropriately addressed to their satisfaction.⁴⁴⁷

1062) No other party commented on this matter.

Applicant response

1063) The Applicant noted DOC's conclusion re the purpose, and responded to DOC's s.53 requests as follows:

- a) In terms of avifauna, the Applicant:
 - i) proposed a further condition to review acoustic recordings and report findings to DOC prior to vegetation clearance;
 - ii) stated that there is no electrocution risk from transformers as none are proposed on the power poles;
 - iii) opined that it would be unduly onerous to require nest checks of non-threatened avifauna; and
 - iv) noted that mortality reporting was already included in the relevant documents.
- b) In relation to whio, the Applicant:
 - i) indicated that nesting deterrent measures would be determined by a suitably qualified and experienced ecologist – an approach that the Environment Court had previously accepted in Te Ahu a Tūranga – Manawatū Tararua Highway Project; and
 - ii) noted that a condition was already included requiring a review in the event of whio mortality.
- c) In relation to bats, the Applicant:
 - i) submitted that the Bat Roost Protocols have no statutory basis and to the extent its proposed condition diverges from the Bat Roost Protocols, this is necessary to reflect the local context; and
 - ii) noted that bat mortality reporting is already included in the relevant documents.
- d) In terms of lizards, the Applicant:

⁴⁴⁷ Poutini Ngāi Tahu Comments on Substantive Application, 12 January 2026, at [3.4].

- i) indicated that the LizMP had been updated to include the matters requested by DOC;
 - ii) opined that additional mitigation beyond what had already been proposed was more onerous than necessary; and
 - iii) confirmed that predator control at release management sites was not proposed and had not been recommended in the Lizard Report.
- e) In relation to management plans, the Applicant submitted that there is no clear justification for requiring recertification of the AMP, BMP and LizMP within 10 years.

Joint empanelment

1064) The who experts for the Applicant and DOC confirmed orally at the joint empanelment that any effects on who as a result of additional sediment build up at Kiwi Flat would be minor, and that in the unlikely event that displacement resulted, the compensation proposed would address that.⁴⁴⁸

Conference with Poutini Ngāi Tahu

1065) Poutini Ngāi Tahu indicated that West Coast green gecko is not a taonga species and the measures proposed by Westpower would address effects on such geckos.

Evaluation and findings

- 1066) In undertaking our evaluation of this matter, we note, as Westpower did, that the Scheme is not required to be consistent with the purpose of the Wildlife Act,⁴⁴⁹ but that its degree of consistency (or otherwise) is a relevant consideration.
- 1067) Based on Westpower and DOC’s uncontested evidence we find that, subject to appropriate conditions, the Scheme is broadly consistent with the purpose of the Wildlife Act.
- 1068) In relation to effects, these have largely been addressed in Part F above, with condition issues detailed in Part L below. For present purposes it will suffice to note that we are satisfied that the conditions we have imposed (which were largely as agreed between the Applicant and DOC) are appropriate to both maintain consistency with the purpose of the Wildlife Act, and manage effects on wildlife.

J5: Information and requirements relating to protected wildlife

1069) The AEE, as updated by Westpower Memorandum #2, confirmed that:⁴⁵⁰

- a) There are a number of protected wildlife species known/predicted to be in the Scheme area.⁴⁵¹

⁴⁴⁸ Joint Empanelment Transcript, 13 February 2026, pp.27-31.

⁴⁴⁹ AEE, Section 7.3.2.3.

⁴⁵⁰ AEE, Section 7.3.3; and Westpower Memorandum #2, 17 November 2025, at [7].

⁴⁵¹ AEE, Section 4.3.2.

- b) Eight threatened species and eight at-risk species have been identified as present/potentially present.⁴⁵²
- c) There are two applicable international conservation agreements – the United Nations Convention on Biological Diversity (**CBD**) and the International Union for Conservation of Nature (**IUCN**).
- d) The Scheme may affect the following species that hold an IUCN red list status:
 - i) Forest gecko: Vulnerable (decreasing);
 - ii) Newman's speckled skink: Vulnerable (decreasing);
 - iii) West Coast green gecko: Vulnerable (decreasing);
 - iv) New Zealand long-tailed bat: Critically endangered (decreasing); and
 - v) Whio: Endangered (decreasing).
- e) The potential impacts on all of these protected species following effects management/mitigation will be less than minor.

1070) The DOC s.51 Report agreed – subject to some recommended changes to conditions. It concluded that overall, the relevant species management plans include appropriate methodologies for salvage and relocation, identify suitable release sites and propose appropriate habitat enhancement measures.⁴⁵³ The DOC s.51 Report also:⁴⁵⁴

- a) Provided a Table with the IUCN red list status of all species named in the Application.
- b) Included an assessment of the CBD noting that:
 - i) the CBD promotes the development of global targets, national strategies and action plans for the protection, restoration and sustainable use of biodiversity;
 - ii) as a party, New Zealand is required to, and has, a national biodiversity strategy and action plan (Te Mana o te Taiao);
 - iii) key relevant objectives of the CBD include that biodiversity protection is at the heart of economic activity, that natural resources are managed sustainably, and that management ensures biological threats and pressures are reduced through management; and

⁴⁵² The eight threatened species comprise: West Coast green gecko; long-tailed bat; kea; blue duck / whio; South Island kākā; long-tailed cuckoo; bush falcon / karearea; and grey duck. The eight at risk species comprise: Newman's speckled skink; forest gecko; yellow-crowned parakeet / Kākāriki; South Island pied oystercatcher; South Island robin; South Island fernbird; New Zealand pipit; and black shag.

⁴⁵³ DOC s.51 Report, Appendix D – Wildlife Approvals, Section 2.

⁴⁵⁴ DOC s.51 Report, Covering Report, Section 4, and Appendix D – Wildlife Approvals, Section 10.

- iv) the Scheme mitigates impacts on resident indigenous species populations and the Scheme’s proposals to salvage wildlife and enhance habitats at the relocation site via planting and pest control will contribute to the protection of biodiversity.
 - c) Pointed out that while the CGP does not contain policies specific to the proposed wildlife activities, Policies 11.1(a) and (c) of CGP remain relevant, and the Scheme is not inconsistent with them.
 - d) Stated that CMS Policy 3.3.3.5(3) is relevant and the Application is not inconsistent with it.
 - e) Noted Treaty settlement matters and Poutini Ngāi Tahu’s position in support.
- 1071) DOC did not comment further on these matters in their s.53 comments, and no other party provided comment on these matters.

Evaluation and findings

1072) There is a large degree of alignment between the AEE and the DOC s.51 Report. Based on these materials, and our findings in Part F, we are satisfied that we have been provided with sufficient information about the protected wildlife likely to be affected by the Scheme and that adequate consideration has been given to their respective threat status. We find that the conditions and management plans (discussed further in Part L below) will adequately address effects, and that given effects will be less than minor, the Scheme is not inconsistent with relevant international agreements.

J6: Decision as to wildlife approvals

- 1073) Taking into account all of the material set out above, we consider it is appropriate to grant the wildlife approvals, subject to appropriate conditions.
- 1074) Our discussion on conditions is set out in Part L. The conditions we have imposed on the wildlife approvals together with the Bat Roost Protocols (unmodified) are set out in **Appendix E** to this Decision.

PART K: EVALUATION OF FRESHWATER FISHERIES APPROVALS | WĀHI K: TE MĀTAI I NGĀ ĀHUATANGA O NGĀ WHAKAAETANGA-Ā- MAHINGA WAI MĀORI

K1: Introduction

- 1075) The Applicant sought complex freshwater fisheries approvals for:
- a) the Headworks diversion weir;
 - b) Alpha Creek groyne structures and associated in-stream construction;
 - c) on-going maintenance activities in Headworks diversion weir, Alpha Creek groyne structures and Macgregor Creek crossing structure;
 - d) all culvert structures;
 - e) the Granite Creek bridge; and

f) the Power Station tailrace.

1076) Further details of the approvals sought are set out in Subpart B2 above.

K2: Assessment criteria

1077) The assessment criteria for complex freshwater fisheries activities are set out in cl.5 of Sch.9 as follows:

For the purpose of section 81, the panel must take into account, giving the greatest weight to paragraph (a),—

- (a) the purpose of this Act; and
- (b) the alignment of the proposed activity with best practice and the New Zealand Fish Passage Guidelines; and
- (c) how the proposed activity will manage risks to freshwater values or habitat, including prevention of access to or spread of invasive species; and
- (d) the availability and quality of the habitat upstream and downstream of the proposed activity; and
- (e) the presence of threatened, data-deficient, or at-risk species under the New Zealand Threat Classification System in the vicinity of the proposed activity; and
- (f) the advantages and disadvantages of providing fish passage upstream or downstream of the proposed activity.

1078) We evaluate each of these matters in turn.

K3: Purpose of the FTAA

1079) The purpose of the FTAA has been set out earlier in this Decision and the AEE assessed the Scheme as achieving that purpose.⁴⁵⁵

1080) No party commented on that purpose in the context of the freshwater fisheries approvals.

Evaluation and findings

1081) Consistent with our earlier findings in Part G that the Scheme would have at least significant regional benefits, it follows that granting the freshwater fisheries approvals sought will facilitate the delivery of the Scheme and its benefits. We return to consider the FTAA purpose and Scheme benefits when we undertake our overall evaluation in Part M below.

K4: Alignment with best practice and Fish Passage Guidelines

1082) The AEE stated that all in-stream structures will be designed to provide sufficient fish passage, adhering to best practice, and informed by the New Zealand Fish Passage Guidelines (**Fish Passage Guidelines**). Fish passage would however only be specifically designed for kōaro, given that they are the only fish species currently found up-stream of Morgan Gorge. Structures will be inspected after significant floods to address potential scouring that may impede fish access.

1083) DOC supported the approach and measures proposed by the Applicant and had no concerns with what was proposed. DOC considered the Application met the

⁴⁵⁵ AEE, Section 2.3.

requirements for managing effects on freshwater fish but suggested some additional conditions relating to the exclusion of certain activities, biosecurity measures and monitoring.⁴⁵⁶ Westpower largely agreed with these conditions.⁴⁵⁷

1084) No other invited party provided feedback on these matters.

1085) We do however note, as we did in Subpart F15 above, that the technical peer review we commissioned raised concerns about the workability of the proposed fish passage, and we received detailed evidence in response from the Applicant about this. These issues were explored further at the joint empanelment. In short, there was no divergence from the conclusions reached by the parties in relation to whether what was proposed aligned with best practice and the Fish Passage Guidelines.

Evaluation and findings

1086) We accept the evidence of the Applicant and DOC that the measures proposed align with best practice and the Fish Passage Guidelines, and therefore support the granting of approvals. We note that we have incorporated the agreed measures into the conditions (as discussed further in Part L below).

K5: Risks to freshwater values or habitat

1087) The proposed management of risks to freshwater values or habitat is detailed in Section 6.15 of the AEE. These include the following specific management measures:⁴⁵⁸

- a) During construction: sediment and contaminant controls, timing of works during low flows, and minimising mortality of aquatic biota during dewatering; and
- b) During operation: ramping procedures for flow changes, monitoring periphyton and sediment accumulation, maintaining fish passage at all structures, and implementing check-clean-dry protocols to prevent the spread of didymo and other invasive species.

1088) DOC noted its support for the above mitigation measures and proposed some additional conditions intended to better protect freshwater values and habitat by excluding certain activities (in-stream works during peak spawning and migration times, and utilisation of wet concrete in flowing water), managing biosecurity risks, and monitoring of fish passage success.⁴⁵⁹ Westpower largely agreed with these conditions.⁴⁶⁰

1089) DOC did not provide further comments on these matters in its s.53 comments and no other party provided comments.

⁴⁵⁶ DOC s.51 Report, Appendix E – Freshwater Fisheries Report.

⁴⁵⁷ Westpower Memorandum #7, 21 January 2026, at [2.84].

⁴⁵⁸ AEE, Section 7.4.3.

⁴⁵⁹ DOC s.51 Report, Appendix E – Freshwater Fisheries Report, at [5.3], and Appendix E1.

⁴⁶⁰ Westpower Memorandum #7, 21 January 2026, at [2.84].

1090) At the joint empanelment, the expert witnesses for the Applicant and DOC agreed that even if there was some additional sedimentation, the effects on kōaro and their habitats would remain less than minor.⁴⁶¹

Evaluation and findings

1091) We are satisfied that risks to freshwater values and habitats can be appropriately addressed through the measures agreed between DOC and the Applicant (as summarised above), and we have incorporated those into the conditions. We therefore find that the risks to freshwater values or habitat do not preclude the granting of approvals.

K6: Availability and quality of habitat upstream or downstream

1092) Sections 5.18 and 5.21 of the AEE provide an assessment of the existing freshwater environment upstream and downstream of the proposed Scheme, and Section 4.4.3 details specific complex freshwater fisheries information. In summary:⁴⁶²

- a) the Waitaha is a high-flowing river with low nutrients, frequent large floods and sedimentation;
- b) the mainstem and tributaries (other than the stable tributaries) of the Waitaha have low densities and diversity of benthic invertebrates; and
- c) the mainstem has limited density and diversity of fish, with kōaro the only fish species found upstream of Morgan Gorge.

1093) The DOC s.51 Report noted that it had not provided commentary on most matters as it concurred with the Application material.⁴⁶³

1094) DOC did not provide further comments on these matters in its s.53 comments and no other party provided comments.

1095) As noted above, the freshwater ecology experts for both the Applicant and DOC confirmed at the joint hearing that additional sedimentation would not increase the scale of effects on kōaro, which would remain less than minor.⁴⁶⁴

Evaluation and findings

1096) We accept the uncontested evidence provided by the Applicant regarding the relatively limited existing available habitat and the limited quality of that habitat.

1097) We note that the conditions agreed by DOC and the Applicant, and imposed by us, will mitigate effects on such habitats. Accordingly, we find that consideration of this factor does not weigh against the grant of approvals.

⁴⁶¹ Joint Empanelment Transcript, 13 February 2026.

⁴⁶² AEE, Section 7.4.4.

⁴⁶³ DOC s.51 Report, Appendix E – Freshwater Fisheries Report, at [2.2].

⁴⁶⁴ Joint Empanelment Transcript, 13 February 2026.

K7: Presence of threatened, data deficient or at risk species

1098) The AEE noted that eight fish species were recorded in the Waitaha catchment. Of these only one fish species (lamprey) had a threatened nationally vulnerable status, and four (kōaro, long-fin eel, torrentfish, and giant kōkopu) had a conservation status of at risk-declining. The DOC Report did not dispute these matters.

1099) Neither DOC nor any other invited party provided comment on these matters.

Evaluation and findings

1100) We acknowledge the presence and status of the fish species, and refer to our evaluation of effects on fish in Part F, and our discussion on appropriate conditions in Part L.

1101) On the basis of the evidence provided by DOC and the Applicant that effects on such species can be adequately addressed via conditions, we find that the presence and status of these species is not a bar to the grant of the freshwater fisheries approvals.

K8: Fish passage

1102) The AEE noted that although fish passage is desirable in most cases, given kōaro is the only species found upstream of Morgan Gorge, the objective with the diversion weir is to maintain that (i.e., to exclude all fish other than kōaro).

1103) All other in-stream structures will be designed and installed in general accordance with the Fish Passage Guidelines – noting that in rivers like the Waitaha with highly mobile bed materials achieving fish passage at all times may not be practicable, and that fish passage is not required for some ephemeral streams. Tributary waterway crossings will use culverts (for small watercourses or those with intermittent/ephemeral flow like Alpha Creek), a culverted ford crossing/drift deck (for other intermittent/ephemeral flow streams like Macgregor Creek), or a bridge (for larger perennial tributaries like Granite Creek).

1104) As noted earlier, the Panel’s hydraulic and fish passage peer reviewer, Paul Morgan raised a number of concerns regarding the workability of the proposed kōaro fish passage. These were responded to by the Applicant and explored further through the joint empanelment of experts, and in our conference with Poutini Ngāi Tahu. As noted in Subpart F15 above, the weight of evidence was that fish passage for kōaro is feasible and can be appropriately managed through conditions.

Evaluation and findings

1105) We accept that fish passage is generally desirable, but not in all cases. Where, as here, the objective is to maintain passage for kōaro but exclude access for other fish species, a bespoke approach is required. As noted earlier, we are satisfied that such fish passage for kōaro is achievable, and that the conditions we have imposed (which require such passage and kōaro monitoring) will appropriately address kōaro passage issues.

1106) In terms of other fish species at locations other than the weir, we agree with DOC and the Applicant that the Application has adequately provided for such fish passage where practicable.

1107) Accordingly, we find the Application has given appropriate consideration to fish passage advantages and disadvantages and proposed a bespoke and appropriate solution to those matters.

K9: Decision as to freshwater fisheries approvals

1108) On the basis of the above evaluation, and taking into account all of the information provided, we find it is appropriate to grant the complex freshwater fisheries approvals subject to appropriate conditions.

1109) Our discussion on conditions is set out in Part L below, with a full set of the conditions set out in **Appendix F**.

PART L: CONDITIONS | WĀHI L: NGĀ HERENGA

L1: Introduction and approach

1110) In this section we set out the general statutory requirements for conditions that are relevant to all approvals, before turning to the specific requirements and issues for each of the four categories of approvals sought. We then summarise the additional changes we have made to conditions as a result of our findings on the issues and feedback received, as well as the changes we have made to address consistency, readability and enforceability issues.

1111) We appreciate the time and constructive way parties engaged with the conditions and confirm that we have carefully considered the feedback received from all parties, both on the Applicant’s various iterations of conditions, as well as those received on our draft conditions. This engagement meant that by the end of this process, there was a large degree of agreement between the parties on conditions.

1112) In terms of our general approach to conditions, where conditions have been agreed between the Applicant and the relevant regulatory authority (and are not contested by any other party), we have, subject to removing any unnecessary duplication, and subject to any minor changes for consistency, workability certainty, and enforceability,⁴⁶⁵ accepted those conditions as being appropriate, for the reasons given by those parties. We take a similar approach to conditions that were initially contested but subsequently resolved between the parties during this process. We therefore generally do not address those conditions in detail in this section.

1113) Where condition issues have been comprehensively addressed in other parts of this Decision, we note the issue and then cross reference to where our discussion and findings on those conditions can be found.

1114) The key focus of this section is on the relatively few remaining areas of disagreement between the Applicant and one or more of the regulatory authorities/persons invited to comment.

⁴⁶⁵ The only exception being the DOC s.78 concession conditions which, for the reasons outlined in Subpart I4 above, we imposed these verbatim from the DOC s.51 Report.

L2: General statutory requirements for all conditions

1115) Section 81 provides that the Panel must set any conditions to be imposed on the approval. The statutory requirements on what conditions are set is determined by what approvals are being sought.

1116) There are also two express FTAA restrictions which are relevant to any conditions that the Panel has a discretion to include under any approval. These are that:

- a) conditions must be no more onerous than necessary to address the purpose for which they are set;⁴⁶⁶ and
- b) the purpose of the FTAA must be given the greatest weight.⁴⁶⁷

1117) These restrictions do not however apply to s.78 concession conditions since, as noted in Subpart I4 above, we have no discretion and must impose them.

1118) In reaching our determination on the appropriate conditions for each of the approvals, we have kept front of mind the requirement that conditions (other than s.78 conditions) must not be more onerous than necessary to address the purpose for which they are set. We have carefully considered whether our conditions are necessary based on the evidence before us. As will be evident, we have made a number of changes in response to feedback received by the Applicant and parties. These changes are intended to ensure that the conditions do not go further than is necessary to appropriately manage effects, and that they give effect to the purpose of the FTAA, which here, is to facilitate the delivery of a Scheme with significant regional benefits.

L3: Changes relevant to all conditions

Lapse dates

1119) As noted earlier in this Decision, the Applicant sought a range of lapse dates. No other party commented on the lapse dates.

1120) To avoid the resource consents lapsing after commencement (as appears to be provided for in cl.26(3) of Sch.5 of the FTAA), we have included a 10-year lapse date for the resource consents. This was the period requested by the Applicant, it meets the FTAA requirement of being no less than 2 years, and it is consistent with the default period provided for renewable energy activities in the RMA.

1121) In terms of the other approvals, while we note there is not an equivalent to cl.26(3) we have, as requested by the Applicant included:

- a) a 10-year lapse period for the lease / licence and easement concessions; and
- b) a 10-year lapse period for the freshwater fisheries approvals.

⁴⁶⁶ FTAA, ss.81(2)(d) and 83.

⁴⁶⁷ FTAA, s.81(2)(b) and (3)(a); Sch.5 cls.17(1) and 18; Sch.6 cl.7; Sch.7 cl.5; and Sch.9 cls.5(a) and 6. Note that while the latter Schedule does not include reference to conditions in cl.5, we consider when it is read in context with cl.6, and given the consideration of conditions is part of assessing applications, it is clear that in setting conditions the greatest weight must still be given to the purpose of the FTAA.

1122) No specific lapse date was requested for the Wildlife Act approvals (potentially as a result of the shorter term sought), and we therefore have not imposed one.

Minor changes

1123) In addition to the amendments expressly referred to in the sections that follow, we have made minor changes and deletions to all condition sets to improve clarity and layout, avoid unnecessary duplication, to remove inconsistencies and correct minor typographical, cross referencing and grammatical errors.

1124) Such changes do not, and are not intended to change the substantive obligations set out in the conditions. Nor are they intended to change the s.78 conditions we are required to impose.

1125) While we have sought to correct any minor errors, to the extent that any such errors remain in the final set, the Panel notes it has powers under s.89 of the FTAA to make minor corrections.

L4: Resource consent conditions

Specific requirements for RMA conditions

1126) In addition to the general requirements noted in Subpart L2 above, for resource consents the following clause of Sch.5 applies:

18 Conditions on resource consent

When setting conditions on a consent, the provisions of Parts 6, 9, and 10 of the Resource Management Act 1991 that are relevant to setting conditions on a resource consent apply to the panel, subject to all necessary modifications, including the following:

- (a) a reference to a consent authority must be read as a reference to a panel; and
- (b) a reference to services or works must be read as a reference to any activities that are the subject of the consent application.

1127) The key provisions of Parts 6, 9 and 10 of the RMA for the purposes of this Application comprise ss.108, 108AA, 123B and 125.

1128) Section 108 of the RMA provides a relatively broad power to impose conditions, which is qualified by s.108AA and case law principles.

1129) Section 108AA of the RMA restricts a panel from including a condition unless:

- a) an Applicant agrees to a condition; or
- b) the condition is directly connected to an adverse effect of the activity, an applicable RMA plan rule or NES, a wastewater or stormwater standard under the Water Services Act 2021, or an infrastructure design solution; or
- c) the condition relates to administrative matters that are essential for the consent's effective implementation.

1130) Section 123B requires that a consent for renewable energy and long-lived infrastructure must specify the period for which it is granted, which must be for 35 years, unless the applicant requests a shorter period, a national instrument requires a shorter period, or the consent authority decides in response to a request from a relevant group that a shorter period is required to manage adverse effects.

1131) Section 125(1)(c) provides a default lapse date of 10 years for a renewable energy activity. Clause 26 of Sch.5 further clarifies that a lapse date must be no less than 2 years after the approval commences, and that if no lapse date is set, a consent lapses after commencement.

1132) In addition to the above, the following relevant case law principles relating to conditions remain apposite:

- a) A resource consent condition must:⁴⁶⁸
 - i) be for a resource management purpose, not an ulterior one;
 - ii) fairly and reasonably relate to the development authorised by the resource consent or designation; and
 - iii) not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties could not have approved it.
- b) The underlying purpose of resource consent conditions is to manage environmental effects by setting outcomes, requirements or limits to that activity, and how they are to be achieved.⁴⁶⁹
- c) Conditions must be certain and enforceable.⁴⁷⁰
- d) A condition must not delegate the making of any consenting or other arbitrary decision to any person but may, subject to the following, authorise a person to certify that a condition has been met or complied with or otherwise settle a detail of that condition:⁴⁷¹
 - i) the basis for any exercise of a power of certification must be clearly set out with the parameters for certification expressly stated in the relevant conditions;
 - ii) this power of certification does not authorise the making of any waiver or sufferance or departure from a policy statement or plan except as expressly authorised under the Act (s.84 of the RMA); and
 - iii) this power of certification does not authorise any change or cancellation of a condition except as expressly authorised under the Act (s.127 of the RMA).

Party views on conditions

1133) The Applicant provided a suite of conditions for all of the RMA resource consents sought in its Application as lodged. This suite was then subject to amendments in

⁴⁶⁸ *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731 (HL), p.739.

⁴⁶⁹ *Summerset Village (Lower Hutt) Ltd v Hutt City Council* [2020] NZEnvC 31, at [156].

⁴⁷⁰ *Bitumix Ltd v Mt Wellington Borough Council* [1979] 2 NZLR 57.

⁴⁷¹ *Turner v Allison* (1970) 4 NZTPA 104.

response to comments received and further information requested throughout the process.

1134) As noted in earlier sections (and in **Appendix G1**), a few parties provided comments on the Applicant's 17 November 2025 conditions in their s.53 responses (comments on the Substantive Application). These comprised (in summary):

- a) DOC, who requested:
 - i) an approval/certification role for management plans relevant to its responsibilities;
 - ii) a number of changes to the AMP, BMP and LizMP;
 - iii) that compensation conditions be moved from the resource consents to the relevant Conservation Act approvals; and
 - iv) various changes intended to mitigate/offset/compensate for recreation and landscape effects (including removing the opt out of no-take days for kayaking, reinstating the original track to Kiwi Flat, burying transmission lines and cables where practicable, increasing compensation, narrowing the permanent access road, restricting the colour palette of structures and vegetation screening amongst others).
- b) WCRC, who confirmed it had no objection to DOC having a joint certification role, and its only concern was the enforceability of the proposed compensation conditions.
- c) WDC, who:
 - i) raised a similar concern re the enforceability of compensation conditions;
 - ii) indicated a cautionary approach should be taken to deemed certification provisions; and
 - iii) queried the location of certain conditions (i.e., whether they better sat in the regional or district conditions).
- d) The Minister for the South Island and Hunting and Fishing, who suggested conditions to ensure public access, and the adoption of measures and monitoring to minimise disruption to species.
- e) The Minister for the Environment, who sought amendments to the AMP, BMP, and LizMP to improve outcomes for fauna.

1135) The Applicant provided an updated set of RMA conditions and a detailed response to these comments from invited parties. In summary:⁴⁷²

- a) The Applicant proposed conditions:

⁴⁷² Westpower Memorandum #7, 21 January 2026, and Attachment 15.

- i) requiring an annual reporting requirement in relation to compensation;
 - ii) restricting the width of the access track from the tunnel to the river to a maximum of 5m;
 - iii) restricting the colour palette of structures and requiring a dark recessive colour for the digger;
 - iv) requiring a vegetative buffer between Construction Staging Area 1 and the Waitaha River and requiring reasonable endeavours to retain a buffer margin; and
 - v) minimising the use of shotcrete as far as practicable and prioritising other options in sensitive areas.
- b) The Applicant accepted it was more appropriate for the kayaking and no-take days, the flow data, and public access and safety conditions to be located in the regional consents.
- c) The Applicant maintained its view that deemed certification conditions were appropriate in this FTAA context and that dual certification or approvals of management plans by DOC was not appropriate.
- d) In response to Ministerial comments, the Applicant noted that most of what was sought was either already addressed in conditions or not required based on the opinions of its experts.
- 1136) Prior to the joint empanelment we received an updated set of resource consent conditions outlining the differences between the Applicant and DOC,⁴⁷³ with some further changes recommended following both the joint empanelment⁴⁷⁴ and the submission of further landscape and recreation statements.⁴⁷⁵ In short, the final conditions as proposed by the Applicant:
- a) Confirm that the consent holder will meet all of DOC's actual and reasonable costs in reviewing the relevant management plans.
 - b) Clarify that management plans are to be certified by the consent authorities (not DOC) and that management plan activities must not commence until the relevant management plan has been certified.
 - c) Require the CEMP to include methods for ensuring the public are informed of the construction activities and programme (including any temporary track closures).
 - d) Require the SOMP to include procedures to:
 - i) ensure ongoing downstream passage of sediment past the Headworks and that in-stream sediment excavation works are minimised;

⁴⁷³ Westpower Memorandum #10, 10 February 2026, Attachment 11A.

⁴⁷⁴ Westpower Memorandum #12, 17 February 2026, at [8], and Appendices A and B.

⁴⁷⁵ Westpower Memorandum #13, 23 February 2026, Attachment E, at [2.4]-[2.7].

- ii) monitor the frequency, duration and spatial extent of in-stream sediment excavation works above the Headworks; and
 - iii) outline the FEMP requirements to manage the effects of the Headworks and tail race structures.
- e) Require the annual report to:
 - i) note the frequency, duration and spatial extent of in-stream sediment excavation works above the Headworks; and
 - ii) include details of compensation payments.
- f) Require all construction, gravel extraction and screening activities to be undertaken so there is no discharge of particulate matter that causes an objectionable effect beyond the Site.
- g) Require the ESCP to be prepared in accordance with the Environment Canterbury Erosion and Sediment Control Toolbox.
- h) Require only cleanfill be placed in spoil disposal areas.
- i) Require the FEMP or SOMP to clarify that fish passage should maintain the exclusion of salmonids from Kiwi Flat.
- j) Require groundwater diverted into the access tunnel and subsequently discharged into the river to comply with certain quality standards.
- k) Require that a freshwater ecologist be involved in reviewing the flushing trials information.
- l) Delete the flushing 20% trigger and insert a timeframe for the FlushMP and an ability to request cessation.
- m) Include a specific reference to kōaro recruitment in the monitoring plan.
- n) Ensure that helicopter pilots flying to/from the Project Site are aware of the proximity of high value ecological areas and measures to reduce impacts.
- o) Require the Consent Holder to use reasonable endeavours to determine when Kiwi Flat Hut is occupied during construction at the Headworks, and where this is the case, comply with the relevant night-time noise limits.
- p) Require emergency sirens to be 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 effects on wildlife.
- q) Require that options other than shotcrete are prioritised during rehabilitation works.
- r) Require the maintenance of an existing vegetation buffer between Construction Area 1 and the river.

- s) Limit the access track from the tunnel to the Waitaha River to 5m wide and its formation to gravel materials post construction.
 - t) Require any digger used in the riverbed to be painted in recessive colours and stored at least 100m inside the access tunnel when not in use.
 - u) Use all reasonable endeavours to retain a vegetative buffer within Construction Staging Area 2 between the Power Station and the true right side of the river during construction.
 - v) Require the Power Station and its roof to be one colour within a certain colour range and reflective value.
 - w) Require a review be undertaken of the August 2024 bird recordings to confirm the species detected and advise DOC within a certain time period.
 - x) Require that effects on bats be avoided as a first priority and then remedied or mitigated.
 - y) Require annual compensation amounts be CPI adjusted at the start of each calendar year.
 - z) Notify and limit any walking track closures to within certain parameters and provide an ability for track users to request escorts during construction.
 - aa) Ensure compliance with the World Health Organisation’s monograph Environmental Health Criteria and International Commission Guidelines for limiting exposure to electric and magnetic fields.
 - bb) Clarify that the construction disturbance area figures include the alternative walking track and the 615m² indigenous vegetation clearance area.
 - cc) Require the Consent Holder to use all reasonable endeavours to ensure information is promptly made available to the public regarding excavation above or adjacent to the Headworks.
 - dd) Require an in-stream works review report where the annual average frequency of in-stream excavation above the Headworks exceeds 15 times, specify the matters that the in-stream report must include, require certification of the report, and recertification of any related amendments to the SOMP and the Headworks structure.
- 1137) The Applicant noted in its Memorandum that some of the changes it was proposing had not been considered by WCRC and WDC at that time. Additional conditions added after the joint empanelment also had not been reviewed by DOC.
- 1138) Following the circulation of our proposed RMA consent conditions, we received comments from Granite Developments Ltd, Tāwhiri Mātea Ltd, WCRC, WDC, DOC, and the Applicant who either raised concerns with, or sought changes to, the conditions. In general these comments related to the following:
- a) additional mitigation measures for noise and lighting effects;

- b) ongoing consultation;
- c) management plan certification;
- d) compensation;
- e) role of SQEP;
- f) safety;
- g) notification;
- h) discharges;
- i) in-stream works;
- j) lizard habitat clearance;
- k) timeframes;
- l) monitoring;
- m) in stream works;
- n) enforceability; and
- o) cross referencing, duplication, omissions and minor wording corrections.

Outstanding condition issues

1139) While there were a number of outstanding issues between the Applicant, the persons providing comment and the peer reviewers relating to conditions, we have already addressed most of these as follows:

- a) gravel extraction and boundary of consent (Subpart F6);
- b) lighting and Bat Roost Protocols compliance (Subpart F9);
- c) restrictions during who breeding season (Subpart F10);
- d) West Coast green gecko mitigation measures (Subpart F12);
- e) site-specific seismic assessment (Subpart F18);
- f) landscape mitigation measures (Subpart F19); and
- g) kayaking no-take days and aspects of the in-stream works review (Subpart F20).

1140) We have also generally addressed the other issues raised in the comments on conditions in **Appendix G2** – which includes a summary of the comments, the Applicant’s response and the Panel’s determination.

1141) The only matters that warrant further comment here relate to:

- a) compensation;
- b) management plan certification; and
- c) in-stream works.

1142) We address these matters in turn in the paragraphs that follow. We then note some other minor changes we have made to conditions and confirm the final condition set.

Compensation

1143) We addressed a number of issues relating to the appropriateness and level of compensation in other sections of this Decision (Subparts F9, F10, and F20). Matters relating to the recreation compensation condition are addressed in the concession conditions section below (Subpart L5). The two remaining issues which we address in this section, relate to who has the power to determine compensation levels and the approvals the compensation conditions should attach to.

1144) In relation to who has the power to determine compensation:

- a) Westpower's view was that only it as the Applicant who has the right to determine, what, if any compensation should be imposed. This was on the basis that:
 - i) s.104(1)(ab) of the RMA explicitly applies to RMA resource consents under the FTAA;
 - ii) that section requires Westpower's agreement to any offsetting or compensation requirement; and
 - iii) compensation was being offered under the RMA resource consents as opposed to the other approvals.⁴⁷⁶
- b) DOC took a different view and submitted that for RMA resource consents, while an applicant can volunteer compensation, the Panel can suggest other or additional measures, and if they are not agreed to, use this as a basis to decline consent.⁴⁷⁷

1145) In relation to which approvals the compensation conditions should attach to:

- a) The Applicant originally proposed that all compensation conditions only be attached to the RMA resource consents.⁴⁷⁸
- b) DOC disagreed and submitted that:⁴⁷⁹

⁴⁷⁶ AEE, Section 2.5.1.2, p.29.

⁴⁷⁷ DOC s.51 Report, Appendix F – DOC Legal Memorandum, at [42]-[47].

⁴⁷⁸ AEE, Section 2.5.1.2, p.29.

⁴⁷⁹ DOC s.51 Report, Appendix F – DOC Legal Memorandum, at [48]-[51].

- i) compensation should be included as a condition in the relevant statutory approvals when it is related to an effect authorised by that approval;
 - ii) cl.21 of Sch.6 is a strong indication that compensation for the benefit of a concession must be included in the concession conditions so that DOC can ensure it is applied to land administered by DOC; and
 - iii) including compensation in each of the relevant statutory approvals would allow DOC to take action if the conditions of the approvals for which it has responsibility are not adhered to.
- c) In its response to comments, the Applicant submitted that:⁴⁸⁰
- i) DOC’s position on the appropriate location for compensation conditions remained unclear;
 - ii) it had made changes to the location of such conditions based on its best interpretation of DOC’s position requiring Westpower to pay compensation for:
 - (1) small residual effects on bats, potential construction related effects on whio, potential operational effects on local biodiversity, potential residual effects from vegetation clearance on birds of conservation importance and potential construction related effects on lizards in the resource consent conditions *and* wildlife approval conditions (without Westpower having to pay twice); and
 - (2) residual adverse recreational effects in the resource consent *and* concession conditions (again without Westpower having to pay twice).

1146) In its comments on the draft conditions, WCRC opined that the conditions contain a significant amount of material that appears to regulate private arrangements between third parties, rather than matters within WCRC’s statutory functions. WCRC also considered that a number of the conditions were not consistent with ss.108 and 108AA of the RMA. Of specific note with regards to compensation, were conditions relating to payments to WWNZ (RC132-RC134) where WCRC sought to alter and/or delete those conditions.⁴⁸¹

1147) In response to WCRC, Mr Jackson for the Applicant stated that condition RC132 had been agreed with WWNZ and its inclusion in the conditions forms part of the agreement Westpower has reached with WWNZ. He said that this matter had been discussed at length with WCRC. Mr Jackson also noted that compensation was a relevant and common effects management method and commonly prescribed in consent conditions and that to assist enforcement, Westpower had subsequently proposed additional reporting conditions.⁴⁸²

⁴⁸⁰ Westpower Memorandum #7, 21 January 2026, at [2.12]-[2.13].

⁴⁸¹ WCRC Comments on Conditions, 27 March 2026, pp.1-2.

⁴⁸² Westpower Memorandum #20, Appendix 2.

1148) Westpower Memorandum #19 from its legal counsel supported Mr Jackson’s response and confirmed that the conditions were lawful and enforceable. It also provided details of the relevant contractual requirement between Westpower and WWNZ.⁴⁸³

Evaluation and findings

1149) In terms of the appropriate levels of compensation, we accept that the other measures included in conditions to address effects are relevant considerations. We note that further measures (particularly in relation to landscape concerns) have been added since the Application was first filed, and we acknowledge that any compensation must be proportionate to the size and scale of the effect it is addressing.

1150) We also accept that for RMA approvals, s.108AA means that while we can suggest the Applicant consider different compensation levels, we cannot impose different compensation levels without the Applicant’s agreement. Here the Applicant has been clear about what level of compensation it considers is appropriate and is willing to offer, - with these now including CPI adjustments at the start of each calendar year for all ongoing payments. We note that no issue has been raised regarding compensation levels other than for recreation. We have addressed that in Subpart F20 above and return to that in the concession conditions section Subpart L5 below.

1151) In terms of which approvals, the compensation conditions should attach to, we accept the general position that the compensation conditions should attach to the approvals where the compensation is relevant. We also accept that where the same effect is relevant under more than one approval, only one compensation payment is required.

1152) We agree with DOC that the recreation compensation payment most appropriately sits within the concession approval and have removed it from the RMA conditions. We do not consider it is appropriate for it to sit in both approvals – this creates uncertainty and raises issues in relation to enforcement.

1153) For similar reasons, (i.e. for certainty and enforcement reasons) we have determined that the other compensation related conditions should also only sit in one approval, rather than be duplicated across different approvals. We have determined that the other compensation conditions most appropriately sit in the relevant RMA resource consent as:

- a) the RMA (in s.104(1)(ab)) expressly provides for effects to be addressed by way of compensation;
- b) the WWNZ compensation payments relate to use of the river for which WCRC is the relevant regulatory authority; and
- c) the other ecological compensation payments are seeking to address effects on both the relevant species and their habitat, and we have provided for DOC to be consulted as to which ecosystem programme the payments should be directed to.

1154) While we acknowledge the concerns expressed by WCRC and WDC in relation to the potential enforceability of compensation conditions, we consider such conditions are not unusual and are (as noted above) expressly provided for by s.104(1)(ab) of the RMA.

⁴⁸³ Westpower Memorandum #20, at [33].

We consider they should be retained and we agree with the Applicant’s counsel that they are both lawful and enforceable.

Management plan certification

1155) Two issues arose in relation to certification:

- a) who the appropriate certification body or bodies are and whether joint/dual certification should be provided for; and
- b) whether it is appropriate to provide for deemed certification.

1156) We set out the parties’ positions on these two issues below separately and then set out our evaluation and findings in one combined section at the end of this part.

Appropriate certification body and joint/dual certification

1157) The Applicant’s view was that it is for the Panel and/or the relevant council to certify the RMA management plans not DOC. In particular, the Applicant submitted that:⁴⁸⁴

- a) the Panel should certify the comprehensive and final management plans comprising the AMP, BMP, FEMP, LizMP, LMP and the VMP, which manage key ecological, landscape and amenity aspects of the Project, as this would enable Westpower to efficiently implement the relevant approvals; and
- b) the relevant council should certify the remaining draft management plans, as they are the relevant regulatory authority under the RMA.

1158) DOC’s position was that for management plans which addressed both RMA effects and effects within its remit, there should be a requirement to also obtain DOC certification/approval before the relevant council certified the plan. It relied on the Environment Court decision in *Transit New Zealand v Southland District Council* in support of its position that such a role is legally possible.⁴⁸⁵

1159) As already noted, WCRC took no issue with DOC having a joint certification role.

1160) The Applicant, in its response to comments, maintained its position submitting that:⁴⁸⁶

- a) Westpower does not dispute the legality of a condition precedent (as referred to in the *Transit* case);
- b) while the *Waihi North* panel found it was not precluded in law from providing DOC with a certification role within the relevant conservation approvals, that did not apply to management plans certified under the resource consents – for those management plans DOC was instead provided with an opportunity to review and comment;

⁴⁸⁴ AEE, Section 2.6.

⁴⁸⁵ DOC s.51 Report – Appendix F, at [52]-[54].

⁴⁸⁶ Westpower Memorandum #7, 21 January 2026, at [2.36]-[2.38].

- c) the councils have the necessary experience and access to technical experts to certify RMA management plans (and it is not within the general experience of DOC);
- d) including DOC as a joint-certifier simply creates inefficiency, cost and potential delay; and
- e) its proposed conditions provide an opportunity for DOC to provide feedback and require that feedback to be considered prior to any relevant management plans being certified.

1161) DOC in its comments on conditions set out the reasons it considered it important that it has a certification role for the AMP, BMP, FEMP and LizMP. In summary this was because:⁴⁸⁷

- a) for activities on public conservation land, DOC should be required to sign off, on behalf of the landowner, that all relevant construction management plans meet their objectives and other relevant conditions;
- b) the management plans fall squarely within DOC's expertise and would be certified by DOC under normal statutory processes;
- c) DOC does not consider that a dual or joint certification role would create the uncertainty or complexity the Panel appears to be concerned about;
- d) the draft conditions relating to compensation do not provide certainty that the monetary sums will be spent on worthy biodiversity and wildlife projects within the Waitaha Valley;
- e) DOC considers a different approach should be taken to certification of management plans dealing with core DOC functions, and that the certification of these management plans should sit in all relevant approvals; and
- f) dual/joint certification 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.

1162) DOC therefore seeks that the conditions be amended to provide for dual and joint certification as follows:

- a) Dual certification by DOC and WDC of management plans prepared to address harm to wildlife (AMP, BMP, LizMP), whereby the draft management plans are provided to DOC and WDC for certification at the same time. These conditions would be included in the wildlife approvals.
- b) Dual certification by DOC and WCRC of the management plan prepared under the freshwater fisheries approvals (FEMP), whereby the draft management plan is

⁴⁸⁷ DOC Comments on draft conditions

provided to DOC and WCRC for certification at the same time. These conditions would be included in the freshwater fisheries approvals.

- c) Joint certification by DOC and WDC 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 WDC for final certification. These conditions would be included in the resource consents and lease-licence concession, with advice notes indicating the dual processes for the certification of management plans under the freshwater fisheries and wildlife approvals (as per (a) and (b) above).

Deemed certification

1163) The Applicant proposed a general condition that if management plans were lodged with the relevant authorities and no response was received within 20wd and no response was received to a follow-up request within a further 5wd, the management plan would be deemed certified.

1164) DOC in its s.53 comments sought the removal of deemed certification provisions.⁴⁸⁸

1165) In response, the Applicant submitted its deemed certification provision was:⁴⁸⁹

- a) necessary to avoid unreasonable delay; and
- b) appropriate in the context of the FTAA where the purpose is to facilitate the delivery of infrastructure and efficiency of delivery is important (since that in turn enables the significant benefits to be delivered).

Evaluation and findings

Management plan certification

1166) In terms of who the appropriate body is to undertake certification, the Panel does not consider it is the appropriate body to certify the management plans given:

- a) the recent changes to conditions are likely to necessitate updates to a number of the management plans;
- b) it is important for DOC to be able to provide comment on relevant (updated) management plans prior to them being certified;
- c) some information will not be provided until the detailed design stage and this will affect relevant management plans (in particular the FEMP);
- d) the nature of the certification role relies on the certifier holding technical expertise in the relevant areas; and

⁴⁸⁸ DOC s.53 Comments on Substantive Application, 14 January 2026, at [54].

⁴⁸⁹ Westpower Memorandum #7, 21 January 2026, at [2.39].

- e) the RMA regulatory monitoring, compliance and enforcement role of the respective councils.

1167) In terms of joint certification, as a general proposition, we do not consider it is appropriate to impose a joint certification role where a management plan is prepared under one legislative regime – e.g. the RMA. We consider it would add an unnecessary regulatory step, resulting in delays and complexities – particularly if one certifying body considered the condition met, and the other did not. We have therefore not imposed a joint certification role as between WCRC and WDC, instead assigning the certification role to one or the other, as follows:

- a) the CEMP now sits with WDC as the matters to be addressed in the plan are generally district matters; and
- b) the SOMP and SMP now sit with WCRC as the matters to be addressed in the plan are generally regional matters.

1168) In terms of a joint certification role between DOC and the relevant council, we find that this is not appropriate for similar reasons.

1169) We have however ensured that in the conditions we have imposed, that where a management plan is relevant to approvals that DOC administers, it has a right to review the draft plans and have its feedback considered and reported on by the Applicant, and then considered by an independent SQEP, before the relevant management plan can be submitted for certification. Further, and while the SQEP will be appointed by the Applicant, we have included a requirement that the SQEP has to be independent of the Project, and that the Applicant has to consider any suggestions the relevant council and DOC may have as to who an appropriate SQEP may be. The costs of the SQEP are to be met by the consent holder.

Deemed certification

1170) In relation to the issue of deemed certification, we agree with DOC that such provisions should be deleted. While we acknowledge the FTAA context is different from the RMA, and that there is an argument that case law on deemed certification under the RMA is not binding on us, we are not persuaded that deemed certification is necessary or appropriate here.

1171) In particular, we are cognisant that following the grant of these consents under the FTAA, any actions required under the resource consents (including the certification and recertification of management plans) falls under the remit of the RMA. In such circumstances, we consider we are able to take into account the RMA case law on certification. As the Applicant acknowledges, deemed certification conditions are “unusual” under the RMA, and there are some cases, where such conditions have been expressly rejected.⁴⁹⁰ Given this context, we consider the more prudent and consistent approach is not to include such conditions in these consents.

1172) We also consider there are other ways to ensure that management plan certification processes are not overly delayed. For example, keeping councils updated on likely timing so they can organise to have resources available and providing a chance for

⁴⁹⁰ Westpower Memorandum #7, 21 January 2026, at [2.38].

input into updated draft plans before formally submitting them for certification, amongst others.

In-stream works

1173) DOC sought to amend draft condition RC111 applying to in-stream works at the Headworks to make it clear that consent is being granted on the basis that there will not be “on average no more than 15 in-stream maintenance works events” per year and the duration of each event is to be limited to no more than four hours. They also sought that an in-stream works review report be provided at the end of each year detailing the number of in-stream excavation events each year to enable the council to consider whether to initiate a review of the consent conditions.

1174) WCRC made a related request, seeking that the number of in-stream excavation events be reduced to 12 per year on average.

1175) The Applicant, in its response to conditions, opined that the Panel had been clear and comprehensive in stepping through the information it evaluated when considering Westpower's concerns about the number of occurrences of in-stream maintenance activities in a year. It considered DOC's preference to propose a limit of 15 annual occurrences was more onerous than necessary. It also commented that WCRC's comment had been made without knowledge of the considerable discussion that had occurred on this topic (which we summarised in the recreation effects section in Part F above).

Evaluation and findings

1176) The Panel remains of the opinion that its in-stream works review report condition remains appropriate. This requires the Consent Holder to identify practicable measures for minimising the frequency of in-stream sediment excavation events if the average annual frequency of in-stream sediment excavation events undertaken above the Headworks exceeds 15 events per annum over a five-year period. We consider this is a practical solution which would enable the Scheme to continue to operate while potential solutions are considered. Furthermore, the DOC proposed condition, by using the word 'average' seems to lead to a similar outcome to the condition we have imposed.

Other condition matters

1177) In addition to the specific changes noted above, we also identified a number of other issues with the conditions which required changes. These related to the following:

- a) Definitions: We added a few additional definitions where necessary to clarify the meaning of terms used in conditions. While we also originally proposed a definition of 'consent holder' we removed that in response to feedback from the Applicant, that such a definition would restrict a subsequent transfer of the resource consent without a s.127 variation.⁴⁹¹
- b) Stable Tributary: As noted in our findings under Subpart F15, we have included a 20m setback condition from the ecologically important Stable Tributary for the access road. This condition stems from the Applicant's original set of conditions lodged with the Application which under a heading called 'prior to earthworks' stated that: "Prior to the finalising the road alignment between Macgregor Creek

⁴⁹¹ Refer Appendix G2 for further details on this matter.

and the Power Station, the consent holder must accurately mark out the location of the 'Stable Trib' via a ground survey for the purpose of confirming the road will be set-back more than 20m from this waterway".⁴⁹² While the condition has continued to evolve, given the importance of the Stable Tributary, as described in the Freshwater Ecology Report, we consider that the condition would be better as a standalone condition specifically associated with the access road rather than earthworks. We have however made some changes to the condition as in its original form it was not clear from which points the setback was to be measured from and to. We have provided that clarification in the condition and included a definition of 'bank' to help address this issue.

- c) Electricity network assets and activities: The Applicant proposed a condition to address Policy 14 of the NPS-EN, which included reference to certain documents "or their revisions, or any other applicable New Zealand standards". We have removed this (quoted) text for certainty and enforceability reasons. We have also simplified the wording.
- d) Flush MP cessation: As part of the FlushMP condition, the Applicant proposed a clause that would enable the cessation (and subsequent continuation by the consent authority) of the FlushMP. We did not consider it appropriate to enable the removal of a condition that was identified as necessary to manage effects (accumulated fine sediment). However, we acknowledge that an adaptive approach to identifying the monitoring and flushing parameters is appropriate. In this context, we consider the FlushMP should set out the methodologies and procedures applicable for a five (5) year period. This approach:
 - i) enables subsequent FlushMPs to be amended to account for monitoring results; and
 - ii) retains the condition that addresses effects associated with accumulated fine sediment.
- e) Restriction on dogs: In Appendix 52 to the AEE, the Applicant indicated that it would include a requirement in its CEMP and SOMP prohibiting dogs being brought onto the Site, except as may be required for ecological monitoring purposes. The draft CEMP we received did not include this condition. To ensure that this requirement is not overlooked, we have included a specific requirement in each of the CEMP and SOMP conditions that those plans include restrictions on dogs (other than for ecological monitoring purposes).
- f) Construction traffic: In the Noise Report a condition was recommended that during construction heavy vehicle use on Waitaha Road should be restricted to daytime hours as far as practicable. The AEE indicated it had adopted this recommendation however it was not carried over into conditions.⁴⁹³ We have therefore included new condition DC17B to address this and included a cross reference to this condition in DC33 (the CNMP condition).

⁴⁹² AEE, Appendix 54 – Proposed Conditions Resource Consent, PART C: WCRC SPECIFIC CONDITIONS C2: Section 9 - Land Use Consent: Earthworks and Vegetation Clearance (Construction Phase), Condition 8.

⁴⁹³ AEE, p.279.

Evaluation and findings

1178) The above changes we have made to the resource consent conditions are necessary to address issues of enforceability, certainty, proportionality, necessity and delegation. As amended, the conditions are not more onerous than necessary, avoid unnecessary duplication across consents, and provide a coherent and workable framework for implementation, monitoring, and enforcement.

Final conditions

1179) The resource consent conditions we have imposed are set out in **Appendix B** to this Decision.

L5: Concession conditions

Specific requirements for concession conditions

1180) In addition to the general requirements noted in Subpart L2 above, for concessions the following clauses of Sch.7 apply:

8 Conditions

- (1) Section 17X of the Conservation Act 1987 applies with any necessary modifications to conditions for a concession as if the first reference in that section to the Minister were a reference to a panel.
- (2) Subclause (3) applies instead of section 17Y(1) of the Conservation Act 1987.
- (3) A panel may impose a condition that the person or body to whom the concession is granted—
 - (a) must pay any specified rents, fees, or royalties to the Minister of Conservation; and
 - (b) must pay any other levy or charge made on an occupier or owner of land, as a result of the grant of a lease, licence, or easement, either to, or as directed by, the Minister of Conservation.
- (4) Without limiting subclauses (1) and (2), a panel may impose conditions that it thinks fit relating to the use of vehicles or aircraft on the land over which a concession is granted.

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.

1181) Our discussion on the s.78 conditions is set out in Subpart I4 above. The remainder of this section therefore addresses our general approach to concession conditions, the substantive comments and responses received on conditions, and the outstanding issues.

General approach to concession conditions

1182) We note that the Applicant proposed a significant number of revisions to DOC's standard concession text. Some of these were proposed to provide greater certainty in the wording, which we accept is appropriate, others however, appear intended to have more significant effects. These include changes which we address further below that propose to restrict the Applicant's obligations (through capping its liability to \$1m), and to broaden the scope of the Minister's liabilities (by inserting the word negligence and extending the global cap to a 'per event' cap instead).

1183) In the absence of any appropriate justification from the Applicant, we have generally not accepted broad-scale or significant changes to the DOC standard concession text as

being appropriate. Accordingly, we have only altered the DOC standard conditions to the extent that:

- a) the conditions are not s.78 mandatory conditions; and
- b) we consider the changes provide greater clarity and are necessary and appropriate given the nature of the Scheme.

1184) We also note that in the versions of the concession conditions provided to us by both the Applicant and DOC, there was a high level of duplication of conditions as between the concessions and the resource consents. One example (of which there are many), are that the hours of operation are included in both. It is not clear to us why it is necessary to have such matters in both approvals. There is also a risk that where such conditions are duplicated, any change under one regime, would then necessitate a change under the other regime to avoid inconsistencies (and enforcement issues) arising. We have therefore made a number of changes to avoid unnecessary duplication by removing any duplicated conditions from the concession approvals. We have however, included appropriate cross references and an advice note. We have also made changes to the resource consent conditions to ensure that DOC's feedback is appropriately taken into account, by requiring a SQEP (independent of the Project) to review DOC's feedback and the Applicant's response to that feedback, prior to certain management plans being certified.⁴⁹⁴

1185) Finally in terms of approach, and as discussed further below, we note that, following the Applicant's request at a late stage of this process to combine the short and long-term concessions into one concession, and in the absence of any guidance at that time from the Applicant, we elected to keep the easement concession separate (but subject to the same term limitation). This appeared to be the most appropriate given the conditions of the lease/licence and easement concessions are significantly different. We note that no party objected to this separation in their comments on our draft conditions.

Comments and responses

1186) DOC while noting that discussions with the Applicant were continuing provided comment on conditions in its s.51 Report for concessions, and attached separate appendices containing its proposed conditions for the short-term lease/licence concession, long-term lease/licence concession, and the easement concession.⁴⁹⁵ It sought a substantial number of changes to the conditions proposed by Westpower, some more significant than others. DOC however summarised the key issues in contention as follows:⁴⁹⁶

- The treatment of management plans and the certification process and particularly the lack of requirement for management plans to be approved by DOC.
- Where compensation is directed, how compensation was calculated, and where compensation sits. Particularly, DOC's view is that the indicated one-off compensation

⁴⁹⁴ These plans are the AMP, BMP, FEMP, and LizMP.

⁴⁹⁵ DOC s.51 Report, Appendix C – Concessions Report, Appendix C1 - Concession Conditions – Lease/Licence (short-term), Appendix C2 - Concession Conditions – Lease/Licence (long-term), Appendix C3 - Concession Conditions – Easements, Appendix D – Wildlife Approvals Report, and Appendix E – Complex Freshwater Fisheries Report.

⁴⁹⁶ DOC s.51 Report, Appendix C – Concessions Report, at [3.12].

payment for recreation effects is inadequate to address the residual effects, and a larger figure is proposed and sought to be included as a concession condition.

- Rationale for why the Whitewater New Zealand (WWNZ) agreement and compensation conditions are relied upon to address all recreational effects of the Scheme.
- Term, specifically when the long-term concession term begins and how to understand the total term being sought. DOC's view is that all concessions should commence on the same date, while Westpower's position is that the long-term concessions should commence "on the commencement of generation". DOC's view is that this would allow for a total interest in the land of up to 64 years which would trigger right of first refusal provisions in the Ngāi Tahu Treaty Settlement and is longer than may be granted under the conservation Act.
- The wording and content of the specified "Concession Activity" in Schedule 1 of each concession. It is DOC's view that the activity authorised by each concession should be detailed more clearly so that each concession is, as far as possible, a stand-alone document, without reference to the application documentation.

1187) DOC also objected to Westpower's proposal to enable a transfer or assignment of the concession without the Minister's approval. This was on the basis that Ministerial consent is required under s.17ZE of the Conservation Act.

1188) DOC's s.53 comments on the Application reinforced its key points and also noted that it did not agree with Applicant's proposed deemed management plan certification conditions.

1189) The Conservation Board agreed with DOC that compensation needed to be embedded within the operational activities rather than through the resource consent process. The Board considered the one-off recreation compensation for track and hut maintenance offered by Westpower to be inadequate and instead endorsed DOC's alternative compensation proposal.⁴⁹⁷

1190) No other invited party commented on the proposed concession conditions.

Applicant response

1191) The Applicant in its response to comments, agreed to a number (but not all) of DOC's proposed changes. The conditions remaining in dispute related to the following:

- a) *Assignment*: In response to DOC's comment about a transfer or assignment requiring Ministerial consent Westpower instead proposed that Waitaha Hydro Ltd be listed as an alternative concession holder and that a "for the avoidance of doubt" condition be included in the assignment section of the conditions.
- b) *Concession activity*: The Applicant maintained its view that a reference to the activities set out in the Application should be included as a catchall.
- c) *Concession term and lapse date for concessions*: The Applicant did not agree that the (original) terms it sought for the concessions infringed the RFR or the statutory maximum period.
- d) *The s.78 conditions*: The Applicant did not include these (long-term concession fee, review, charges, costs and bond) on the basis discussions were continuing with DOC.

⁴⁹⁷ Conservation Board Comments on Substantive Application, 13 January 2026, Section 3, at (v) and (vi).

- e) *Additional conditions to protect the environment and to provide for additional environmental monitoring:* The Applicant did not agree with these conditions as it considered these matters were already addressed in other parts of the concession.
- f) *Condition clarifying concession activity permitted:* The Applicant sought the retention of a condition “to avoid doubt” that new structures and land alterations comprised in the Concession Activity did not require further Ministerial approval.
- g) *Signs:* The Applicant did not agree that signs should require prior approval of the Minister given there would be health and safety and other signs required.
- h) *Liability:* The Applicant (as noted earlier):
 - i) did not agree that it should be liable to the Crown for its performance of the concession activity unless there was a breach, and also sought to cap that liability at \$1m; and
 - ii) sought to expand the Crown’s liability to include any negligent acts or omissions, and to impose a ‘per event’ cap of \$1m rather than a ‘global’ cap of \$1m.
- i) *Breach:* The Applicant did not agree with DOC’s suggested inclusions regarding:
 - i) that a breach of the CGP or CMS also constituted a breach of the concession given the age of those documents and how uncertain DOC’s proposed wording was; and
 - ii) the conditions relating to the Minister being required to spend money on the Minister’s structures, facilities or land alterations if there was a breach, since (in its view) there are no existing structures, facilities or relevant land alterations.
- j) *Suspension when natural event/public safety risk:* while the Applicant agreed a suspension condition should be included it did not agree with the wording proposed by DOC due to the uncertainty it created in terms of the ability for the Minister to suspend the operation of the Scheme;
- k) *Termination:* The Applicant:
 - i) wanted (and DOC objected to) the inclusion of the words “as a last resort” to signal the significantly adverse impact that termination of a concession would have on its \$200m infrastructure project; and
 - ii) objected to DOC’s additional exception requiring that a matter be remedied within a reasonable period of time from the alleged default or breach on the basis that the wording was too uncertain.
- l) *Payment of costs:* The Applicant sought a similar right to the Minister’s right to recover costs in relation to the enforcement of rights under the Concession;
- m) *Access:* The Applicant objected to the inclusion of a clause stating that the concession must not be construed as affecting the rights of the Minister and the

public to have access across the concession land on the basis it would need exclusion occupation of certain parts for its operation.

- n) *Co-siting*: The Applicant did not accept DOC's proposed conditions relating to co-siting on the basis that co-siting is not appropriate in a concession of this scale but could instead be requested on a site by site basis.
- o) *Variations*: The Applicant did not agree with DOC's proposed wording allowing unilateral variations to be made and did not consider that such wording was necessary to give effect to s.17ZC(3)(a).
- p) *DOC Liaison Officer*: The Applicant did not accept DOC's proposed deletion of a clause about the expertise required for the DOC liaison officer.
- q) *Management plans*: The Applicant did not agree that all management plans and any amendments to such plans should require DOC approval/certification prior to being certified by the council or that it should await DOC's feedback if it was not received within 20wd.
- r) *Kiwi Flat Hut occupation*: The Applicant did not agree with DOC that it should meet the noise limits irrespective of whether Kiwi Flat hut is occupied.
- s) *Recreation compensation level*: The Applicant did not agree with the methodology for, or resultant level of, recreation compensation proposed by DOC.
- t) *Helicopter flight management and drones*: The Applicant did not agree it was necessary to include helicopter flight and drone management conditions in the long-term concession as it said these were already covered in the short-term concession.
- u) *Bond*: the Applicant did not agree that the bond condition should be included in the easement concession, as there were already provisions for such a bond in the lease/licence concession.

1192) In addition, the Applicant proposed a figure for the required public liability insurance.

Change to Application in response to RFR issue

1193) Further, and as noted in Subpart I4 above, in order to respect the TRONT position and avoid the RFR being triggered, a week before our draft decision was planned to go out the Applicant amended its concession application to combine the construction and operation concessions into one 49-year concession with a 10-year lapse period. The Applicant advised that this meant that:⁴⁹⁸

- a) the concession could commence on the date provided for in cl.12 of Sch.6 (i.e., once it is signed in accordance with cl.11) – eliminating issues regarding the term of the operational concession being linked to the 'commencement of generation';

⁴⁹⁸ Westpower Email to the EPA, 6 March 2026.

- b) the construction conditions should apply during construction and should cease to apply from the date of commencement of generation – at which point the operational conditions should come into effect; and
- c) the short-term concession fee should apply during construction, with the long-term concession fee to apply once operation has commenced.

1194) The Applicant did not however provide an updated set of concession conditions at that time indicating how it considered the concession conditions should be merged into one. Nor did it advise whether it intended that the lease/licence concession and the easement concession be merged into one.

1195) The timing of this change meant that there was not sufficient time left to request an updated set of concession conditions from the Applicant, nor to seek DOC's view on the Applicant's updated set of conditions before our draft decision and conditions needed to be issued. This was unfortunate as it would have been helpful for the Panel to have that information to inform its drafting of this Decision and the concession conditions.

Comments on our draft conditions

1196) In response to our draft concession conditions, we received comments from DOC, the Conservation Board and the Applicant. These comments raised a number of matters from duplication, omissions and minor wording corrections to more substantive matters, including:

- a) recreation compensation;
- b) removal of structures on expiry or termination;
- c) management plans; and
- d) the recreation access track.

1197) A summary of all of the feedback received on concession conditions (along with a brief summary of our response to that feedback) is set out in **Appendix G2**.

1198) Of note to the above matters, DOC in its comments on the draft conditions:⁴⁹⁹

- a) continued to seek a sum of \$315,000 as recreation compensation;
- b) sought that the recreation compensation payment be paid to it and applied to land it administered for the purpose of offsetting effects of the Scheme on recreational users of the Waitaha Valley;
- c) required the imposition of a further s.78 condition regarding removal of structures;
- d) maintained its view that it should have a certification role in relation to the AMP, BMP and LizMP and sought a range of changes to conditions which sought that or similar; and

⁴⁹⁹ DOC Comments on Conditions, 27 March 2026 (Table).

- e) sought that it have an approval role in relation to the location and design of the recreation access track.

1199) In responding to DOC, the Applicant:⁵⁰⁰

- a) maintained its view regarding the appropriate compensation level;
- b) was comfortable that the compensation could be paid to DOC but sought that the condition reference the compensation being used for recreation track and hut maintenance;
- c) acknowledged the imposition of the s.78 condition;
- d) maintained its view that it was not appropriate for DOC to have a certification role; and
- e) opposed DOC having an approval role in relation to the recreation access track location.

Outstanding issues

1200) By the time we came to determine concession condition issues, all of the issues disputed by the Applicant (and referred to above in paragraphs [1191] and [1196] above), other than the s.78 conditions, still remained in contention.

Evaluation and findings

1201) We have carefully considered the submissions, evidence and material provided by the parties on the concession conditions⁵⁰¹ and have made a number of changes as a result. We address each of the outstanding issue areas in turn below.

Assignment

1202) In relation to this issue we note that s.17ZE of the Conservation Act requires the Minister's approval to any transfer or assignment of a concessionaire's interest.⁵⁰² While there does not appear to be any express statutory restriction on an alternate being named as a concession holder, this does not appear to sit comfortably with the requirement in s.17ZE.

1203) Further, we note that under s.17S a concession application is required to include information about the Applicant and its ability to undertake the concession activity. While the Application contains information about Westpower, it contains no information whatsoever about Waitaha Hydro Ltd. In the absence of such information and in the absence of any legal submissions about the ability to provide for such an alternate in the concession, we consider a conservative approach is warranted. We therefore do not agree to the Applicant's request to include Waitaha Hydro Ltd as an alternate concession holder.

⁵⁰⁰ Westpower Memorandum #19, 7 April 2026, Appendix 3.

⁵⁰¹ With the exception of the material noted in Subpart C10 above.

⁵⁰² This section is relevant to our consideration under cl.7(1)(a)(ii) of Sch.6 of the FTAA

Concession activity

1204) We agree with DOC that it is important that the activities covered by the concession be clearly specified in the concession activity condition. Referencing the full Application seems unnecessary and could give rise to complexity and uncertainty - particularly given the Application is not limited to just the concessions but includes all of the other types of approvals as well. We have therefore deleted reference to the Application and instead referenced the list of concessions (Appendix C to this Decision)⁵⁰³ as that clearly specifies what the activities are.

Concession term and lapse date for concessions

1205) We addressed the issue of the concession term in Subpart I4 (Section 17Z) above. Those findings apply here. We also note that as only one 49-year concession is now applied for, the following issues fall away:

- a) *Commencement date*: This will be after the grant of the concession (as per the usual process in cls.11 and 12 of Sch.6) rather than the operational component being linked to the commencement of generation.
- b) *Right of renewal*: These conditions are not required as there is no right of renewal for the concession.
- c) *Final expiry date*: This will be the expiry of the concession term, since there are no rights of renewal.

1206) In relation to the lapse date, we accept the 10-year lapse period proposed by the Applicant as being appropriate given the nature of the Scheme and given that both construction and operational activities are covered by the same concession. While not determinative, we note that a 10-year lapse period also aligns with the default period (which we have imposed) for renewable energy resource consents under the RMA.

The s.78 conditions

1207) We addressed the issues in relation to the s.78 conditions in Subpart I4 (Section 17Y) above.⁵⁰⁴ We rely on and do not repeat the findings made in those parts of this Decision.

1208) We also accept DOC's new requirement for s.78 conditions addressing the removal of structures as noted in **Appendix G2** to this Decision.

Additional conditions to protect the environment and to provide for additional environmental monitoring

1209) We agree with the Applicant that the additional conditions sought by DOC are duplicative and already covered in other parts of the concession, as well as the relevant management plans. Including additional conditions is not necessary and could give rise to uncertainties and ambiguities given the conditions are differently worded. Accordingly, we have not included those additional conditions in our condition set.

⁵⁰³ Noting that as set out in Appendix G2, we updated this list in response to feedback from the Applicant to more accurately capture the concession activities.

⁵⁰⁴ Subpart I4 for all issues other than certification which was addressed in Subpart L2 above.

Condition clarifying concession activity permitted

1210) We agree with DOC that the right to undertake the concession activities is inherent in the concession itself – indeed that is its purpose. Provided the concession activity is clearly specified in the concession document (which we have done), we see no need for a condition confirming that the concession activity is permitted. We have therefore not included such a condition.

Signs

1211) We agree with the Applicant that health and safety / warning signs should not require the prior approval of the Minister, given they are necessary for public safety.

1212) We do however note that in our conditions on the resource consents we have included restrictions on signage associated with the Scheme to limit them to a certain size, and to ensure they are not flashing, revolving or retro-reflective. This should assist in mitigating any concerns that DOC may have about the effects of such signage in the concession area.

Liability

1213) In relation to the liability issues:

- a) We agree with the Applicant that it should not be liable for issues which arise from the performance of its concession activity where it is complying in all respects with the conditions of its concession. The concession process (i.e., this FTAA process) is where anticipated issues/effects are identified and conditions are imposed, where necessary, to address those matters. To the extent that an issue/effect has been identified and a condition has not been imposed, then a consequence of granting the concession is that such issues/effects are deemed acceptable. This might be for example, where a positive effect results, or an issue has negligible effects. To the extent that unanticipated issues/effects arise, we have, as noted below, included variation clause in the lease/licence concession.
- b) We do not agree with the Applicant that it is appropriate to cap its liability to \$1m. Here, the concession is providing the Applicant with a right to use public land for a private purpose (albeit we acknowledge it is a use that will have some public benefit). If the Applicant breaches the terms of the concession and that breach results in losses, damage or liabilities for the Minister, then, in our view, the Applicant should be responsible for indemnifying the Minister against that cost. Imposing a cap on that liability would transfer the cost of a private breach to the public purse. We find that is not appropriate.
- c) Nor do we agree with the Applicant's requests to expand the Minister's liability to include negligent acts and for the \$1m cap on the Minister's liability to apply 'per event'. We note that the standard s.78 conditions approved by the Minister for FTAA processes include conditions which limit such liabilities to wilful acts or omissions, and to a \$1m cap overall (i.e., not per event).⁵⁰⁵ While DOC has not specifically included those conditions in the s.78 conditions it requires for this Project, we are still able to have regard to those conditions (given we have been provided with them as part of this process). We find that it is more appropriate for the conditions to remain consistent with the standard wording for liability

⁵⁰⁵ DOC Memorandum, 5 March 2026, Attachment 3.

issues of this nature, and doing so would also avoid any potential floodgates/precedent concerns arising. Finally, we note that challenges to the Minister’s decision on those standard conditions sit outside this process.

Breach

- 1214) We agree with the Applicant that it is not appropriate to include conditions deeming a breach of the CMS, CGP or any other similar plan as a breach of the concession. Including such a clause introduces a considerable amount of uncertainty, given those documents are not written as standards. Further, and as we noted in Subpart 14 above, the CMS and CGP are dated and were not authored, co-authored or prepared in consultation with tangata whenua. As a result, we find elevating them to the status of a condition is inappropriate.
- 1215) In terms of whether there is a need to include conditions relating to the Minister’s structures or facilities, we note that there are generally no current structures or facilities on the ground within the footprint, but that the Morgan Gorge swing-bridge (a DOC structure) is within Area 1 as shown on Figure 3 of this Decision. However, as we understand it no existing DOC assets are proposed to be used to facilitate the construction or operation of the Scheme, with the Scheme including its own access track and tunnel. Accordingly, and in the absence of any explanation as to why such conditions are considered necessary, we have deleted them.

Suspension when natural event/public safety risk

- 1216) Given the intention of the clause appears to be (primarily) to enable the Minister to suspend the concession where there is an immediate risk to public safety arising from a natural event/emergency, and given the Minister as the landowner will have health and safety responsibilities for activities undertaken on its land, we consider it is appropriate for a suspension clause to be included. We do however consider the circumstances in which this power should be able to be exercised should be clearly specified and confined. In particular:
- a) We agree with the Applicant that the power should be limited to immediate temporary and significant risks and only endure for the period necessary to remove or mitigate the risk. This is because suspension of the concession is a severe step to take, particularly in the context of this concession activity, when it may be necessary to continue generating power to assist with such emergencies. Further, not every public safety risk would necessarily be of a scale or type such that immediate suspension of the concession would be required – particularly where the activity can be continued and controlled remotely (i.e., without staff needing to be onsite).
 - b) We do not agree with DOC that the power should be extended to include:
 - i) “or in any other way” as this is overly broad and gives rise to uncertainty as to what it may cover; and
 - ii) a breach of a concession condition as there are other conditions which provide a process for addressing breaches.
 - c) We do not agree with the Applicant that the Minister should be required to give 10wds notice prior to a suspension taking effect, or that the Concessionaire should be able to refer such suspensions to the dispute resolution process. Given

the nature of the situations when the power might be exercised (natural disaster/emergency), and given the time required to go through the dispute resolution process, such restrictions are not workable or appropriate.

Termination

1217) We acknowledge that termination of a concession would have a significant adverse impact on a Project of this nature, given the significant amount of investment required. However, we do not consider that the words “as a last resort” as sought by the Applicant are necessary. The words of the condition already clearly restrict the circumstances in which termination can occur, and there is also a restriction on terminating where steps are being taken to remedy a breach, or where the disputes resolution process has been activated. We have (as noted in **Appendix G2**), also added additional text to clarify that where the disputes resolution process has been activated the proposed termination notice will be of no effect during that process.

1218) We do, however, agree with the Applicant that the additional words sought by DOC requiring confirmation that any breach will be remedied within a reasonable period of time, are unnecessary and introduce a level of uncertainty to the condition. Given the condition already requires the concession holder to work diligently in rectifying a breach, the time it takes to do so would by implication likely also be reasonable.

Payment of costs

1219) We consider there is a difference between providing a specific concession condition confirming that the Minister as an agent of the Crown is able to recover costs, since those costs would otherwise be covered by the public purse; and the ability of the concession holder, a private entity, to cover costs. Given the purpose of the concession is effectively to set out the terms on which the concession holder is able to use public land, we consider it is not necessary or appropriate to include a similar cost recovery condition for the Applicant. We note however that the absence of such a condition does not mean that the Applicant is restricted from seeking costs. Should there be a breach of the Minister’s obligations, the Concessionaire would be able to raise that and seek to recover costs in the usual way, for example through the dispute resolution process provided for in the concession.

Access

1220) We agree with the Applicant that it is not appropriate to include a generic condition that the grant of the concession does not affect the rights of the Minister and the public to have access across the concession land. Such a condition is overly broad and does not recognise that there will be circumstances and areas in which access should not be enabled for health and safety reasons.

1221) However, given the footprint of the concession also includes public recreation areas, we consider it is important that access not be restricted unnecessarily. Accordingly, we have modified the condition to recognise that such access may need to be ‘temporarily’ limited for health and safety reasons.

1222) Also, in relation to access, we do not consider it is appropriate to include the qualification that the Minister’s ability to restrict public access during times of high fire hazard or for reasons of public safety or for an emergency does not affect the Concessionaire’s access. We consider such a qualification is overly broad and does not sit comfortably with the legislation power. Accordingly, we have not included it.

Co-siting

- 1223) We agree with the Applicant that given the nature of the concession activity it is not appropriate to provide for co-siting – which we understand means to enable the use of the concession holder’s structures by a third party. In this case the structures will be created, constructed and funded by the Applicant for its concession activities. It therefore differs from a situation where a concession holder has been given a right to use the Minister’s structures for an activity. We have therefore not included co-siting conditions.
- 1224) In terms of the related issue regarding whether the Minister should be restricted from granting another concession within the easement area, we agree with DOC that such a restriction is inappropriate and unduly restricts the Minister’s ability to manage the land. We note that the provision requiring non-derogation of grant still applies and consider that provides appropriate protection for the Concessionaire’s interests.

Variations

- 1225) We note that s.17ZC of the Conservation Act provides the Minister with a power to vary conditions in certain circumstances. The wording put forward by DOC appears to go beyond what is provided for in that section and instead provide a broad right to unilaterally change conditions. We do not agree this is appropriate. We consider a variation clause should be included but that it should be limited to the circumstances set out in s.17ZC. We have included such a condition in our condition set.

DOC liaison officer

- 1226) We do not consider it is necessary to include a clause setting out the skills and experience that a DOC liaison officer should have. The concession already includes a condition noting that the role, brief of service and remuneration will be agreed between the parties. In our view, that process already allows the parties to engage around the skills required for the role and provides the flexibility to match skills to the role at hand. We have therefore not included the condition sought by the Applicant.

Management plans

- 1227) The issues in relation to management plans (certification and other matters) have already been addressed in other parts of this Decision.⁵⁰⁶ We rely on and do not repeat the findings made in those parts of this Decision.
- 1228) The only additional comment we make relates to certification. We considered whether it was appropriate for DOC to be the sole certifying authority of any management plans relevant to concessions. However, as there are no concession-only management plans with all management plans also being to address RMA effects, we have determined that the appropriate certifying body remains the relevant council. As noted elsewhere, we have however strengthened the resource consent conditions providing for DOC’s input into relevant plans (the AMP, BMP, LizMP and FEMP) by requiring a review by a SQEP (independent of the Project) after receipt of DOC’s input and the Applicant’s response, and prior to the plan being certified.

⁵⁰⁶ Subpart I4 for all issues other than certification which was addressed in Subpart L4 above.

Kiwi Flat Hut occupation

1229) We agree that it is important that noise limits are adhered to when Kiwi Flat hut is occupied overnight. However, we do not agree that the wording the Applicant has suggested (“use all reasonable endeavours to determine when the Kiwi Flat hut is occupied”) is appropriate. We consider a better way to address the uncertainty is to assume that the hut is occupied, unless there is clear evidence to the contrary. To avoid duplication, we have amended the relevant resource consent condition and removed it from the concession conditions.

Recreation compensation level

1230) We addressed compensation matters generally in Subparts F20 and Subpart L4 above. We adopt, and do not repeat those matters for the purpose of this section.

1231) In relation to concession specific matters, we acknowledge that the Applicant proposed including the recreation compensation condition in both the RMA and the concession conditions, but with an advice note that it only requires one payment. We consider this is overly complex and that it is more appropriate for the payment to sit in one or the other, not both. In our view, given the payment is for recreation effects and the land involved is DOC land it most appropriately sits in the concession conditions.

1232) We also acknowledge that this shift means that technically there is not the same restriction on compensation as occurs under the RMA (since s.108AA of the RMA does not apply to concessions). As a result, we have included a requirement for a CPI adjustment given the 10-year lapse period, given the Applicant has agreed to CPI adjustments for other payments, and given that the Applicant did not object to such an adjustment in its comments on our draft conditions. We have not however increased the amount, given the issues identified by the Applicant with using the DOC methodology,⁵⁰⁷ and given the absence of any other methodology to justify a different amount.

1233) We do however agree with DOC and the Applicant that the condition should be amended to require the payment to be made to DOC. In terms of what the payment should be used for, we consider the Applicant’s proposed wording is more appropriate, as it more clearly directs that it should be used for recreation track and hut maintenance.

Helicopter flight management and drones

1234) We understand that the Applicant is only proposing to use helipads for construction, and that during operation, the Applicant will rely on helicopter operators to have the appropriate concession permissions. As a result, we agree with the Applicant that it is not necessary to include helicopter flight management in the operational part of the concession.

1235) In relation to drone use, we note that the AEE and the Schedule of activities within the lease/licence concession refers to drone use. Accordingly, we consider it is appropriate to retain these conditions.

⁵⁰⁷ Refer to Subpart C10 for our reasoning as to why we have not considered the further material DOC provided in support of its methodology with its comments on conditions.

Bond

1236) We have, as noted above, adopted DOC’s position regarding the s.78 conditions, which include a bond condition. However, we agree with the Applicant that including the bond provisions in the easement concession conditions would duplicate what is already in the lease/licence concessions conditions and doing so could therefore create confusion as to whether one or two bonds are required. While the easement concession has been separated out in our conditions set as a separate form of concession, it relates to the same Project, and its activities are undertaken in conjunction with the lease/licence activities. We therefore consider the requirement to give effect to the s.78 bond condition is already met through the lease/licence condition, and a similar condition is not required in the easement conditions.

Removal of structures on expiry or termination

1237) We addressed this briefly in Subpart I4 above when we discussed s.78 conditions. In short, as this is a s.78 condition required by DOC we have included it in the concession lease/licence conditions.

Recreation access track

1238) We addressed this issue in the recreation effects section above (Subpart F20), and a summary is also included **Appendix G2**. We refer to those sections for our findings on this issue.

Insurance

1239) The Applicant suggested \$5,000,000 as the appropriate level of public liability insurance, but noted that DOC had not yet had a chance to comment on it. To provide DOC with an opportunity to comment on that level, we included the figure in our draft conditions. In the absence of any objection from DOC on this issue, we have included that figure in our conditions, and made a consequential amendment to a later condition relating to insurance to clarify that the Minister has the power to determine insurance types and quantum other than public liability insurance which is specified in Table 1 of those conditions.

Final conditions

1240) The concession conditions we have imposed are set out in **Appendices D1 (Lease and Licence)** and **D2 (Easement)** to this Decision.

L6: Wildlife approval conditions

Specific requirements for wildlife approval conditions

1241) In addition to the general FTAA condition requirements noted earlier (in Subpart L2), for the grant of a wildlife approval, cl.6 of Sch.7 applies:

6 Conditions

- (1) A panel may set any conditions on a wildlife approval that the panel considers necessary to manage the effects of the activity on protected wildlife.
- (2) In setting any condition under subclause (1), the panel must—
 - (a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and
 - (b) where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and

- (c) take into account, as the case may be, the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife that is to be covered by the approval.

Approach to conditions

1242) As a general statement, we note that the conditions as proposed by the Applicant/DOC appeared, in some respects, to go beyond the scope of what can be conditioned under the Wildlife Act. For example, habitat clearance for winter works, which is outside the scope of a wildlife approval and covered by the RMA consents. Accordingly, in our condition set we have limited the conditions to those relevant to the handling, killing or disturbing of wildlife, and removed any unnecessary duplication with the resource consent conditions.

Comments and responses

1243) DOC provided detailed comments on the proposed Wildlife conditions in its s.51 Report and in its s.53 comments. It sought a number of amendments to the Applicant's proposed conditions, the more substantive of which we summarise as follows:

- a) replacing references to DOC being the Grantor with the Panel;
- b) replacing the term 'authorised' with 'approved';
- c) deleting the qualifier to the incidental harm condition regarding reasonable effort being made to meet the conditions of the approval;
- d) inserting references to, and attaching copies of, the AMP, BMP and LizMP and deleting reference to them being approved by the Panel;
- e) requiring the SQEP approved to undertake the activity to be authorised by DOC;
- f) deleting reference to the wildlife approval holder being able to carry out the activity and leaving it just as the approved personnel;
- g) requiring the AMP, BMP and LizMP to be recertified by DOC after 10 years to reassess habitat conditions and update the management plans to reflect current species knowledge, best practice lizard management and mitigation techniques;
- h) requiring that compensation conditions relevant to wildlife be moved from the RMA consents to the wildlife approvals;
- i) a requirement for a contingency plan for West Coast green geckos and pre-clearance salvage measures given their threatened nationally-vulnerable status;
- j) an incidental discovery condition for lizards not covered by the approval;
- k) deleting reference to the word "incidentally" in the incidental death condition (but not the heading) and broadening the investigation costs clause to cover any animal irrespective of threat status;
- l) enabling DOC to cancel the approval in certain circumstances; and
- m) requiring compliance with the Bat Roost Protocols when felling occupied bat roost trees to reduce the likelihood of killing or injuring bats present in roosts at the time of felling.

1244) NZCA was satisfied that systems agreed with DOC would satisfactorily mitigate any adverse impacts and did not specifically seek any changes to the wildlife approval conditions.

1245) In response to DOC's comments, the Applicant provided an updated set of conditions which:

- a) accepted a number of DOC's proposed amendments;
- b) disagreed with attaching copies of the AMP, BMP and LizMP to the wildlife approvals and with deleting reference to them being approved by the Panel;
- c) did not accept the need for DOC approval of the SQEP, and suggested specifically naming its lizard expert;
- d) did not agree to delete reference to the approval holder carrying out the activity;
- e) stated that there was no clear justification for requiring recertification of the AMP, BMP, and LizMP after 10 years and such a requirement was unduly onerous;
- f) left the ecological compensation conditions in the RMA conditions but duplicated them in the wildlife approval conditions;
- g) stated that DOC's additional conditions regarding the West Coast green gecko and pre-clearance salvage effort were unduly onerous;
- h) disagreed with the inclusion of an incidental discovery clause for lizards not covered by the approval;
- i) did not accept it was appropriate to delete reference to 'incidentally' from within the incidental death condition or for investigation costs to extend to cover non-threatened species;
- j) proposed alternative wording for the cancellation clause requiring at least 30-days' notice of an intention to cancel and an ability for either party to invoke a new dispute resolutions process; and
- k) did not include the Bat Roost Protocols on the basis it was unworkable.

1246) We took the parties comments into account, when we developed our proposed set of conditions, which were then circulated to the parties for comment as part of our draft decision. Comments were subsequently received on our proposed wildlife approval conditions from DOC, the Conservation Board and the Applicant. In summary these parties raised the following matters:

- a) certification;
- b) amendments to the Bat Roost Protocols;
- c) recertification of the AMP, BMP and LizMP after 10 years; and
- d) other minor amendments.

Outstanding issues

1247) The Bat Roost Protocol and West Coast green gecko issues have already been addressed in other sections of this Decision (Subparts F9 and F12 respectively above, and in **Appendix G2** where we summarise comments on conditions and our response to those).

1248) The only substantive issues remaining between the parties in relation to our proposed Wildlife Approval conditions related to the following:

- a) management plans;
- b) personnel approved;
- c) re-certification;
- d) incidental discovery;
- e) incidental death; and
- f) cancellation.

Evaluation and findings

Management plans

1249) We acknowledge that the Applicant is intending to prepare the AMP, BMP and LizMP so that it addresses both the RMA and Wildlife Act requirements. We have provided conditions that enable that to occur without unnecessarily duplicating the requirements in the resource consent.

1250) However, as noted earlier, we have found that we are not the appropriate body to certify those (or any other) management plans, and that joint certification is not appropriate. We have however strengthened the resource consent conditions to provide for DOC input and an independent SQEP review in relation to these management plans.

Personnel approved

1251) We discern that there are three issues in relation to the personnel approved conditions:

- a) whether it is appropriate to specifically name the SQEP;
- b) whether DOC should have to authorise the personnel approved; and
- c) whether the Wildlife Approval Holder should also be enabled to carry out the Approved Activity.

1252) In relation to the first issue, we note that the Applicant has sought Dr Ussher be specifically named in the approved personnel condition for lizards together with a reference to others under his direct supervision. Such a condition appears unusually restrictive to us, given the length of term sought for this approval (some 15-years) and given any change in lizard expert would then require a variation to the Wildlife permit. To avoid this, we have included Dr Ussher's name as requested, but also included reference to any other SQEP as authorised by DOC.

1253) In relation to the second issue, we consider that DOC's wording is more consistent with the wording of s.53 of the Wildlife Act which states that "the Director-General may from time to time in writing authorise any specified person to...". Accordingly, we have included reference to the SQEP (other than Dr Ussher) being required to be authorised by DOC.

1254) In relation to the third issue, we note that DOC's request appears inconsistent with the references in other conditions which refer to the Wildlife Approval Holder carrying out the Approved Activity (for example Sch.2 cl.2). If the intention is that only the Approved Person actually undertakes the Approved Activity (i.e., handling, salvage etc) then other amendments to the conditions are required to make that clear. This issue was not commented on further by DOC in its response to our draft conditions. Accordingly, in the absence of any further response, and for consistency with those other sections, we have left the reference to the Wildlife Approval Holder in the "who is approved" condition (Sch.2 cl.3.1).

Re-certification

1255) Given DOC's standard practice is that Wildlife Approvals are only granted for 10 years, but that here 15 years is sought (presumably to account for the 10-year lapse period for the resource consents and the 4-year estimated construction period), we find it is appropriate to require recertification of the AMP, BMP and LizMP if construction has not been completed and operation has not commenced by that time. This will also ensure that any changes in the intervening period can be considered. As the plans are prepared under the resource consent conditions, we have included the requirement in those consents.

1256) Further, we note that to the extent that unanticipated issues or effects arise during construction that necessitate changes to the management plans prior to the 10-year recertification review, we note that the Applicant has the ability to update such plans and resubmit them for certification, and that s.128 of the RMA provides an ability for the relevant council to review the conditions of consent.

Incidental discovery

1257) We note that while the Applicant objected to the inclusion of such a condition, it did not provide a clear reason for why it considered the condition to be inappropriate. In the absence of any such rationale, we see no issue with a requirement to notify DOC if a lizard species not covered by the approval is located within the Project Site. This would be similar to the condition requiring notification to DOC of any taxa found which are new to science. We have, accordingly, moved the proposed condition to sit after the new taxa condition. We have however, removed the requirement to seek advice since the conditions relate to activities authorised under this approval; and we have confined the notification requirement to the Project Site, since that is the Land to which the approval applies.

Incidental death

1258) There are two issues in relation to incidental death that require determination:

- a) whether to delete the word "incidentally" from the incidental death condition; and
- b) whether the Wildlife Approval Holder should pay the costs incurred in investigating the death of any animal irrespective of its threat status.

- 1259) In relation to the first issue, we do not agree with DOC that such a deletion is appropriate. Including the word “incidentally” is consistent with the use of the term ‘incidental’ in the heading, and more importantly, with s.53A of the Wildlife Act which expressly recognises that an authority may be granted under s.53 to kill wildlife “incidentally”.
- 1260) In relation to the second issue, given the chapeau of the condition expressly refers to any threatened, at risk or data deficient species, we consider, it already achieves what the Applicant is seeking, and it is not necessary for those words to appear again in the subclause relating to costs. Accordingly, we have made the deletion suggested by DOC.

Cancellation

1261) There are two issues relating to cancellation:

- a) whether a specific period should be specified for the notice of intention to be issued prior to cancellation; and
- b) whether there should be an ability for either party to invoke a new dispute resolution process prior to a permit being cancelled.

1262) In relation to the first matter, we consider that where a notice of intention is required to be given prior to cancellation, it is clearer and provides greater certainty if a time period is included for that notice – rather than DOC’s wording of “such prior notice as the Department considers reasonable and necessary in the circumstances”. The Applicant has suggested a period of 30 days advance notice. While no reasoning was supplied as to why a period of 30 days is appropriate as opposed to another time period, in the absence of further comment from the parties, we consider such a period would allow at least an initial opportunity for liaison and discussions to occur between the parties to clarify the reasons for the notice and next steps. We have therefore incorporated this time period into our conditions.

1263) In relation to the second matter, given a dispute resolution process is provided for under the concession conditions which DOC has agreed to, and given the Applicant is proposing conditions which mirror that process, we see no issue with including such a process in the Wildlife conditions as well, and no party objected to the insertion of such conditions in their comments on our draft conditions. We therefore find such conditions to be appropriate given they provide a clear process to address disputes, while also requiring each party to continue to perform their obligations under the Approval while the dispute is ongoing.

Final conditions

1264) The Wildlife conditions we have imposed together with the Bat Roost Protocols are set out in **Appendix E** to this Decision.

L7: Complex freshwater fisheries

Specific requirements for freshwater fisheries approval conditions

1265) In addition to the general FTAA condition requirements noted earlier (in Subpart L2), for the grant of a complex freshwater fisheries activity approval cl.6 of Sch.9 applies:

6 Conditions on complex freshwater fisheries activity approval

A panel may impose conditions on an approval that the panel considers necessary to manage the effects of the activity on freshwater fish species, taking into account—

- (a) best practice standards; and
- (b) the New Zealand Fish Passage Guidelines.

Outstanding issues

1266) DOC, in its s.51 Report, made a number of suggested amendments to conditions relating to exclusions, biosecurity management, and monitoring. It also requested the term 'Grantor' be changed to 'DOC'. These changes were largely accepted by the Applicant with the following exceptions.

Exclusion conditions

1267) The Applicant indicated that its ecologist considered that excluding in-stream works during peak spawning and migration times in "waterways"⁵⁰⁸

- a) at the Headworks and the intake weir was not practicable due to the length of time construction will take, the safety considerations for when construction should occur (during low-flow) and was not necessary as kōaro was the only fish found upstream of the Gorge and their passage downstream will not be hindered; and
- b) was overly restrictive given the Applicant did not currently know what species may be in the tributaries.

1268) As a result, the Applicant sought an exclusion for the Headworks and intake area. It also sought an exclusion for waterways that were ephemeral/intermittent or dry at or downstream of the works area at the time the works are undertaken; and for temporary works (less than two weeks in duration). No specific reasoning or comment was provided from the Applicant's ecologist on the temporary exclusions.

1269) The Applicant also proposed alternative wording for DOC's proposed restriction on utilising wet concrete in flowing water or where it can enter flowing water. The Applicant's proposed wording was "place any wet concrete in any flowing water within a waterway" to align with its proposed RMA conditions.

1270) In its comments on conditions, the Applicant reiterated its view that "flowing water" needed to be added into the in-stream works condition, to ensure the condition was capable of technical compliance. Consistent with its earlier response to DOC's comments, it also sought to amend the scope of that condition by adding the qualifier "that prevent fish passage", and by adding an exclusion for temporary works, albeit it reduced this to no longer than one week.⁵⁰⁹

Biosecurity management

1271) The Applicant while accepting two of the three conditions proposed by DOC, sought deletion of the third condition relating to undertaking biosecurity risk assessments of any species translocated throughout the stream realignments. The Applicant's ecologist was unsure of the need for such assessments, based on the Ministry of Primary Industries definition of biosecurity risk assessments, and Westpower indicated that further information was required from DOC before it would accept the requirement. DOC did not provide such reasoning in its s.51 Report, or subsequently.

⁵⁰⁸ Applicant Proposed Conditions Markup, 21 January 2026, Condition 15.

⁵⁰⁹ Noting that the Applicant had previously requested an exclusion period of up to two weeks.

Monitoring

1272) Westpower did not agree with DOC's proposed fish passage monitoring condition which required monitoring in accordance with the Fish Passage Guidelines and annual reporting of monitoring results to DOC. Westpower's reasons, based on its ecologist's view, as well as its own, were that:

- a) such monitoring is not practical at the Headworks and would instead be done via monitoring kōaro recruitment using a before and after control impact design as is allowed in the Fish Passage Guidelines and as provided for in the FEMP;
- b) annual reporting is not proposed in the FEMP; and
- c) there is already a requirement in its resource consent for an annual report to be provided (including to DOC) which reports on the outcome of ongoing monitoring under the FEMP.

Evaluation and findings

1273) While we accept that the measures agreed as between the Applicant and DOC are largely appropriate for the reasons set out in their respective evidence and comments, we find there is a significant degree of unnecessary duplication between the conditions proposed for this approval and those in the resource consent. Consistent with the approach we have taken to the other approvals, we have therefore removed the duplicated conditions and instead included a requirement in this approval that all activities be undertaken in accordance with the relevant resource consent conditions which we have identified in Table 1.

1274) In relation to the three outstanding issue areas we find as follows:

Exclusion conditions

1275) We accept that it is appropriate to include an exclusion condition for in-stream works. However, we consider that the condition needs to be focused on addressing the matter which the ecological evidence stated to be of most ecological concern – i.e., the prevention of fish passage during migration times. We have amended the condition (condition 20) to reflect that. While it may be implicit that works within an ephemeral/intermittent stream which is dry at or downstream of the works area at the time the works are being carried out would not prevent fish passage, we have included an express exemption so that is clear.

1276) We do not agree with the Applicant's request to exempt temporary works of less than one (or two) weeks duration from this condition. No technical evidence or reasoning was provided to support such a request.

1277) With respect to the proposed restriction on the placement of wet concrete in a waterway, we consider this is already covered by the relevant resource consent condition (RC87). As noted in **Appendix G2**, we have amended that condition to refer to "flowing water within a water body" as that more clearly identifies the effect of concern. Accordingly, to avoid any unnecessary duplication we have not included a similar condition in this approval, but have referenced the relevant resource consent condition in Table 1 as one which must be complied with.

Biosecurity management

1278) In the absence of any explanation of the relevance of the condition regarding biosecurity risk assessments, we agree with the Applicant that it should not be included.

Monitoring

1279) We accept the Applicant's evidence that monitoring at the Headworks is not practical, and in the absence of any evidence to the contrary that the method it has proposed in its FEMP is consistent with the Fish Passage Guidelines.

1280) Given the monitoring required in the FEMP and that DOC is required to be provided with a copy of monitoring data in Westpower's annual report under its resource consent conditions, we find there is no need to duplicate the monitoring in the freshwater fisheries approval.

Other changes

1281) As noted in Subpart L3 above, we have made some suggested amendments to the conditions for workability, consistency and to avoid duplication. We have also amended the references to the term 'Grantor' to DOC as requested by DOC. We find that with the amendments we have made the conditions are appropriate.

Final conditions

1282) The conditions we have imposed on the freshwater fisheries approval are set out in **Appendix F** to this Decision.

PART M: OVERALL APPROACH | WĀHI M: TIKANGA WHĀNUI

1283) The potential adverse effects of the Scheme are typical of, and in some cases, less than those normally associated with a Hydro Scheme, given the relatively small scale of the Waitaha Scheme and given the avoidance of any significant dam structure in the riverbed. These effects include all of those addressed in Part F of this Decision.

1284) While the effects were the subject of a number of comments, we consider that they were adequately addressed by a combination of the information provided by the Applicant and the other parties, as well as the conditions we have imposed.

1285) This section addresses the principal issues in contention, our findings on those issues, the requirement to give greatest weight to the purpose of the FTAA, and the s.85 requirement regarding whether any adverse effects are "sufficiently significant" to be out of proportion to the Project's regional or national benefits.

M1: Principal issues in contention

1286) The principal issues in contention for this Project were:

- a) whether there was sufficient information to understand the hydrology and flow effects and what information it was acceptable to leave to detailed design;
- b) whether there was sufficient information to understand the sediment and geomorphological effects and what information it was acceptable to leave to detailed design;

- c) the impact of the Scheme on recreation and landscape values (including ongoing in-stream maintenance works) and the ability to mitigate or compensate for these effects;
- d) the feasibility of providing fish passage at Morgan Gorge for kōaro and which excludes salmonids;
- e) who should determine the long-term concession fee and the appropriate level of that fee;
- f) whether exceptional circumstances existed which warranted a term longer than 30 years;
- g) whether the terms sought for the construction and operation concessions infringed the RFR and/or the statutory maximum period of 60 years when considered collectively;
- h) the approach to assessing consistency with the CGP and CMS;
- i) whether the Panel has the power to determine compensation amounts, the appropriate level of such compensation and which approvals compensation conditions should be incorporated into;
- j) whether the Panel should certify some of the management plans; and
- k) whether a dual/joint certification role should be provided for management plans.

M2: Main findings on these issues

1287) Our main findings in relation to these issues are set out in the relevant Parts, but by way of brief summary are that:

- a) there is sufficient information to understand the hydrology and flow effects and to impose appropriate conditions to address those effects while leaving specific details to detailed design (refer Subpart F4);
- b) there is sufficient information to understand the sediment and geomorphological effects and to impose appropriate conditions to address those effects while leaving specific details to detailed design (refer Subparts F7 and L4);
- c) while the Scheme post construction will have significant localised adverse effects on recreation values and more than minor adverse effects on landscape values, the conditions we have imposed (including compensation) reduce those effects somewhat, and when considered in conjunction with the relevant planning framework, do not warrant the decline of approvals (refer Subparts F19 and F20, H3-H5 and H8, I3-I12, and L4);
- d) the evidence confirms that it is feasible to provide a kōaro fish pass at Morgan Gorge which excludes salmonids, and with the conditions we have imposed, there will be appropriate monitoring and reporting on whether the fish pass is working (refer Subparts F15 and K8);

- e) the Minister is the appropriate person to determine the concession fee to apply during operation in accordance with the s.78 concession conditions required by DOC (refer Subpart I4);
- f) exceptional circumstances exist that warrant a concession being granted for longer than 30 years given the nature of the Scheme (refer Subpart I4);
- g) following amendment of the Application to request a single 49-year concession covering both construction and operation, the term requested (and subsequently granted) does not infringe either the RFR (50-years) or the statutory maximum (60-years)(refer Subpart I4);
- h) it is appropriate to assess consistency with the CPG and CMS on a holistic basis and we are satisfied that overall the Scheme is consistent with both these documents (refer Subparts I4 and I7);
- i) the Panel has the power to determine compensation for recreation to the extent it sits within the concessions, and the Panel has determined that a one-off payment of \$25,000 CPI adjusted is appropriate in the context of the other payments made and conditions proposed (addressed in Subparts F20 and L5);
- j) it is not appropriate for the Panel to certify any management plans given the changes to conditions since the management plans were prepared, the specialist technical expertise required for such a role, and the ambit of the councils' regulatory roles which normally includes such matters (refer Subparts F8-F10, F12, F15 and F19 and Subpart L4 above); and
- k) it is not appropriate to provide for a joint/dual certification role for management plans prepared due to the uncertainty and complexity that would arise, but that it is appropriate to (and we have) included conditions requiring DOC to be given the opportunity to review relevant management plans, to require reporting on that feedback, and, in the case of the AMP, BMP, FEMP and LizMP, to also require a review by an independent SQEP prior to any such plans being certified (refer Subparts F8-F10, F12, F15 and F19 and Subpart L4 above).

M3: Greatest weight to the purpose of the FTAA

1288) We have found in other sections of this Decision that the Scheme will be consistent with the purpose of the FTAA, and that granting the approvals sought will best give effect to that purpose.

1289) We note that in reaching our conclusions on the relevant assessment criteria for each approval, we found that grant was warranted, without having to rely on the giving greatest weight to the purpose of the FTAA. Doing so, confirms our decision that the grant of the approvals is appropriate.

M4: Section 85 "sufficiently significant" test

1290) As noted in Subpart D4 above, we have a discretion to decline an approval if we reach a conclusion that there are adverse effects which are "sufficiently significant" so as to be out of proportion to the Project's regional or national benefits after we have taken into any conditions we set, or conditions or modifications the Applicant may propose.

1291) As noted earlier, the only adverse effects that we have found to be greater than minor post the application of mitigation relate to the localised recreation effects, which remain significant for the duration of the Scheme. However, as will be evident from earlier parts of this Decision, we have found that with the compensation offered, the residual effects on recreation are not such as to warrant decline of the approvals.

1292) It follows then that we consider those adverse localised impacts are not “sufficiently significant” to be out of proportion to the Scheme’s regional or national benefits, and that granting the consents will best give effect to the FTAA purpose.

PART N: FINAL DECISION | WĀHI N: TE WHAKATAUNGA

1293) For the reasons set out in the above Parts of this Decision the Panel grants:

- a) the RMA resource consents listed in **Appendix A** subject to the conditions set out in **Appendix B**;
- b) the concessions listed in **Appendix C** subject to the conditions set out in **Appendices D1 Concession (Lease and Licence)** and **D2 Concession (Easement)**;
- c) the Wildlife Act permit on the conditions set out in **Appendix E**; and
- d) the Freshwater Fisheries approval on the conditions set out in **Appendix F**.

1294) We reiterate our thanks to all those who participated in this process for their contributions.

E pari atu nei te tai o mihi ki a koutou katoa.

[Our thanks flow to all]



Vicki Morrison-Shaw
(Chair)



Dean Chrystal
(Member)



Tony Cussins
(Member)



Nick Eldred
(Member)



Josh Markham
(Member)