

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

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

Between                    **WESTPOWER LIMITED**

                                    Applicant

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**EXPERT PANEL: WESTPOWER LTD MEMORANDUM #5  
MEMORANDUM OF COUNSEL RESPONDING TO THE REQUEST FOR  
INFORMATION DATED 19 NOVEMBER 2025**

Dated: 10 December 2025

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**MAY IT PLEASE THE PANEL:**

1. This memorandum is filed on behalf of Westpower Limited (**Westpower**), the applicant for the Waitaha Hydro Scheme Project (**Project**) listed in Schedule 2 of the Fast-track Approvals Act 2024 (**FTAA**).
2. The Expert Panel issued a Request for Further Information (**RFI**) on 19 November 2025 on seven topics. A table follows which records the topic and location of the response (paragraph in this memorandum or attachment number).

RFI question and topic	Response reference
1 – 2: Flows	Paragraphs 3-4  Attachment 1
3: Roads and access	Paragraphs 5-8
4: Rock removal	Paragraph 9
5 – 9: Landscape	Paragraph 10  Attachments 2 and 2A
10: Recreation	Paragraph 11  Attachment 3
11: Economics	Paragraph 12  Attachment 4
12 – 13: Appendix 18: Legal matters	Paragraphs 13 -57  Attachments 5 and 5A

## Flows

*Question 1: Provide the Waitaha River flow rate record for the period starting 16 November 2025 and ending on 23 November 2025.*

*Question 2: Confirm the river flow rate(s) used for each of the visual simulations.*

3. Flow data from the Whataroa and Hokitika rivers is used to synthesise flows on the Waitaha River with good confidence (refer section 3.5, Appendix 18: Hydrology Report<sup>1</sup>).
4. Mr Doyle provided Westpower with the following synthetic flow data; **Attachment 1** includes the average daily flow (m<sup>3</sup>/s) for the November 2025 period requested. In respect of the visual simulations, the base photos were taken on 8 and 9 July 2024 between the hours 10am and 5pm, and the average daily flow rates for this period, and for the period between 16 and 23 November 2025 are set out below.

Date	Waitaha Flow Rate
<b>16 – 23 November 2025</b>	<b>Average Daily Flow (m<sup>3</sup>/s)</b>
16 November 2025	24.2
17 November 2025	23.0
18 November 2025 <sup>2</sup>	335.0
19 November 2025	162.3
20 November 2025	64.4
21 November 2025	46.0
22 November 2025	41.9
23 November 2025	35.8
<b>Visual simulations</b>	<b>Max and minimum flow (m<sup>3</sup>/s)</b>
8 and 9 July 2024	Varied between 8.7 and 8.2

<sup>1</sup> [Appendix-18-hydrology-report.pdf](#)

<sup>2</sup> An orange weather warning followed the Panel's site visit.

## **Roads and access**

*Question 3: Confirm whether the top access road at the weir site is for construction only or is intended to remain during operation.*

5. Westpower (Mr. Griffiths) confirms that the 'top access road' is a temporary construction road.
6. This is described at section 3.3.7.2, page 67 of Part B, Substantive Application 'Temporary Access Roads and Tracks':<sup>3</sup> "A temporary road is also proposed at the Headworks area to provide access between the Headworks and the associated Construction Staging Area during the construction phase (see item 14 in Figure 5)."
7. The top access road is for construction only to allow for access to Construction Staging Area 1. Once construction is complete, any operational equipment will be stored in the Access Tunnel, and the top access road and Construction Staging Area 1 are no longer needed and so will be rehabilitated in accordance with the Landscape Management Plan and the Vegetation Management Plan.
8. Note the 'top access road' is referred to in the Substantive Application as the 'temporary access road' and as one of the 'Temporary Construction structures/activities'. See: page 82 - 'Temporary Road to Construction Staging Area 1', page 85 'associated temporary access road and stream crossings', and page 122 – listed under 'Temporary Construction structures' (and activities).

## **Rock removal**

*Question 4: Confirm whether any insitu rock needs to be removed on the true left of the river at the intake location.*

9. Mr Griffiths confirms that this is not planned, but it is possible that a small amount of rock scaling (to remove weathered or any weak/crumbling rock) will be required to provide a good interface for the weir concrete. Further

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<sup>3</sup> [Waitaha-Hydro-project-substantive-application-documents.pdf](#).

input can be sought from the engineers if more detail is required by the Panel.

## **Landscape**

### *Questions 5 – 9*

10. **Attachments 2 and 2A** respond to the Panel's questions as Mr Bentley was able and with commentary and alternative images to assist the Panel where the request was unable to be directly met.

## **Recreation**

*Question 10: Supply a statement from its recreation expert confirming whether in light of the information above (requests #1 to #9 inclusive), and the findings in the decision version of the Te Tai Poutini Plan regarding the classification of parts of the project site as outstanding natural landscapes, his conclusions remain the same.*

11. Mr Greenaway has provided this statement in **Attachment 3**.

## **Economics**

*Question 11: Supply a statement from the economics expert confirming his assessment under the Fast Track Approvals Act 2024 tests (at present reference is only made to Resource Management Act 1991 matters).*

12. Mr Copeland has provided this statement in **Attachment 4**.

## **Legal matters**

*Question 12: Provide a legal opinion addressing whether there is scope for the following as part of this Fast Track application:*

- a) The additional consents now identified as being necessary under the Te Tai Poutini Plan; and*
  - b) The amendments proposed to the concessions sought including the addition of further marginal strip areas.*
13. Under the FTAA legal framework, we address the Panel's questions as follows:
- (a) the FTAA allows for changes during the application process; and
  - (b) that the changes made by Westpower are within the scope of the:

- (i) Schedule 2 project listing; and
- (ii) the Substantive Application lodged with, and accepted as complete, by the EPA.

*The FTAA allows for changes during the application process*

14. The FTAA process envisages changes can be made through the process and provides steps to develop and improve applications, including:
  - (a) a request for written comments on the substantive application, which is broadly framed, for those parties required or invited to be asked for comments;<sup>4</sup>
  - (b) the ability for the applicant to respond to those comments;<sup>5</sup>
  - (c) the ability for a panel to request further information or a report;<sup>6</sup> and
  - (d) the ability for the applicant to amend its substantive application to seek additional approvals before a panel proceeds further (if s 62(2) criteria are met).<sup>7</sup>
15. In respect of the statutory intent and relevant precedent, we consider that:
  - (a) The FTAA supports flexibility and changes to be made to an application if that assists in:
    - (i) meeting the:
      - s 3 purpose "to facilitate the delivery of infrastructure and development of projects with significant regional or national benefits"; and
      - s 10(1) procedural principles regarding "timely, efficient, consistent and cost-effective processes";
    - (ii) ensuring the:

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<sup>4</sup> FTAA, s 53(1).

<sup>5</sup> FTAA, s 55.

<sup>6</sup> FTAA, s 67 and 68. Natural justice requires the opportunity for an applicant to respond to any such information or report.

<sup>7</sup> FTAA, s 62(2) criteria for a Ministerial direction to be given; the Minister must consider that:

- (a) different or further approvals are required in respect of the project; and
- (b) those approvals relate to the same specified Act as an approval that is sought in the substantive application; and
- (c) the nature of the project would be better understood if the substantive application were amended to seek those approvals before the panel proceeds further.

- efficacy of the statutory check on 'completeness and scope' in s 46, that is, changes should not frustrate that step at the commencement of the process; and
- information remains fit-for-purpose; effectively s 43 captures an ongoing requirement on applicants when providing information to the EPA or panel:

"Information required by section 43 must be specified in sufficient detail to satisfy the purpose for which it is required"

- (iii) sections 67 and 68 provide mechanisms for expert panels to request more information (consistent with s 10):

"At any time before a panel makes its decisions under section 81 on a substantive application..."

- (b) The processes for the applicant submitting more information and making changes to an application through the FTAA process, in principle, align with common Resource Management Act 1991 (**RMA**) practice. That is, changes can be proposed to a proposal after consent applications have been lodged with the relevant authority.<sup>8</sup> Under the RMA, the key context is the nature and scale of the original application and whether the changes effectively change the substance of that application.<sup>9</sup>

16. Further, under RMA case law, the Supreme Court in *Estate Homes* also stated that, where a question of scope arises, "the question of any prejudice to other parties, and the general public, is always relevant."<sup>10</sup> Under the FTAA, this is appropriately (given sections 3 and 10) limited to prejudice to parties invited to comment under s 53, or who may have otherwise been invited to comment pursuant to s 53(3) and the Panel exercising its discretion.

<sup>8</sup> *Haslam v Selwyn District Council* (1993) 1B ELRNZ 15 (PT) succinctly stated at 21: *The Resource Management Act provides procedures for applications for resource consent that are designed to enable all persons who wish to take part to do so....In practice, the lodging of submission and the presentation of opponents' cases frequently leads to applicants or consent authorities modifying proposals to meet objections that are found to be sound. That must surely be part of the statutory intent in providing for making submissions.*

<sup>9</sup> The highest authority in relation to questions of scope under the RMA is the Supreme Court's decision in *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112, [2007] 2 NZLR 149 in which it stated at [29]: *We accept that in the course of its hearing the Environment Court may permit the party which applied for planning permission to amend its application, but we do not accept that it may do so to an extent that the matter before it becomes in substance a different application. ...*

<sup>10</sup> *Estate Homes Ltd*, above n 9, at [35].

17. Subsequent RMA case law is that amendments may be within the scope of an original application if they:<sup>11</sup>
- (a) are fairly and reasonably within the ambit and scope of the original consent application and do not result in what is in substance a different application;
  - (b) do not result in a significant difference in scale and intensity of the proposed activities or the character of their environmental effects compared with the activities described in the original consent application; and
  - (c) do not prejudice any person.
18. It is contrary to section 10 of the FTAA (inefficient and costly) to take a narrower approach than the RMA and prohibit changes that do not alter the substance of an application. If that was not the case, an applicant would be required to resubmit an amended application for each change. That would clearly frustrate the section 3 purpose of the FTAA to facilitate the delivery of projects with regional or national benefits.

*Appropriate evaluation*

19. In light of the statutory purpose, text and context as described above, and as informed by RMA practice, we consider the following evaluation assists the Panel:
- (a) Is there sufficient detail to inform the Panel about the change and its impact on the Project?<sup>12</sup>
  - (b) Does the change remain fairly and reasonably within scope of the Substantive Application, including the Project's Schedule 2, FTAA listing, and is it in substance the same application?
  - (c) Is there any prejudice, that cannot be remedied through the process, to parties invited to comment under s 53 of the FTAA?

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<sup>11</sup> *Director-General of Conservation v Taranaki Regional Council* [2021] NZEnvC 27, (2021) 22 ELRNZ 557 at [22]. The key cases referred to include the Supreme Court decision in *Estate Homes*, above n 9; *Atkins v Napier City Council* (2008) 15 ELRNZ 84 (HC) at [20]–[21]; *H.I.L Ltd v Queenstown Lakes District Council* [2014] NZEnvC 45, (2014) 18 ELRNZ 29 at [42]; and *Shell New Zealand Ltd v Porirua City Council* CA57/05, 19 May 2005 at [7].

<sup>12</sup> Acknowledging, as above, the Panel can consider remedying any information gap through an RFI.



*Scope is informed by the Schedule 2 listing*

20. The authorised person for a listed project may lodge with the EPA a substantive application for the project. "Project" is defined in s 4(1) of the FTAA and:
- (a) means "the project as described in Schedule 2"; and
  - (b) includes "any activity that is involved in, or that support and is subsidiary to" that project.
21. Westpower is the authorised person of the Schedule 2 listing for "Waitaha Hydro". The Project description and approximate geographic location recorded are:
- (a) Develop a hydro scheme in the Waitaha River to provide renewable energy, *including*—
    - (i) constructing, operating, and maintaining a weir to divert a portion of the Waitaha River into an approximately 1.5 kilometre tunnel to convey water to a powerhouse;
    - (ii) constructing and maintaining an access road;
    - (iii) a 66 kV transmission route, conveying power from the scheme to the distribution connection point on State Highway 6; and
  - (b) within the true right bank of the Waitaha River, between the lower end of Kiwi Flat and Macgregor Creek within Waitaha Valley, 38 kilometres south of Hokitika.<sup>13</sup>
22. Two other matters assist with evaluating what is within scope of the Schedule 2 listing:
- (a) whether an "ineligible activity"<sup>14</sup> has been applied for (that is not the case here) and would be plainly out of scope; and
  - (b) whether the s 3 purpose is undermined by the change because it has reduced the benefits (and is contrary to the FTAA's purpose of facilitating those benefits).

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<sup>13</sup> While different measurements are used, the Application is consistent with this approximate location. 38 km is an aeronautical measurement flying from Hokitika to the Waitaha Valley (the location of the Project). The Project Description and technical assessments of effects refer to local road measurements from Hokitika to the Project.

<sup>14</sup> FTAA, s 5.

23. The 'facilitation' element of the FTAA's purpose also provides guidance to considering whether changes are within scope of the listing of a project. It necessitates active consideration of how to deliver the benefits. In this case, it supports elements such as approvals for infrastructure critical to the conveyance of a more resilient electricity supply from the Waitaha Hydro Station to West Coast electricity consumers (which is why the transmission line is a listed component of the Project within the project description in Schedule 2). This focusses the enquiry on the key aspects required to facilitate the benefits of the overall project.
24. Westpower's proposed changes will not reduce the Project's benefits. In fact, there are no additional effects of the changes as those effects were assessed and incorporated within the Substantive Application, and in any event are low. There is no feasible argument about whether the purpose of the FTAA has been compromised by the changes.

*Application to Westpower's changes*

Changes to address the Te Tai o Poutini Plan – Decisions Version

25. The Substantive Application included a summary of each Project activity (as part of Appendix 3: the Project Overview Report<sup>15</sup>). The relevant activities have not changed as a result of the notified TTPP – Decisions Version. The Substantive Application therefore explains the nature and scale of the activities and their effects within Part B, including the transmission line activity on Waitaha Road.<sup>16</sup>
26. Westpower was not subject to an obligation to consult widely about the transmission line under the FTAA,<sup>17</sup> and it was a permitted activity at the time of lodgement. However, as addressed in Part B of the Substantive Application, meetings were held with the local community about the Project, including a meeting with Waitaha Valley residents on 19 November 2024 where the transmission line was discussed.<sup>18</sup>
27. Detailed descriptions of the transmission line presented in the Substantive Application were intended to ensure that, should the rules in legal effect change during the Fast-track process, the Substantive Application provided

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<sup>15</sup> [Appendix 3 project overview report part1](#), pages 26, 30 and 31.

<sup>16</sup> [Waitaha-Hydro-project-substantive-application-documents.pdf](#), for example the transmission line is described as a key construction activity at 2.1.2, at 2.5.9 (pg 36) includes its existing the pTTPP is discussed at 7.1.11; [Appendix-51-statutory-assessment-regional-and-district-plans.pdf](#) from page 71.

<sup>17</sup> FTAA, s 29.

<sup>18</sup> [Waitaha-Hydro-project-substantive-application-documents.pdf](#) at 2.4.8.

sufficient information to participants and the Panel. The information provided in the Substantive Application, and the assessments of effects proactively addressed all matters subject to potential change through the notification of the TTPP – Decisions Version on 10 October 2025.

28. As the TTPP decisions version has been released, the rules within it have legal effect (s86B, RMA), acknowledging they are not 'operative' and many, if not all, of the rules as relevant to the Project will be appealed (addressed under Question 13 below).
29. In relation to the objectives and policies of the TTPP, their application comes down to a question of weight.<sup>19</sup> Obviously, there should be better alignment with the new rules and reflection of the most up-to-date planning provisions. But, again, many, if not all, of the TTPP objectives and policies relevant to the Project will be appealed. As the Panel will be aware, that must be borne in mind when considering the weight to apply to them.
30. With certainty over the rules in legal effect, Westpower's planning, landscape and noise experts have already updated their assessments of effects (appended to Memorandum #2 dated 17 November 2025 (**Memorandum #2**) and mentioned further below).
31. For completeness, Westpower's Substantive Application assessed the Project against the proposed TTPP, adopting an RMA "bundling" approach that treated the Project restrictively, as a non-complying activity.<sup>20</sup>
32. The TTPP – Decisions Version changed the activity status of some activities, including:
  - (a) Renewable Electricity Generation Activities which shifted from non-complying to discretionary; and
  - (b) Power Station site flood protection structures (Natural Hazard Mitigation Structures) which shifted from discretionary to restricted discretionary.
33. Taking the same bundling approach, the TTPP – Decisions Version affords a more permissive bundled activity status to the Project of "discretionary" (but

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<sup>19</sup> *Hanton v Auckland City Council* [1994] A10/94.

<sup>20</sup> FTAA, Sch 5, cl 17(1)(b), excludes s 104D, RMA consideration (a non-complying activity is effectively treated as a discretionary activity).

that has no effect given s 104D of the RMA is disapplied under Schedule 5 of the FTAA).

34. The TTPP – Decisions Version also introduced new reasons for consent and some more restrictive activity statuses (none above discretionary) for the activities below, all of which are included in the Substantive Application and the technical reports appended to it carefully assess the relevant effects of each:

- (a) the new 66kV transmission line (change from a permitted activity to a discretionary activity);<sup>21</sup>
- (b) earthworks and earthworks in ONL18 and ONL22, and building, structures and associated earthworks within an ONL (all being new reasons for consent - restricted discretionary activities);<sup>22</sup>
- (c) repairs and maintenance of Power Station site flood protection structures (being a new reason for consent - discretionary activity);<sup>23</sup> and
- (d) proposed Waitaha Road upgrades and maintenance (being a new reason for consent - discretionary activity).

35. Westpower's Memorandum #2 updated the Substantive Application by providing:

- (a) an updated Table 11 of Part B, listing the consent required under the TTPP – Decisions Version for the new 66kV transmission line along Waitaha Road;<sup>24</sup>
- (b) updated Tables 8A and 8B replacing Table 8 of Appendix 50;<sup>25</sup>
- (c) an additional landscape assessment confirming a low level of effects relating to the transmission line;<sup>26</sup> and

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<sup>21</sup> As recorded in the appeal documents referenced in response to Question 13 below, Westpower has appealed the transmission line rules (ENG-R4, ENG-R10, ENG-R12).

<sup>22</sup> As recorded in the appeal documents referenced in response to Question 13 below, Westpower has appealed Earthworks in General (EW-R1, EW-R3 and EW-R7). Appeals to Earthworks in ONL (NFL-R6, NFL-R10, and NFL-R13). Appeals to buildings and structures in ONL (NFL-R5, NFL-R8, NFL-R13 and NFL-R14).

<sup>23</sup> As recorded in the appeal documents referenced in response to Question 13 below, Westpower has appealed natural hazard mitigation structures in ONL (NFL-R3, NFL-R9) and natural hazard mitigation structures in Natural Character & Margins (NC-R1, NC-R2, NC-R3, NC-R4 and NC-R5).

<sup>24</sup> [Westpower-Memorandum-2-Attachment-1B.pdf](#).

<sup>25</sup> [Memo 11.07.24](#).

<sup>26</sup> [Westpower-Memorandum-2-Attachment-2A.pdf](#).

- (d) an additional noise assessment confirming the Project's anticipated compliance with more stringent noise standards in the TTPP – Decisions Version.<sup>27</sup>
36. Accordingly:
- (a) there is sufficient information before the Panel;
  - (b) the consent for the new 66kV transmission line fairly and reasonably relates to the Schedule 2 listing (it is in fact explicitly listed) and further was foreshadowed by the relevant explanatory material in Part B of the Substantive Application despite its permitted activity status at the time of lodgement); and
  - (c) there are no new matters raised by the TTPP – Decisions Version that were not included and assessed in the Substantive Application. The only consideration is an updated assessment of the activities against the updated provisions now in legal effect (which are subject to appeal<sup>28</sup>).
37. Planning changes are a common occurrence in RMA consenting processes. Prejudice is not relevant to a change in planning provisions with legal effect during a process in circumstances where all the activities are already included and considered.
38. This is supported by sufficient information being available in the Substantive Application to assess the relevant activities irrespective of the change in planning provisions. Taking the new 66kV transmission line along Waitaha Road as an example, details about the activities were included in the Substantive Application despite it being a permitted activity under the operative plan. This was because Westpower considered there was a possibility that the decisions version of the TTPP would require resource consent for new lines (contrary to Westpower's submission on the matter). Assessment of the new transmission line against the new rule in legal effect under the TTPP – Decisions Version, was provided to the Panel with Memorandum #2. There is no prejudice because the updated material was available to the Panel when making its s 53 decision, and it is presently available to parties invited to comment.<sup>29</sup>

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<sup>27</sup> [Westpower-Memorandum-2-Attachment-2B\\_Redacted.pdf](#).

<sup>28</sup> [Appendix-1-Appeal-Tables-Setting-Out-Relief-Sought.pdf](#).

<sup>29</sup> [Substantive application](#).

39. In light of the Panel's RFI, and to ensure the Panel is comprehensively informed, Westpower has now also assessed the Project against the TTPP – Decisions Version Objectives and Policies. Counsel considered that the Panel only required a consideration of the rules as was provided in Memorandum #2. But, given the Panel's interest and questions, and to ensure that absolutely every angle is crossed off, the team has now updated the entire TTPP objective and policy assessment (previously presented in pages 71 to 120 of Appendix 51 to the Substantive Application) to assess the Project against the TTPP – Decisions Version in Attachments 5 and 5A. This includes a statement from Mr Jackson summarising the planning assessment of the Project against the objectives and policies of the TTPP – Decisions Version. This provides yet further justification for Westpower's comfort that all matters potentially relevant to the TTPP are addressed (and before the Panel). The overall conclusion of this assessment is that the Project remains consistent with the TTPP – Decisions Version.
40. We address later in this memorandum that there will be many appeals on the TTPP – Decisions Version, likely covering the entire plan.

Changes to address marginal strips

41. The Department of Conservation raised in their Memorandum to the Panel Convener on 10 October 2025 at [10] that:<sup>30</sup>
- A further evidentiary/factual matter the D-G has identified is that the application did not identify a marginal strip over the private land adjoining Allen Creek over which an easement may be required to place and operate the proposed transmission lines and access road. DOC staff have raised this directly in discussions with the applicant, and it is anticipated that information will be provided to the Panel on this issue also.
42. That memorandum included other types of information that the Department sought more detail about (including reasoning for a concession term being sought over 30 years, and wildlife information (lizards, avifauna and bats)).
43. All relevant activities affecting all actual or potential marginal strips extending along and abutting Allen Creek, and their locations were included in the Substantive Application. The Project also affects Crown owned land administered by the Department under the Conservation Act 1987 and this was clear in the lodged application.

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<sup>30</sup> [DOC-memo-to-Convener.pdf](#).

44. In Memorandum #2, Westpower:
- (a) clarified the legal descriptions of land including actual and potential marginal strips;<sup>31</sup> and
  - (b) detailed the locations of the actual and potential marginal strips extending along and abutting Allen Creek (as well as Macgregor Creek and Waitaha River which are listed in the Substantive Application).<sup>32</sup>
45. In respect of the scope of including in the approvals sought the marginal strips extending along or abutting Allen Creek:
- (a) the Panel has sufficient detail to understand the nature of the Project as it relates to activities on actual or potential marginal strips extending along or abutting Allen Creek;
  - (b) the relevant activities that may affect those marginal strips, and parcels of land affected, are in the Substantive Application and assessed in the appended technical reports;
  - (c) the change:
    - (i) is within the Schedule 2 listing (i.e. the relevant activities that may affect marginal strips along Allen Creek relate to constructing and maintaining an access road and a 66kV transmission route conveying power from the scheme to the distribution connection point on State Highway 6); and
    - (ii) fairly and reasonably relates to the Substantive Application (as above the relevant activities are included in it); and
  - (d) there is no prejudice to parties invited to comment under s 53 due to the change because the activities and their locations were otherwise included in the Substantive Application.

Changes to address the helicopter use, hovering and landing

46. In Memorandum #2, Westpower updated Table 13 of Part B of the Substantive Application, which is a Summary of Activities and Types of Concession Required (see Attachment 6 of Memorandum #2).<sup>33</sup> Table 13 clarifies the concession type that Westpower and the Department agree is

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<sup>31</sup> [Westpower-Memorandum-2-Attachment-5A\\_Redacted.pdf](#).

<sup>32</sup> [Westpower-Memorandum-2-Attachment-5B.pdf](#).

<sup>33</sup> [Westpower-Memorandum-2-Attachment-6-updated.pdf](#).

appropriate for the Scheme/Project component or activity. Again, this is at a detailed level, well below any issue as to scope.

47. Helicopter use, hovering and landing was included in the Substantive Application and the effects assessed (particularly in respect of noise effects and on whio (see below)). Westpower's RMA and wildlife conditions therefore considered management of the activities relating to helicopter use. Appendix 52<sup>34</sup> of the Substantive Application also evaluates helicopter movements against the Conservation Management Strategy (**CMS**) and Conservation General Policy 2005 (**CGP**).<sup>35</sup> On lodgement, Westpower considered it would rely on the concessions held by existing helicopter operators during construction, maintenance and operation of the Project. Due to updated information, concession approvals are now required for helicopter use to construct, operate and maintain the weir, access road and transmission line (the relevance of this to the concession conditions will be worked through with the Department in a revised set). But these activities, and their effects, have always been assessed.
48. The change made to the Substantive Application is that concession approvals are sought for:
- (a) a short-term licence for helicopter use, hovering, and landing at Construction Staging Areas 1 and 2, and construction of the access road and transmission line; and
  - (b) a long-term licence for helicopter access to weather monitoring stations.
49. Construction helicopter movements are described and assessed in the Substantive Application, Part B, at 3.5.17 (Table 6: Anticipated Helicopter Flights During Construction) and at 6.10.1 and 6.17.1, Appendix 22 Whio Report,<sup>36</sup> Appendix 28: Recreation Report<sup>37</sup> and Appendix 29: Noise Report<sup>38</sup>, and Appendix 52: CMS and CGP.<sup>39</sup>
50. Westpower proposes to prepare and implement a specific Flight Management Plan for construction,<sup>40</sup> including to raise awareness of pilots flying to and from the Project Site of the proximity of high value ecological

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<sup>34</sup> [Appendix 52 management strategy and conservation general policy statutory assessment.](#)

<sup>35</sup> [Appendix 52 management strategy and conservation general policy statutory assessment.](#)

<sup>36</sup> [Appendix 22 Whio report.](#)

<sup>37</sup> [Appendix 28 Recreation report.](#)

<sup>38</sup> [Appendix 29 Noise report.](#)

<sup>39</sup> [Appendix 52 management strategy and conservation general policy statutory assessment](#), CGP 9.5, CMS 3.6.4.

<sup>40</sup> [Westpower-Memorandum-2-Attachment-3.pdf](#), Part D, Conditions 20 – 27.



areas supporting wildlife that can be adversely affected by helicopter noise. Existing helicopter use in the area is described at 5.5.3 of Part B. The use of helicopters will comply with the limits set out in New Zealand Standard NZS 6807:1994 “Noise Management and Land Use Planning for Helicopter Landing Areas”. Pre-mitigation, the construction noise effects are assessed as moderate and temporary in the Substantive Application and with mitigation, no more than minor and acceptable. Operational noise effects are also assessed at 6.17.2 and concluded to be negligible.

51. As clear from the above, in respect of the scope of including helicopter use, hovering and landing in the approvals sought:
- (a) the Panel has sufficient detail to understand the nature of the Project and the impact of approvals for helicopter use, hovering, and landing and none of that has changed through amending who will hold the relevant concession);
  - (b) the Substantive Application (including appendices) includes a description of the activities and assessments of effects, and the activities:
    - (i) are within the Schedule 2 listing (i.e. helicopter activities relates to constructing, maintain and operating a weir to divert a portion of the Waitaha River into an approximately 1.5 km tunnel to convey water to a powerhouse, constructing and maintaining an access road, and a 66kV transmission route conveying power from the scheme to the distribution connection point on State Highway 6); and
    - (ii) fairly and reasonably relate to the Substantive Application (as above the relevant activities are included in it); and
  - (c) there is no prejudice to parties invited to comment under s 53 due to the change because the activities and their locations were otherwise included in the Substantive Application.

*No proposal to move the Morgan Gorge swingbridge*

52. At the Project Overview Conference, the Panel Chair requested that Westpower address in writing whether moving the Morgan Gorge swingbridge is within the scope of its Schedule 2 Project.
53. The movement of the swingbridge is not a part of Westpower's proposal or application. Mr Greenaway, Westpower's recreational expert recommends consideration of the potential mitigation of moving the swingbridge to minimise views of the weir in section 4 of Appendix 28: Recreation Report.<sup>41</sup> This is also detailed in section 6.19.2.2 of Part B, Substantive Application. The recommendation is not adopted by Westpower, due to cost and on advice from its landscape and natural character expert, Mr Bentley, about the effects of doing so.<sup>42</sup> Removal and reestablishment of the Morgan Gorge swingbridge is not a change to the Substantive Application that is before the Panel.
54. Mr Beverley addressed in the Project Overview Conference that moving the swingbridge is not within the scope of Westpower's Substantive Application. Applying the framework above, that is for the reasons below:
- (a) there is no request for approvals relating to moving the swingbridge in the Substantive Application (it would be highly likely that such a change if proposed by Westpower would require RMA, concession and wildlife approvals);
  - (b) the existing sets of concession conditions before the Panel do not address any relevant authorisations to enable Westpower to perform that activity lawfully under the Conservation Act on stewardship land and manage it appropriately;
  - (c) there are no assessments of effects in the Substantive Application relating to removal of the swingbridge and reestablishment elsewhere and no methods to appropriately manage those effects;
  - (d) it is not within the Schedule 2, FTAA listing:
    - (i) explicitly, as a component of the Project;

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<sup>41</sup> [Waitaha Hydro Westpower - recreation assessment](#), at page 22; [Appendix-27-landscape-report.pdf](#), at page 36 in respect of locating the Scheme in close proximity to the existing modifications, and page 45 (4.4.3) in respect of Mr Greenaway's potential mitigation.

<sup>42</sup> Section 6.19.2.2 states "*The recommendation to relocate the swing bridge is cost-prohibitive, including realignment to the adjoining walking track sections, this would undermine the commercial viability of the Project.*"

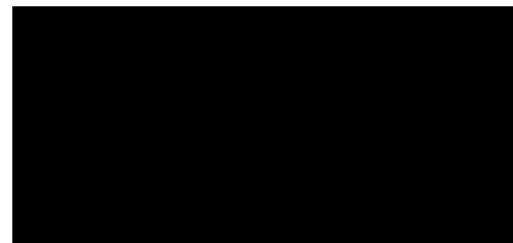
- (ii) taking a purposive approach, it is not fundamental to facilitating the delivery of the benefits of the Project; and
  - (iii) while removal may sit within the approximate geographic location, where it may be moved to is not contemplated (and remains a hypothetical); and
- (e) the nature and effects of the activity differ from other activities included in the Substantive Application (in respect of both the RMA approvals and the necessary concession approvals), and may be of a different scale (for example, careful assessment of landscape and natural character effects to an unmodified Outstanding Natural Landscape, and ecology effects around a proposed new location of the swingbridge, particularly in respect of effects on whio residing in the Waitaha Valley).
55. In any event, the Morgan Gorge swingbridge is an asset owned and managed by the Department on stewardship land. It is for the Department to consider and arrange its removal if it is of the view that is appropriate under the Conservation Act 1987. If that is sought by the Department in the future, Westpower will cooperate with the Department in relation to that matter.

*Question 13: Provide an update following the close of the appeal period for the Te Tai Poutini Plan noting:*

- a) Whether any appeals have been lodged; and*
  - b) To what extent the appeals relate to provisions of relevance to this Project.*
56. The appeal period was extended and closed two days ago on 8 December 2025, and s 274 notices must be filed by 19 January 2026. As above, Westpower considers it likely that all aspects of the plan are subject to appeals (but has not yet read all appeals).

57. The TTPP website links to all appeals received and includes over 30 appeals as at today.<sup>43</sup> Westpower's appeal is described and listed in the appeal notice and attachment linked in the footnote.<sup>44</sup>

**Dated:** 10 December 2025



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Paul Beverley / David Allen / Rachael Balasingam

**Counsel for Westpower Limited**

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<sup>43</sup> Appeals Received - Te Tai o Poutini Plan | West Coast District Plan, footnotes 21 – 23 above address appeals on particular rules of relevance to the Project.

<sup>44</sup> Microsoft Word - Notice of Appeal - Westpower Limited; Appendix-1-Appeal-Tables-Setting-Out-Relief-Sought.pdf  
Appendix-1-Appeal-Tables-Setting-Out-Relief-Sought.pdf