

**To: Minister of Conservation** (or Ministers delegate)

**From: David Newey as Delegate of Director-General of Conservation**

**Date: June 2017**

**Re Application: Notified Concession Application for a Run of the River Hydro Scheme on the Waitaha River**

**‘RECOMMENDATIONS TO THE DECISION MAKER INCLUDING A SUMMARY OF ALL OBJECTIONS AND COMMENTS RECEIVED IN RESPONSE TO PUBLIC NOTIFICATION AND RECOMMENDATIONS AS TO THE EXTENT TO WHICH THEY SHOULD BE ALLOWED OR ACCEPTED PURSUANT TO Part 3B AND 49(2)(d) OF THE CONSERVATION ACT 1987 FOR THE CONCESSION APPLICATION’**

**APPLICANT: Westpower Limited**

**FILE: PAC-00-04-119 / PERMISSION RECORD NUMBER: 34113-OTH**

## Introduction and Background

1. Westpower Limited applied on 30 July 2014 for concessions to construct, operate and maintain a 16-20 Mw run-of-river hydro-electric power scheme on the Waitaha River, located within the Waitaha Forest conservation area on public conservation land. More specifically the application includes:

A lease for permanent structures	A Weir and diversion structures including an intake channel, intake portal and upper tunnel portal.
	Subsurface tunnels and sediment settling basins. (Main tunnel 1.5km long, up to 8m wide x 7m high)
	Lower tunnel portal, penstock, powerhouse (15m x 30m) and surrounds, switchyard 20m x 20m, tailrace – Open canal 120m long 5 m wide at base, 3m deep with a 20m top width, stop-bank and flood protection works.
A Licence for temporary Structures	A raised platform for staff facilities and work area.
	A site for assembly and storage of machinery above flood levels.
	Access route between intake site and storage/assembly areas.
	Foot access from existing DOC foot tracks on true right and contractor's facilities platform.
	Staging/storage areas and treatment pond.
Easements	Short intake access road between tunnel portal and intake and associated protection works.
	Foot access track between existing DOC foot access track on the true right and main tunnel entrance
	Access road from tunnel to power house across Macgregor Creek (2km and approx. 10m wide), including associated drainage and protection works
	Overhead power lines, width approx. 10 adjacent to the rode.
	Maximum Water-take 23 m <sup>3</sup> /s (cumecs) Minimum residual flow 3.5 m <sup>3</sup> /s (cumecs) immediately below intake

2. The term of the Concession is proposed to be 49 years.
3. The process of compiling the Department's Officer's Report (Officer's Report) included extensive input from DOC Technical Advisors (Recreation, Freshwater and Flora / Fauna) as well as input from external contractors for Landscape and Geotechnical advice.
4. The Officer's Report is attached as appendix A and is part of the matrix of information that is relevant to your decision. The Hearing Chairman strongly recommends that you read the Officer's Report in its entirety.

## **Map**

5. A map of the scheme components is attached as Appendix C.

## **Officer's Report Summary**

6. By way of summary, the Officer's Report concluded on p117:

*“There would be a range of effects that the Department considers would be small and adequately avoided, remedied or mitigated for. These include: a loss of 3.62ha of vegetation, potential effects on Blue duck, bats, lizards, invertebrates and freshwater habitats and species.*

*The Department considers that there would be high adverse effects from: the industrial nature of the intrusion on the natural character of the area in the Waitaha River Valley at the top of Morgan Gorge; from the decrease in water through the abstraction reach; and from the industrial intrusion at the powerhouse site.*

*The Department also considers there would be significant adverse effects on kayakers through the change from the river being in a natural state to one where there would be a significantly reduced opportunity to kayak the Morgan Gorge and the stretch below the Gorge to the proposed the tailrace.*

*You need to consider whether the proposed mitigation measures are adequate and where there are no or inadequate measures you will need to decide whether the effects are such that the proposed hydro scheme should be declined pursuant to 17U(2)(b) of the Conservation Act and;*

*If this was the case and taking this into account whether the proposed activity would also be contrary to the provisions of the Act and the purposes for which the land is held because the conservation values are not able to be protected as*

*required by section 25 of the Conservation Act and pursuant to section 17U (3) of the Conservation Act.*

*You also need to consider whether the information available is insufficient or inadequate to fully assess the effects and where the information is insufficient or inadequate he will need to decide whether that the proposed hydro scheme should be declined pursuant to section 17U(2)(a) of the Conservation Act and;*

*A number of CGP and CMS policies rely for consistency on the effects being adequately mitigated. You need to consider whether as discussed in this report the proposed hydro scheme is consistent with the CGP's in particular; CGP policy 4.5 (b) Geological features, landforms and landforms policies, CMS section 3.3.4.3 - Management of Geodiversity and landscapes policy 1, and 3.7.2 – Activities on or in Beds of Rivers of Lakes policy 1 a) and e) and 3.5 Authorised uses of Public Conservation Lands objective 3. If you consider that the proposed hydro scheme is inconsistent with these policies then to grant a concession for the proposed hydro scheme would be inconsistent with 17 W(1) of the Conservation Act.*

*In considering whether to form the intention to grant you should also keep in mind that, if ultimately the proposal is granted, Westpower would need to develop a number of detailed management plans in accordance with standards imposed by special conditions. Westpower would need to determine appropriate methodology in order to demonstrate that each standard can be met. Failure to do so would mean that it would not be able to exercise the consent. In effect, it would fail to meet a condition subsequent of the grant.”*

**The Officer's Report (decision in Principle) provided two options:**

**7. “Option 1**

- 1. Approve in principle the granting of notified lease, licence and easement concessions for a term of 49 years for a Hydro scheme to Westpower Limited subject to the standard concession contracts; and the special conditions identified in this report.*
- 2. Agree that if this application is approved in principle then the intention to grant the concessions for a Hydro scheme will be publicly notified; and*
- 3. Agree that the intention to grant be placed in two local papers (the Greymouth Star and The Hokitika Guardian) and the 4 daily newspapers published in Auckland, Wellington, Christchurch and Dunedin.*

**Or Option 2**

- 4. Decline the application pursuant to:*

- a) *Section 17U(2)(a) of the Conservation Act 1987 on the basis that the information available is insufficient or inadequate to fully assess the effects.*
- b) *Section 17U (2) (b) of the Conservation Act 1987 on the basis that there are no adequate methods or no reasonable methods for remedying, avoiding or mitigating all the significant adverse effects of the activity on Natural Character and Recreational values, as discussed in this report.*
- c) *Section 17(U) (3) on the basis that some aspects of the proposed hydro scheme are contrary to the purposes for which the land is held; and*
- d) *Section 17W(1) on the basis that the application is inconsistent with parts of the Conservation General Policy and the West Coast CMS.”*

### **Proposed Special Concession Conditions – ‘Conditional Grant’**

8. The Officer’s Report contained a number of concession conditions proposed as a condition of grant of the authorisations. These are set out in Appendix 1 of the Officer’s Report (starting page 132). Of particular note, the authorisations are subject to Westpower preparing final Management Plans for audit and approval of the Grantor, before any construction could commence, including plans for:
- a) Construction Management Plan
  - b) Wastewater, Groundwater, Erosion and Sediment Management
  - c) Construction Noise Management Plan
  - d) Landscape Management Plan
  - e) Rehabilitation Management Plan
  - f) Pest and Weed Control Management Plan
  - g) Protection of Terrestrial and Aquatic Fauna Management Plan
  - h) Environmental Monitoring Plan

### **Approval in Principle Decision**

9. The Deputy Director-General, Michael Slater on the 19 August 2016 formed the intention to grant lease, licence and easement concessions to Westpower Limited to construct the 16-20 MW Run of River hydro scheme on the Waitaha River within the Waitaha Forest Conservation Area.
10. The decision maker made the following comment on the report *“would like the Hearing Commissioner to explore further the impact on kayaking and whether the mitigation proposed is adequate.”*

### **Public Notification**

11. The ‘Intention to Grant’ was publicly notified for 41 working days on Friday 16 September 2016 on the Department’s website and in the Grey Star and Hokitika

Guardian and for 40 working days on Saturday 17 September 2016 in the Christchurch Press, Otago Daily Times, New Zealand Herald and Dominion Post.

12. Submissions closed on Monday 14 November 2016.

### **Submissions Received**

13. 3264 submissions were received, 2864 were template submissions from Forest and Bird members, there were also other template submissions from Whitewater New Zealand (WWNZ) (74) and the Greymouth polytechnic. One submission from the Green party had 2343 signatures on it.

14. Of the submissions received, 23 were in support of the intention to grant, 3241 in opposition to the intention to grant and one neutral.

15. Copies of all submissions received are available on the Department's website at the following link:

<http://www.doc.govt.nz/get-involved/have-your-say/all-consultations/2016/intention-to-grant-a-run-of-the-river-hydro-scheme-concession/>

16. The Department has prepared a 'submission by submission' summary of all individual submissions received, which identifies all the main relevant issues in the submission. This 'submission by submission' summary is provided in an excel spreadsheet and is available at the following link: [DOC-2916920](#). This document has been used as the background document to prepare the official 'Summary of Submissions' in this report that is required under section 49 (2) (d) of the Conservation Act.

### **Hearing**

17. 72 submitters initially asked to be heard. 55 individual submitters and groups including a number of additional expert witnesses appearing for both WWNZ and Westpower, were heard by an appointed hearing panel at a hearing held in Hokitika between 5-8 December 2016.

18. Hearing notes are attached as appendix B and linked here [DOC-2982150](#), this includes additional links to all the papers tabled by submitters at the hearing.

### **Westpower's Right of Reply**

19. Westpower Limited presented an oral and written right of reply to matters raised in the submissions on the last day of the hearing 8 December 2016, their reply is attached as Appendix D [DOC-2937865](#) and includes the following 12 items;

1. Table – Analysis of Submissions [DOC-2937744](#)
2. Notes on the WWNZ submission by Martin Doyle [DOC-2937745](#)
3. Waitaha Hearing Panel Address Rob Caldwell [DOC-2937746](#)

4. Waitaha Summary Statement of Rob Greenaway [DOC-2937747](#)
5. Waitaha Hydro Landscape Submission Response – James Bentley [DOC-2937748](#)
6. Concession hearing response memo – EOS Ecology [DOC-2937749](#)
7. Westpower Waitaha Reply Submissions – Introduction Paul Radich [DOC-2937750](#)
8. Statutory paper - Paul Radich [DOC-2937751](#)
9. Terrestrial Fauna – Rhys Buckingham [DOC-2937755](#)
10. Waitaha Hydro – Conservation Board letter 4.12.15 [DOC-2937752](#)
11. Letter to Rob Caldwell (from WWNZ) – presented at hearing on 7.12.16 [DOC-2937753](#)
12. WHS Response to DOC request for further information – Recreation (kayaking) [DOC-2937754](#)

<b>Purpose and Format of this report</b>
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20. The purpose of this report is to provide you with a summary of all objections and comments<sup>1</sup> received in response to the public notification of the Intention to Grant, and to recommend to you:

- The extent to which the submissions should be “allowed”;
- The extent to which submissions should be “accepted”;
- The consequences, of “allowing and accepting” submissions, for whether the application should be granted under the statutory tests.

21. These recommendations are contained in the attached table, titled

“Summary of all objections and comments received in response to public notification and recommendations as to the extent to which they should be allowed or accepted pursuant to section 49(2) (d) and 17u of the Conservation Act 1987’

22. For the purposes of the table, submissions have been broken down into issues and grouped where possible under the relevant legal tests in Part 3B of the Conservation Act.

23. In the table, the Hearing Chairman first recommends whether you should “allow” submissions. This reflects whether they are relevant under the Act. The Hearing

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1. <sup>1</sup> The Act refers variously to “objections” “comments” and “submissions” in the relevant section (section 49). In this report and table, we use the term “submission” to refer generally to comments, objections and submissions.

Chairman then recommends whether the “allowed” submissions should be “accepted”<sup>2</sup>. This reflects whether he considers that they have substantive merit.

24. This report also provides the Hearing Chairman’s ‘overall’ recommendation on whether the application should be granted. (Refer para 41)
25. You should note that any recommendation that the Hearing Chairman makes to you, as the Director General’s delegate, does not fetter your discretion to come to a different view on any issues covered in the report. While you should consider the Hearing Chairman’s recommendations and the content of the summary of submissions provided to you, it is for you alone to decide, subject to administrative law principles, whether or not to proceed with the proposal and grant concessions pursuant to Part 3B of the Conservation Act.
26. The Applicant’s response to submissions is contained in a separate column in the table. The Applicant was sent a copy of this report in draft on 2 June 2017, Westpower provided comments on 6 July 2017, the full set of comments are attached to this report as appendix B. The Hearing Chairman has responded to those comments:
- at the end of this report under ‘Applicant Comments’.
  - throughout the report by making various changes

<b>Summary of key recommendations in the table</b>
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This section contains a summary of key recommendations that, if accepted, would result in the application being declined.

**Effects on Natural Character, Landscape and Visual Amenity - 17(U) (2)(b) section 3.3 of the table in this report.**

27. The Hearing Chairman considers that the submissions have added to the understanding of the natural character, landscape and visual amenity values of the area under application and the potential effects on these values.
28. The Hearing Chairman recommends that you accept submissions that:
- i. The area that would be affected by the activity holds very high natural character, landscape and visual amenity values, including intrinsic values;
  - ii. The activity would have significant adverse effects on those values; and
  - iii. those adverse effects cannot be **adequately** mitigated.

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<sup>2</sup> The “allowed” and “accepted” terminology is found in section 49 of the Conservation Act.



29. The Hearing Chairman recommends that the application be declined pursuant to 17(U)(2)(b) as there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects on natural character, visual amenity and landscape values.

**Effects on Recreational Values – Tramping - 17(U)(2)(b) section 3.51 of the table in this report.**

30. The Hearing Chairman considers that submissions have added to the understanding of the values of the area for trampers, and the potential effects on those values.

31. The Hearing Chairman recommends you accept submissions that the proposed activity would have significant adverse effects on the values of the area and on the tramping experience, and these effects cannot be adequately mitigated.

~~32. The Hearing Chairman recommends that you accept submissions that state:~~

- ~~• The area is highly valued by trampers, for its beauty, remoteness and unspoilt character;~~
- ~~• Tramping in the Valley is valued as a “pinnaele” experience;~~
- ~~• Even though parts of the tramping experience would not, specifically, be affected by the proposed activity, the experience as a whole, of a remote, intact wilderness, would be significantly affected; and~~
- ~~• those effects could not be mitigated.~~

33. The Hearing Chairman recommends that the application be declined pursuant to 17(U)(2)(b) as there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects on trampers.

**Effects on Recreational Values - Kayaking- 17(U)(2)(b) sections 2.3 and 3.52 of the table in this report.**

34. The Hearing Chairman considers that submissions have contributed to understanding the value of the area to kayakers, how kayaking trips are planned and carried out, and how the kayaking experience would be affected by the proposed activity.

35. The Hearing Chairman recommends that you accept submissions that:

- that the Morgan Gorge is ‘the Jewel in the Crown’ or the ‘Pinnacle’ of whitewater kayaking opportunities and is known for this nationally and internationally.
- The **adverse** effects of the scheme on kayaking would be significant, both in terms of the quality of the experience and its availability.

- the scheme would reduce kayaking opportunities for the whole river, but particularly for the gorge and the lower part of the abstraction reach.
- that two “no take “ days (or even an increased number) would not be adequate mitigation for these effects.

36. The Hearing Chairman considers that conditions available to mitigate the impacts on kayakers are inadequate and recommends that the application be declined pursuant to 17(U)(2)(b) as there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects on kayakers.

**Contrary to the provisions of the Act or Purposes for which the land is held (17U(3)) sections 4.2 and 4.3 3-52 of the table in this report.**

37. As noted above, the Hearing Chairman recommends that you accept submissions on the effects on natural character, visual amenity, landscape, tramping and kayaking values. These conclusions lead inevitably to the Hearing Chairman also recommending that you accept submissions that the proposed hydro scheme is both contrary to the provisions of the Act and the purposes for which the land under application is held.

38. The Hearing Chairman therefore recommends that you decline the application pursuant to 17U(3) of the Conservation Act.

**Consistency with the Conservation Management Strategy 17W(1) section 6 of the table in this report.**

39. Again given the recommendations on natural character, visual amenity landscape, tramping and kayaking values the Hearing Chairman considers that the proposed hydro scheme is not consistent with the West Coast Conservation Management Strategy (CMS) policies and should therefore be declined pursuant to 17W(1) .

40. In particular, the proposed hydro scheme would not be consistent with CMS policies:

- 3.3.4.3 - Management of Geodiversity and landscapes policy 1;
- 3.5 - Authorised uses of Public Conservation Lands - objective 3;
- 3.7.2 - Activities on or in Beds of Rivers of Lakes policy 1 (a) and (e);
- 3.7.11 – Utilities – policy 3; and
- 4.2.6.3 - Geodiversity, landform and landscapes in 2020. Outcome for Hokitika Place.

## **Overall Recommendation**

41. The Hearing Chairman recommends that you decline Westpower’s application for concessions to construct and operate a hydro scheme on the Waitaha River, on the basis of the recommendations set out in the attached table, and in particular on the basis of the key recommendations set out above.

The Chair recommends that the Minister

<b>Note</b> the contents of the attached table summarising submissions and providing the Chair’s recommendations	<b>Yes/No</b>
<b>Accept</b> the Chair’s recommendations as to the extent to which submissions should be allowed and accepted, as set out in the “recommendations” column of the table	<b>Yes/No</b>
<b>Accept</b> the Chair’s overall recommendation that the application be declined pursuant to sections 17U(2)(b), 17U(3) and 17W(1) of the Conservation Act 1987	<b>Yes/No</b>

### **Applicant’s view regarding “new” material**

42. The Hearing Chairman would like to bring to your attention one key matter raised by the Applicant **in their Right of Reply and in their comments on this report. This concerns** whether the submissions process raised ‘new’ material, and if not, whether you can, or should, reach a different view from the first decision –maker.
43. The Applicant considers that submissions did not introduce any new material that should lead the Department to reach a different decision from that reached by the first decision maker (Mr Slater) when he formed his “intention to grant” the application.
44. The Officer’s Report (which informed Mr Slater’s decision) presented the Department’s analysis and recommendations on the application at that time.
45. The Officer’s Report concluded that there would be high adverse effects on natural character and significant adverse effects on kayakers (p117 of Decision in Principle Officers Report). The report asked the first decision-maker to consider whether the effects were such that the application should be declined.
46. The first decision-maker did not decline the application; rather he formed the intention to grant. As stated above, he noted: *“would like the Hearing Commissioner to explore further the impact on kayaking and whether the mitigation proposed is adequate.”*

47. The Chairman accepts that the application as submitted by Westpower was comprehensive. He acknowledges that Westpower provided a suite of expert reports addressing all material matters. Further, the Department provided expert reports, either written by its own subject matter experts, or by experts commissioned from outside the Department. There was sufficient information for Mr Slater to form his intention to grant.
48. That being said, the submission process brought to light further information about, among other things, the nature and extent of current use of the area and the effects of the proposal, on natural character, landscape and visual amenity and recreational values. Whether or not the information in submissions was “new” the Hearing Chairman considers that submissions gave a much greater insight into those effects than the Officer’s Report provided. For example, submissions gave a fuller understanding of how kayaking trips are planned and carried out and how the scheme would impact on this (refer section 2.3 of the table in this report).
- ~~49. Many submissions addressed effects on natural character and recreation. Whether or not the information in submissions was “new” the Hearing Chairman considers that submissions gave a much greater insight into those effects than the Officer’s Report provided. For example, submissions gave a fuller understanding of how kayaking trips are planned and carried out and how the scheme would impact on this (refer section 2.3 of the table in this report).~~
50. Hearing these submissions has led the Hearing Chairman to reach a different conclusion from that reached by the first decision-maker, as to effects on natural character, **landscape, visual amenity, and** recreation. In response to the first decision-maker’s comment noted above, the Hearing Chairman recommends that you accept submissions that the impact on kayaking is significant and the mitigation inadequate.

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**PART 1: SUMMARY OF ALL OBJECTIONS AND COMMENTS RECEIVED IN RESPONSE TO PUBLIC NOTIFICATION AND RECOMMENDATIONS AS TO THE EXTENT TO WHICH THEY SHOULD BE ALLOWED OR ACCEPTED PURSUANT TO SECTION 49(2)(D) OF THE CONSERVATION ACT 1987**

Issue Number	Statutory Test	Submitter Topic/Issue	Submitters (Examples only, not complete list of those who raised issue)	Westpower's Response	Departments position in Original Report (Ref)	Recommendations as to the extent to which they should be allowed or accepted pursuant to section 49(2) (d)
1 17 S(2)	Submissions relating to 17 S(2) reasons and sufficient information to be satisfied that it is both appropriate and lawful to grant in terms of 17 U	<p>The following main issues were raised in regard to 17S (2) and are discussed below:</p> <ul style="list-style-type: none"> <li>1.1 Power is surplus to Requirements</li> <li>1.2 Alternative Power Sources to hydro should be used</li> <li>1.3 Financial Viability – no sound Economic Justification</li> <li>1.4 Relevant Information Relating to the Applicant (Including Ability to carry out the proposed Activity)</li> </ul>		<p>(Ref Paul Radich Statutory paper)</p> <p><b>“Section 17S(2)</b>  21. Section 17S(2) states that Westpower is required to “<i>supply reasons for the request and sufficient information to satisfy the Minister, in terms of section 17U, that it is both appropriate to grant the lease, profit à prendre, licence, or easement and lawful to grant it</i>”.</p> <p>22. Westpower has provided a detailed application which covers the reasons for the application, and addresses why it is considered appropriate to grant this concession.</p> <p>23. Westpower has provided extensive information and expert technical assessment as part of its application and further information provided. This includes:</p> <ul style="list-style-type: none"> <li>(a) a detailed description of the nature of the concession activity;</li> <li>(b) a detailed description and a comprehensive set of expert assessments of the potential effects;</li> <li>(c) a detailed description and expert assessments of the measures that can be undertaken to avoid, remedy and mitigate adverse effects; and</li> <li>(d) a detailed environmental impact assessment.” </li></ul>	See comments below	See comments below

Issue Number	Statutory Test	Submitter Topic/Issue	Submitters (Examples only, not complete list of those who raised issue)	Westpower's Response	Departments position in Original Report (Ref)	Recommendations as to the extent to which they should be allowed or accepted pursuant to section 49(2) (d)
				<p>Westpower responded that it has provided a detailed application which covers the reasons for the application, and addresses why it is considered appropriate to grant this concession.</p> <p>Westpower also stated that they had provided extensive information and expert technical assessment as part of its application and in further information provided" through the application process.: "This includes:</p> <ul style="list-style-type: none"> <li>(a) a detailed description of the nature of the concession activity;</li> <li>(b) a detailed description and a comprehensive set of expert assessments of the potential effects;</li> <li>(c) a detailed description and expert assessments of the measures that can be undertaken to avoid, remedy and mitigate adverse effects; and</li> <li>(d) a detailed environmental impact assessment.</li> </ul> <p>Ref Introductory Paper - Submissions in Reply for Westpower Items 1-23 this paper provides the rationale for the scheme;</p> <p>"1. The Waitaha River Hydro Scheme has been designed and presented to the Department of Conservation and to the community only after the most careful thought and meticulous planning. All of that work has been undertaken, and the lengthy concession and consenting</p>		



Issue Number	Statutory Test	Submitter Topic/Issue	Submitters (Examples only, not complete list of those who raised issue)	Westpower's Response	Departments position in Original Report (Ref)	Recommendations as to the extent to which they should be allowed or accepted pursuant to section 49(2) (d)
				<p>process has been embarked upon, only because of the value that the project will bring to the community as a whole.</p> <p>2. It is a scheme which, through the generation of between 110 and 120 GWh of electricity per annum, will provide renewable electricity for the benefit of the region's consumers, while reducing New Zealand's climate change liability. In addition to direct benefits through increases in employment and expenditure, the cheaper and more efficient energy produced (through making wholesale prices more competitive and reducing transmission losses) will lower the cost of energy in the region and enable savings to be passed on to the region's consumers – Westpower's beneficiaries – through lower retail electricity prices and larger annual rebates.</p> <p>3. It is a given; an unavoidable consequence; a quid pro quo (however it may be phrased) for a project of this nature, which produces those benefits, that there will be effects of varying degrees on the catchment and its use. But, through the most careful planning and design and through the proposed imposition of a range of conditions and mitigation measures, the effects are, on expert advice, in most cases minor or less than minor and in the very few situations where that is not able to be achieved, the effects on the catchment are able to be</p>		

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				<p>mitigated. Moreover, the effect of the scheme on the region as a whole is low.</p> <p>4. The net position when looking at s 17U of the Conservation Act 1987 ("the Act"), which requires an assessment of the nature of the activity and its effects, is that the positive effects of the proposal – the benefits it brings – outweigh any other effects.</p> <p>5. Alongside the positive environmental effects that accrue for the benefit of the region and for the country in using run-of-the-river hydroelectricity development wherever possible, and the economic benefits for people and businesses in the region, this is a scheme that is on all fours with the country's climate change obligations, with New Zealand's energy strategy, with the West Coast Conservation Management Plan and with the relevant policies and objectives in the District Plan.</p> <p>6. The rationale for the scheme must be front and centre. It is only when that is clear that a holistic approach to an assessment of the nature of the activity and its effects under s 17U can be undertaken." ...</p> <p>AEE Vol 1 pages 5-9 Vol 1 2.2 p 7; 117 - 123 Vol 4 Appendix 21.</p>		

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				Westpower response to the Baldwin report 23 September 2015. DOC Officer's Report Pages 7-8		
1.1		<p><b>Power is Surplus to Requirements</b>  Many submitters claim there is not a need for this power and Whitewater NZ (WWNZ) claimed that this has not been assessed in the application/report. Tony Baldwin claims that the demand for electricity has dropped since 2011 and the supply capacity for the West Coast has become significantly greater than demand. The wholesale electricity price has become flat and that's why most of the other West Coast new generation projects have been cancelled or deferred. Similar for the rest of the country. Tony Baldwin states <i>"it is clear that no additional generation capacity is required to meet expected demand growth on Westpower's network ..."</i> and that there is <i>"a surplus of electricity supply relative to demand, the Westpower's region has a surplus of supply capacity for some decades."</i></p> <p>Mr Baldwin submits that Westpower's forecast for growth in demand is not consistent with other power company's forecasts.</p> <p>Other points made by submitters:</p> <ul style="list-style-type: none"> <li>This proposal is too small and too far away from the energy consumption to make any significant contribution to security of supply even just considering the West Coast.</li> <li>The entire country is supplied by national grid, no need for West Coast to be self-sufficient or independent of the grid, that is the reason for a national grid.</li> </ul>	82 submissions plus the WWNZ and Forest & Bird template submissions including; Tony Baldwin, Green Party, Permolat Trust, NZ Federation of Freshwater Anglers, Council of Outdoor Recreation Associations NZ, Federated Mountain Clubs Alpine Kayak Club, Mic Hopkinson, Ben Gia, Neil Silverwood,	See general response above and Refer <b>Introductory Paper - Submissions in Reply for Westpower, item 2 above</b>  AEE Vol 1 pages 5-9 Vol 1 2.2 p 7; 117 - 123 Vol 4 Appendix 21. Westpower response to the Baldwin report 23 September 2015. DOC Officer's Report Pages 7-8	Whether power was considered as being 'surplus to requirements', in regards to whether it is appropriate to grant or not in terms of 17 S(2) was not considered in the Officer's report.  However reliability and security of supply was provided as drivers (reason) for the hydro scheme proposal. This information is not provided directly in the Decision in Principle Officers Report.	In regard to 'Power is surplus to requirements' and increased reliability of supply (both the submissions in support and in opposition to the scheme): the Hearing Chairman is not satisfied that these submissions are relevant under the Conservation Act and therefore recommends that they not be allowed.

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		<ul style="list-style-type: none"> <li>• The scheme would not provide any more reliability of supply.</li> <li>• A transmission upgrade in 2011 already provides an acceptable level of security of supply.</li> </ul> <p>Submitters objecting claim that if the scheme is not needed then it is unlikely to be appropriate to grant under 17 S (2).</p> <p>Mr Baldwin submits that there is not sufficient reason to conclude that it would be appropriate to grant under section 17 S(2) - and the activity must be both appropriate and lawful. Submitter claims that the reasons are not supported by the evidence or are not relevant under part 3B.</p> <p>Mr Baldwin submits that New Zealand still has a very large quantity of new generation that has already been consented which is waiting in the wings to see if demand rises to a level that would make it economic to build.</p> <p>Friends of the Earth stated that if the Concession was granted it will go to court, the Act is clear and it shouldn't have to go to court.</p> <p><b>Submissions in Support</b>  Federated Farmers submitted in support of the application and stated that there would be an increased security of supply particularly during extreme weather events and if there was an earthquake.</p> <p>Westland Milk Products submitted that power from run of the river schemes like this are vital for continuance of power supplies on the West Coast during extreme weather events and earthquakes. They also stated that <i>“there is about 1 or 2 power outages a year. They use millions of</i></p>	Katarina Te Maiharoa on behalf of the Waitaha Taiwhenua o Waitaki, Hilke Bruns			

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		<p><i>dollars of power. Farmers are currently ill-equipped to cope with power losses. There are 400 shareholders and 33-34 only have generators.”</i></p> <p>Federated Farmers of NZ supports the scheme for security of supply of electricity for New Zealanders especially for the Westland Dairy Factory.</p> <p>New Zealand Energy also submitted that once constructed it would provide 110-120 Gwh per year, equivalent to providing for about 12,000households, and make the area almost self-sufficient.</p>				
1.2		<p><b>Alternative power sources to hydro should be used</b>  Many submitters submit that alternative power sources should be used such as solar, de-centralised power generation through self-generation, wind, batteries. Some stated that <i>“Hydro is outdated and will soon be taken over by more sustainable technologies that cause less environmental degradation. The scheme is moving in the opposite direction to the way the world is going. Hydro schemes are being removed around the world.”</i></p> <p>Mr Baldwin submits that for the Waitaha scheme to compete against low cost wind and geothermal, it would need to have an impressively low capital cost. How this would be achieved is not apparent. Westpower has not disclosed any of its key assumptions.</p> <p><b>Submissions in Support</b>  A couple of submitters supported the application in regard to the benefits of hydro being a renewable and sustainable power supply.</p>	43 Submitters plus all the WWNZ and Forest and Bird template submissions Including; Council of Outdoor Recreation Association of NZ	See general response above and <b>Refer Introductory Paper - Submissions in Reply for Westpower, in particular item two above.</b>	Whether ‘alternative power sources’ to hydro should be used in regards to whether it is appropriate to grant or not in terms of 17 S(2) was not considered in the Officer’s report.	<p>The Hearing Chairman does not consider the Submissions in regards to alternative power sources are relevant under the Conservation Act and recommends that they not be allowed.</p> <p>In regards to Pioneer Energy’s submission that the application is consistent with NZ’s Energy Strategy goal; the Hearing Chairman recommends that the submission be allowed. Government policy is relevant to concession decisions to the extent that the policy is not contrary to the requirements of the Act. The pursuit of renewable energy is not, per se, contrary to the</p>

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		<p>Westland Milk Products submitted that the benefits of a clean air scheme to West Coast communities should be a major consideration.</p> <p>Pioneer Energy Limited and Development West Coast submitted that the application is consistent with NZ's Energy Strategy goal of 90% renewable energy by 2025</p>				<p>requirements of the Conservation Act. However, <b>the scheme would make only a small contribution to the Energy Strategy goal, and this does not outweigh the negative effect of the scheme on the particular area. That being the case,</b> given the very specific statutory factors that you must consider, the Chairman recommends that you give little weight to any contribution the proposed activity might make to the Energy Strategy goal.</p>
1.3		<p><b>Financial Viability - No sound economic justification/benefit</b>  Many submitters referred to and supported information prepared by Tony Baldwin. Key points submitted were:</p> <p><b>Financial Viability/Economic Justification</b></p> <p>Tony Baldwin states it is not satisfactory for DOC to rely on financial analysis provided by Westpower that has not been independently critiqued. And that financial viability is relevant in regards to the 'appropriateness' test and that the Departments report considers financial viability only in relation to the risk of the crown ending up with the cost of running the scheme or removing it.</p> <p><i>"If future electricity prices are assumed to be high enough, and/or the cost of building and capital are assumed low enough. Any hydro scheme can be made to appear financially viable, however none of Westpower's</i></p>	<p>32 Submitters plus all the WWNZ template submissions including; Tony Baldwin, Permolat Trust, Mic Hopkinson, Neil Smart</p>	<p>See general response above <b>and Refer Introductory paper - Submissions in Reply for Westpower, items 2- 13 includes a summary of the economic benefits. In particular the following items refer to economic benefits (items 2-6 as above);</b></p> <p><b>"7. The starting point is the 31 March 2014 report of Brown Copeland &amp; Co on the economic effects of the proposed scheme.</b></p> <p><b>8. As that report notes, because Westpower is 100% community owned, any profits generated by the scheme will be passed through to the community by way of rebates, and the scheme will provide a significant long term asset to be</b></p>	<p>The Department accepted the 'Baldwin Report' and further information on Financial Viability from Westpower under 17 S4(a) and(b). The Department considered both the 'Baldwin' report provided by Tony Baldwin which included an assessment of financial viability and Westpower's response to the Baldwin report which also included a report on the schemes financial viability.</p> <p>The Department did not consider it necessary to seek independent advice nor was the scheme considered</p>	<p><b>Financial Viability</b>  The Hearing Chairman considers the submissions in regard to financial viability should be allowed. Financial viability was considered in the Officer's Report under 17 S(2). The submissions are noted, however the Hearing Chairman is satisfied the Department has addressed this issue adequately and recommends that you not accept submissions seeking an independent review of viability.</p>

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		<p><i>assumptions are disclosed in any of the information provided by or on behalf of Westpower.</i>"</p> <p>Mr Baldwin asserts that based on current market information, it seems unlikely that the Waitaha scheme would become economic in the reasonably foreseeable future.</p> <p>He states further that <i>"Westpower's reasons for the scheme are not supported by the evidence and do not provide sufficient reason to conclude that it would be appropriate to grant in terms on 17 S(2). - and the activity must be both appropriate and lawful."</i></p> <p>The activity is not likely to be financially viable in the reasonably foreseeable future therefore not appropriate to grant under 17S(2).</p> <p>Financial viability is a distinct matter to be considered by the Minister in deciding to grant a concession. (Fiordland Monorail precedent - financial viability was given as one of five reasons to decline that application.)</p> <p>It is impossible from the Officer's report to determine whether Westpower's assertions on financial viability are realistic and reliable.</p> <p>There is a wide range of alternative locations ... outside the relevant conservation area. (this point is discussed later in this report under submissions relevant to 17 (U)(4)(a)) Issue 6.)</p> <p>Financial risks due to tunnel conditions being more difficult than expected due to location near fault.</p>		<p>owned by West Coast residents and businesses.</p> <p>9. The report examines trends relating to growth in population, employment, agriculture and tourism in the West Coast region and in the Westland district and makes the point that:</p> <p><i>"Improvements in electricity supply, self-sufficiency and reliability will help sustain employment in the key growth sectors for the Westland district and West Coast regional economies by providing increased confidence for business investment in Westland and on the West Coast through a more reliable and cost effective electricity supply. In the short to medium term the project's construction will also provide additional jobs in the district and region."</i></p> <p>10. Accordingly, tourism and recreation will in fact benefit from the scheme at a regional level. In this sense, to allow a confined set of effects on a confined group from the 3km stretch in question to dominate the conversation is an inappropriately narrow approach.</p> <p>11. The Brown Copeland report goes on to discuss the way in which the proposed scheme aligns with the government's energy policy. In the first place, it aligns with the obligations we have as a country under New Zealand's emissions trading scheme ("the ETS") through the Climate</p>	<p>specifically in terms of its economic justification.</p> <p>The Officer's report at paragraph 2.21, considered that Westpower has used appropriate methodology and rigor to demonstrate that the Waitaha Hydro project is of a low risk financially to the Department in terms of the Department's ending up with the cost of running the scheme, or removing it and undertaking possible site remediation by default. The report also considered that, in the unlikely scenario that Westpower became financially unviable, there would be a high likelihood that there would be a purchaser for the asset.</p>	<p><b>Economic Justification/Economic benefits</b></p> <p>The Hearing Chairman considers that the submissions in regard to economic justification/benefits both in support of the application and in opposition are not relevant. Therefore, he recommends that these submissions not be allowed.</p>

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		<p>Mr Baldwin submits that Westpower should not be given an 'option' to build the scheme sometime in the future if and when it becomes economic.</p> <p><b>Economic justification/benefits</b> Will hardly provide an increase in employment</p> <p>Keeping the Waitaha as it is will have greater impact on jobs and produce more financial profit than the hydro scheme</p> <p>Impact on NZ economy should be considered from NZ becoming a less attractive place as an international kayaking destination.</p> <p>Mr Baldwin submits that <i>"if a higher security of supply is wanted by Westpower and its customers a range of much less expensive options are available well ahead of building a 16-20MW hydro scheme."</i></p> <p><b>Submissions in Support</b> A few of the submitters supported the application in regards to it being of economic benefit to the region, it being a locally owned company and that power costs to locals would be lower. (eg Westland Milk Products, Unions West Coast, Bruce Smith, Charlie Macbeath)</p> <p>Federated Farmers submitted that the proposed construction and operation would provide a valuable opportunity. New Zealand Energy submits that there would be significant economic benefits of the proposal through robust infrastructure. <i>"The construction will use local products and services with possibly \$60-80 million possibly spent on the West Coast. Estimated at 20 full time equivalent jobs with 1.8 million in wages and salaries."</i></p>		<p><b>Change Response Act 2002.</b> The ETS has been introduced progressively since 2009 with the stationary energy sector (which applies to coal, gas and geothermal electricity generation) being brought into the ETS in 2010.</p> <p>12. New Zealand Units (NZUs) need to be expended relative to emissions released. The government gifted NZUs to particular industry participants, which did not include the stationary energy sector. The consequence of that is to raise the cost of thermal generation (i.e. coal, gas and geothermal-fired generation) relative to those in the sector using renewables such as hydro and wind generation, which are outside the ETS. An annual saving of \$1.9m can be achieved if thermal generation alone is displaced.</p> <p>13. Moreover, from a national economic perspective, the fewer units which need to be purchased, the more competitive the New Zealand economy will be, and the lower the economic impact will be in meeting our greenhouse gas obligations.</p> <p>14. But, more than that, the government has adopted an economy-wide target for a 50% reduction in New Zealand's carbon-equivalent net emissions compared to 1990 levels, by 2050. Emissions from electricity generation (which includes the use of coal, gas and geothermal energy) accounted for 19.6% of New Zealand's</p>		



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		<p><i>Also indirect effects from additional expenditure of those employed, e.g. supermarkets, restaurants and bars.</i></p> <p>Development West Coast submitted that "As Westpower is community owned lower costs will be passed through to local businesses and residential consumers"</p>		<p>total energy sector emissions in 2012. In addition, the government has a target under the New Zealand Energy Strategy 2011-20216 that 90% of electricity generation be from renewable sources by 2025 (providing this does not affect security of supply)"....</p> <p><u>References:</u> AEE Vol 1 pages 5-9 Vol 1 2.2 p 7; 117 - 123 Vol 4 Appendix 21. Westpower response to the Baldwin report 23 September 2015. DOC Officer's Report Pages 7-8</p>		
1.4		<p><b>Relevant Information Relating to the Applicant (Including Ability to carry out the proposed Activity)</b></p> <p>Ben Gaia - Westpower has shown they can't clean up after themselves.</p> <p>A couple of submitters support the application in regards to Westpower having an excellent track record and proven success for this type of development.</p> <p>Mick Hopkinson stated that the applicant needs to include the cost of removal of the scheme at the end of its life in the CBA.</p>	Ben Gaia, Mick Hopkinson.	<p>Westpower responded in <b>their analysis of submissions paper</b> stating: "Balancing the interests of stakeholders and the environment is not new to Westpower, and in fact is a key consideration in the operation of the electricity sub transmission and distribution network and of course the Amethyst Hydro scheme." And "Westpower has proven its capability to undertake projects of this nature through the successful construction and commissioning of the Amethyst Hydro Scheme also in South Westland. Westpower has a highly experienced hydro engineer on staff, and access to highly capable technical expertise within the wider Westpower Group and through external sources."</p>	<p>Section 5.0, paragraphs 5.1-5.3 of the Officer's report notes that no convictions or current criminal charges have been disclosed and states that Westpower currently holds a number of Concessions with the Department including Amethyst Hydro and there have been no compliance issues. Westpower has a good credit record.</p> <p>Paragraph 6.13 recommends a bond set via an independent risk assessment to cover the cost of removal of the structures if the concession was to be granted.</p>	<p>The submissions relating to the applicant's ability to undertake the activity are allowed. The applicant's ability to carry out the activity forms part of the application pursuant to 17S(1)(f) of the Conservation Act 1987 and is a matter that can be considered under 17 U (d) (any information received under 17S can be considered).</p> <p>The Hearing Chairman notes the submissions but is satisfied the applicant would have the ability to undertake the activity. He recommends that you accept submissions commending the Applicant's track record for this type of development.</p>

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						Mr Hopkinson's submission noting the need to include the cost of removal of the scheme is allowed. The Hearing Chairman recommends that if (contrary to his recommendations in this report) the concession were granted, conditions requiring bonds, removal of all structures and rehabilitation should be included.
<b>2 17U(2)(a)</b>	Submissions related to 17U(2)(a) 'sufficiency / adequacy of information to enable assessment of effects'	<p>The following main issues were raised in regard to 17U(2)(a) and are discussed below:</p> <ul style="list-style-type: none"> <li>2.1 Inadequate Information on threatened species</li> <li>2.2 Deficient Cultural Assessment</li> <li>2.3 Information on Kayaking effects not complete</li> <li>2.4 Inadequate information on the impacts on the whitewater as a natural feature as a component of natural character</li> <li>2.5 Values of the Area – Lack of Understanding</li> </ul> <p><b>General Submission in Support</b> New Zealand Energy submitted that they have reviewed the application, requests for further information and DOC Officer's report and submit that the entire process has been undertaken thoroughly and accurately and the recommendation fair and just.</p>		<p><b>General Response to Adequacy of Information</b> From Westpower's response ref Paul Radich Statutory Paper In terms of section 17U(2)(a) and the level of information provided as part of this application, the following points should be noted:</p> <p><b>Section 17U(2) - level of information and avoiding, remedying and mitigation adverse effects</b> "34. Section 17U(2) of the Act states: <i>The Minister may decline any application if the Minister considers that—</i> <i>(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,</i></p>	<p>The Officer's report states at paragraph 4.481 and 4.482, p90:</p> <p>4.481 .... <i>"In most sections of this report the Department considers that there is sufficient information on the effects of this proposal to enable the Minister to assess the effects of the proposed activity and that the range of methods proposed to avoid, remedy or mitigate effects are adequate and reasonable. However in those instance where it is not so clear the decision maker will have to consider whether the application should be</i></p>	<p>See panel responses to each 2.1-2.5 item below.</p> <p>The Hearing Chairman recommends that you allow New Zealand Energy's submission supporting the application process.</p>

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				<p><i>remedy, or mitigate the adverse effects) of any activity, structure, or facility; or</i></p> <p><i>(b) There are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility."</i></p> <p>From item 35.  “(a) this is a very detailed application that reflects the significance of this proposal on public conservation land;  (b) there has been extensive advice from highly regarded technical experts;  (c) those experts have collectively spent significant time on the application site;  (d) the information provided by Westpower's experts has been subject to expert technical peer review – both internal and external to the Department;  (e) Westpower has proposed a substantial suite of proposed conditions and management plans; and  (f) there has been very little in the way of expert assessment to challenge the level or quality of that information provided by Westpower, the Department and their experts.”</p> <p>Item 36. “Westpower believes that the nature and extent of information provided is more than appropriate for this application.”</p> <p>Item 37. Westpower states that:  “Inevitably there will be areas where</p>	<p><i>declined pursuant to this section 17U(2)."</i></p> <p>4.482 “As also indicated in this report there are other parts of the application where it might be considered that there is inadequate information or not adequate methods to describe how significant adverse effects would be avoided, remedied or mitigated.”</p> <p>This was pointed out in the report at paragraph 4.188 and 4.461 in regards to lizards and the Minister needed to decide if the information available on lizards was inadequate or insufficient to assess the effects.</p> <p>Paragraph 4.465 and 4.467 indicate that the Department believes that the freshwater values are adequately described however acknowledges there is a level of uncertainty regarding the effects on some ‘At risk’ native fish and the Minister would need to decide if the information is insufficient or inadequate to assess the affects.</p>	

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				<p>further information could be gathered. That is the inherent nature of expert assessment in the natural resources field. The Department's report confirms that Westpower has provided sufficient information on almost all of the potential effects of this proposal to enable the Minister to assess the effects of the scheme.”</p> <p>Item 38 Westpower states: “However, the Department’s report also identifies limited areas where there were questions around the sufficiency of information. In the Department’s report the decision-maker was presented with an option to decline the application under section 17U(2)(a). With respect, the decision-maker appropriately did not select that option. There has been no new information provided through submissions or the hearing that should lead the Department to change its view on this matter.”</p> <p>Westpower also provided the following response in Paul Radich’s Statutory paper  <b>“Section 17U(1)(a) – nature of activity and type of structure 28. The application documentation explains in detail the nature of the proposed activity and structures involved.</b></p> <p><b>Section 17U(1)(b) – the effects of the activity and structure</b></p>	<p>This is also alluded to at paragraph 4.483 in regards to the development envelope approach and certainty around the adverse effects and the minister needing to be satisfied that there are clear bottom lines.</p>	

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				<p>29. The application documentation explains in detail the nature of the effects anticipated to arise from the proposed activity and structures involved.</p> <p><b>Section 17U(1)(c) – measures to avoid, remedy, mitigate</b></p> <p>30. The application documentation explains in detail the proposed measures to avoid, remedy and mitigate the effects that are anticipated to arise.</p> <p><b>Section 17U(1)(d) – information received by the Minister</b></p> <p>31. Westpower has responded to the additional information received by the Minister, including the information from WWNZ and Mr Baldwin.</p> <p><b>Section 17U(1)(e) – environmental impact assessment</b></p> <p>32. Westpower has provided a detailed environmental impact assessment.</p> <p><b>Section 17U(1)(f) – any oral or written submissions</b></p> <p>33. The matters raised in oral and written submissions will be addressed in detail in Westpower's reply."</p> <p><u>References:</u>  AEE  Vol 1 vi, section 10.2.2 p160; Section 13 p202  DOC Officer's Report pages 42, 59, 83, 89-90,</p>		

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2.1	Submissions related to 17U(2)(a) 'sufficiency / adequacy of information to enable assessment of effects'	<p><b>Inadequate Information on Effects on threatened Species</b></p> <p>Many submitters state that the applicant has not adequately assessed the presence of and effects on threatened species including bats, lizards and Whio including the importance of Morgan Gorge on Whio and the unknown effect on the wider population of Whio than just the local population.</p> <p>Submitters state there is no certainty whether bat habitat would be destroyed and this alone is contrary to the purpose for which the land is held, and Doc's Bat Recovery Plan.</p> <p>Submitters submit that there is insufficient information on the impact on weka.</p> <p>Submitters submit that there is insufficient information on koaro and other at risk fish species.</p>	<p>2864 Forest and Bird Template</p> <p>Hilke Bruns Keith Morfett West coast Branch Green Party (2343 signatures) Clare Backes Jessica Matheson Waitaha Executive Grandmothers Council of the Waitaha Nation Jeremy Rodgers Richard Suggate Bruce Stuart-Menteath Zelka Linda Grammer and family Makere Stewart-Harawira</p>	See general comments above on Adequacy of Information	<p>The Officer's report at paragraph 4.163 states:  <i>"Westpower suggests only a low number of threatened species are present however the Department does not agree with this statement. The site contains significant habitat of threatened and representative bird and bat species. Impacts potentially include loss of breeding and/or feeding habitat through felling of trees and clearance of habitats mainly for the road development, and locally about the portal, weir and other workings. The greatest potential impact would be the potential loss of a bat roost during felling, if this happened this would be a significant effect. However, if Westpower could avoid felling any bat roosts then the potential effects on bats would be considered minor. Effects on forest birds would also be considered negligible if Westpower could avoid important food source trees. If Westpower adheres to the proposed conditions it is considered that effects on fauna values would be</i></p>	<p>The Hearing Chairman recommends that submissions relating to adequacy/sufficiency of information on effects on threatened species be allowed.</p> <p>The Hearing Chairman is satisfied that the information on threatened species is adequate to enable the effects to be assessed and that (were the application to be granted) the effects on threatened species would be adequately addressed through the proposed conditions. The Hearing Chairman accepts Westpower's response that its application was very detailed, appropriately reflecting the significance of the proposal. He recommends that you not accept submissions as to inadequacy/insufficiency of information on species.</p>

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					<p><i>adequately avoided, remedied and mitigated.”</i></p> <p>And in regards to lizards the Officer's report discusses conclusions in respect to lizards in paragraphs 4.185-4.188 with the main points being:</p> <ul style="list-style-type: none"> <li>• The site is considered significant for lizards.</li> <li>• The amount of loss is described by the applicant's specialist as both “negligible” or “of very little adverse effect on the lizard fauna of the project area”. However the Department considered this is not the case <u>if</u> the Westland green gecko or a unique clade of the speckled skink is present.</li> </ul> <p>4.188 The Department considers that the likely presence of a threatened gecko species and total removal of less well represented “At Risk” skink habitat would be considered to be a significant local negative effect and potentially a nationally significant negative effect and would</p>	

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					<p>cause a loss of biodiversity values.</p> <p>A range of mitigation measures are proposed at para 4.183 and concludes that the minister needs to decide whether the proposed mitigation measures would avoid, remedy and mitigate adequately the effects on lizards or whether the information available on lizards is insufficient or inadequate to assess the effects</p>	
2.2	Submissions related to 17U(2)(a) 'sufficiency / adequacy of information to enable assessment of effects'	<p><b>Deficient cultural Assessment report.</b> The Waitaha Executive Grandmothers Council of the Waitaha Nation submits that only 1 page in the 190 pages of DOC report is devoted to cultural assessment and this is severely inadequate. They also stated the process was inconsistent with section 4 (part 1 item 4) - give effect to principles of treaty of Waitangi - partnership and active protection, they claim that neither has been given effect to.</p>	Waitaha Executive Grandmothers Council of the Waitaha Nation	<p>See general comments above on Adequacy of Information</p> <p>Westpower also responds <b>in their analysis of submissions paper:</b> "Ngati Waewae and Makawhio have the mandate from Ngati Tahu to speak on the application as the scheme is located within their rohe. Both Iwi are happy with the scheme and any concerns they may have had have been addressed.</p> <p>Submissions made on cultural issues have, with all due respect, been made by members of other hapu who do not have the mandate to speak on behalf of the Iwi whose rohe is subject to the scheme."</p>	Paragraphs 4.309 – 4.313 of the Decision in Principle Officers Report are relevant and comment that the application area is in the Takiwai of Te Runanga o Ngati Waewae and Te Runanga o Makawhio. Consultation occurred with both iwi on two occasions the first time in written form with the provision of the application information and again at a meeting on 1 December 2015. Both iwi indicated that concerns had been addressed directly with the applicant and they were happy with the application	The Hearing Chairman recommends that this submission be allowed. The Hearing Chairman recommends that it not be accepted for the reasons stated in Westpower's response (in the column to the left).



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					<p>and no further comment was provided.</p> <p>The Officer's report at paragraph 4.313, p67 agreed with Westpower that potential effects on cultural values are no more than minor and if the applicant adheres to the proposed conditions above then the Department considers that the effects on cultural values would be adequately avoided, remedied and mitigated.</p>	
2.3	Submissions related to 17U(2)(a) 'sufficiency / adequacy of information to enable assessment of effects'	<p><b>Information on Kayaking Effects Not Complete</b> A number of submitters submitted that: The application is incomplete, contains errors in its assessment of effects on kayaking and recreation values and omits key data on impacts on whitewater kayaking and natural values:</p> <p><b>Waitaha is the Pinnacle of Whitewater Kayaking/ Nationally Internationally significant</b> Many submitters, including a number of kayakers, some professional, who had travelled and paddled extensively around the world indicated that the Department has underestimated the values of the Waitaha as a kayaking resource and that the Waitaha is the 'pinnacle' of Whitewater kayaking in New Zealand and Morgan Gorge is the Mt Cook or Everest of whitewater runs in NZ (or jewel in the crown) and some claimed the river as the best in the world.</p>	<p>WWNZ (and expert witnesses) 74 WWNZ Template Submissions</p> <p>Victoria University Canoe Club Dave Quant Keith Riley Mic Hopkinson</p>	<p>See general comments above on Adequacy of Information</p> <p>Westpower responded in regards to comments on <b>the high values of the whitewater run:</b></p> <p>From their Analysis of submissions paper:</p> <p>"AEE and Recreation Report: Internationally and nationally significant for extreme kayaking (Morgan Gorge, upper Waitaha Gorge) and high grade kayaking (Waitaha Gorge) as part of the West Coast kayaking complex."</p> <p>Rob Greenaway,</p>	<p><b>Waitaha is the Pinnacle of Whitewater Kayaking/ Nationally Internationally significant</b></p> <p>At paragraph 4.417 Mr. England described the overall character of the Waitaha River as the pinnacle of one-day wilderness adventure kayaking on the West Coast and a classic grade 5 river trip of world class. The Waitaha offers an intense and aggressive whitewater challenge set amongst spectacular gorges, with a known challenge held back</p>	<p>It is recommended the submissions in regards to adequacy of information about kayaking values are allowed as they are considered relevant under 17U(2)(a) of the Conservation Act.</p> <p>The Hearing Chairman considers that these submissions contribute to a greater understanding of the values of the kayaking resource and the potential impacts on kayaking.</p> <p>The submissions on the Waitaha River and</p>

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		<p>A number of submitters claimed the Waitaha is world/internationally renowned and is a key international destination with paddlers coming from around the world to paddle it. Justin Venable submitted that to most accomplished kayakers making the pilgrimage to the Westcoast ranks amongst the most highly coveted destinations on Earth.</p> <p>Keith Riley who is the only paddler who has paddled the whole river and stated he was on the first descent of the Morgan Gorge and the first descent of the Waitaha from its source. He stated that he has had a 15 year relationship with the river. He has explored rivers worldwide and can attest to the world class natural beauty of the Waitaha and Morgan Gorge. He submits that rivers like this is why he has chosen the West Coast as his home. A number of paddlers submitted that the reason they now live on the West Coast is because of its rivers for kayaking.</p> <p>Michal Abbot submits there are few rivers in the world that compare and these places are fast disappearing.</p> <p>Zak Shaw submitted that he has travelled the world kayaking and is an adventure photographer. He says the Waitaha is New Zealand's hardest river, it is isolated but has easy access (via helicopter) and powerful like no other. The Waitaha is on the cover of the whitewater kayak book. He is a lecturer at the Greymouth polytech, he described at the hearing how he takes his students up the Waitaha river and stated that the river has inspirational effects on his students and has value for future generations.</p> <p>Justin Venable submitted that to approve this hydro is to sanction chopping the fangs out of this wild beast by effectively dewatering its most beautiful and challenging feature.</p>		<p>Consultant recreation &amp; tourism planner  <b>Rob Greenaway &amp; Associates</b>  Dip Parks &amp; Recreation Management (Distinction)  Member:  NZ Association for Impact Assessment  NZ Recreation Association (Fellow)  Sir Edmund Hillary Outdoor Recreation Council</p> <p>“Rob Greenaway response: Confirm that the kayaking values are of national and international significance.”</p> <p><b>References:</b>  AEE  Vol1: page 107-110  Appendix 19 The Recreation Report p5-6, 29-32, 44-47, 55-56  DOC Officers Report p82</p>	<p>for the end of the day in the form of the Morgan Gorge portage. Morgan Gorge now being paddled leaves a delectable challenge open to the world's most skilled whitewater kayakers. And at paragraph 4.419 Whitewater kayakers spoken to in 2014 by the Department, commented that other than the Waitaha River only one other river (the Hokitika) and some of its tributaries such as the Mungo and Whitcombe Rivers offers such a range and variety of extremely challenging white water for the most expert of kayakers. However, because a number of the Waitaha runs are more challenging still, thus resulting in its pinnacle status and there is no other resource offering the same mix and level of extremely challenging white water that can substitute for the Waitaha River.</p> <p>At paragraph 4.429 of the Officer's report the Department noted impacts include effects on highly-experienced kayakers who may seek to paddle the</p>	<p>particularly the Morgan Gorge being the 'Jewel in the Crown' or the 'Pinnacle' of whitewater kayaking opportunities in New Zealand have added to the understanding of the significance of the values of the kayaking resource both nationally and internationally. Likewise the submissions from kayakers who have paddled throughout the world and note that the Waitaha rates as world class internationally.</p> <p>The information on how a kayak trip through the Waitaha River and the Morgan Gorge is run is considered new information and also contributes to understanding the effects on kayakers.</p> <p>Particularly the information around the advanced planning required to plan a trip, including needing to scout the river and rapids on days prior to the planned trip.</p> <p>In addition, the submission on the additional portage of 1.5km potentially coming at the end of a long day's</p>

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		<p>Mic Hopkinson director of New Zealand kayak school submitted at the hearing that if New Zealand was to establish a World Heritage Park for wild rivers, the top two rivers on the list would be the Waitaha and the Hokitika and a recreation report of an internationally famous river such at the Waitaha should include comparison with rivers in the USA, Canada, the Himalayas, the Karakorum and Europe. ... the Waitaha River and the view into Morgan Gorge ranks as high as any visual and emotional experience the submitter has had in the rest of the World.</p> <p>This view is supported by other similar submissions stating for e.g. Morgan Gorge should have world heritage protection, or a Water Conservation Order.</p> <p>A video was presented at the hearing which can be viewed at the following link: <a href="https://vimeo.com/190836386/">https://vimeo.com/190836386/</a></p> <p><b>No Substitute for the Waitaha River</b> WWNZ on Page 39 of their submission note that other class V runs on the West Coast will not necessarily offer a substitute for the Waitaha Gorge run as they are more often compromised by flow availability ... and do not offer the same wilderness or wild scenic kayaking experience.</p> <p><b>Low Usage</b> A number of submitters stated that the use level of the river is a poor indicator of value and that because only a few had paddled the Gorge this provides additional inspiration such as the case for Mouth Cook, Everest etc.</p> <p>Local paddler Gareth Fryer submitted that more people use the area than you think not all are recorded.</p> <p><b>Keep for Future Generations</b></p>		<p><b>Run Worthy of a Water Conservation Order</b></p> <p><b>Westpower gave a reference but no specific comment:</b></p> <p><b>AEE Vol 1: p162</b></p> <p><b>No Substitute for The Waitaha River</b> Westpower responds in their Analysis of Submissions:</p>	<p>Morgan Gorge, and on all kayakers on the river who portage the Gorge section but then paddle down past Douglas Creek (The location of the proposed tailrace) to a take-out point with the latter potentially facing an additional 1530 metre portage when flows are inadequate due to the scheme.</p> <p>In addition, at paragraph 4.430 the Department considered that both national and international visitors, and in particularly kayakers, regardless of whether or not they have the ability to paddle the Morgan Gorge, highly value and appreciate the intrinsic worth of retaining rivers on the West Coast and around the world that can flow uninterrupted and are free of hydro schemes and their associated structures.</p> <p>Paragraph 4.431 states: <b>The Department notes Westpower's conclusion that mitigations are available to avoid and mitigate the scale of effects on kayaking through a number of the proposed conditions</b></p>	<p>paddling for these types of trips has added to the understanding of effects.</p> <p>The significance of Kiwi Flat at the entrance to Morgan Gorge in terms of being a focal point for the next stage of the kayak trip is also new information to consider.</p> <p><del>The Hearing Chairman recommends that you accept submissions that the impact of the proposed activity on kayaking was not fully described in the Officer's report.</del> The Hearing Chairman recommends that you accept submissions that the Morgan Gorge is 'the Jewel in the Crown' or the 'Pinnacle' of whitewater kayaking opportunities and is known for this nationally and internationally.</p> <p>The Hearing Chairman considers the submissions summarised in this section to be also relevant to section 3.52. The Hearing Chairman has taken into account these submissions in making recommendations under that section.</p>

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		<p>A number of submitters claimed they would like the opportunity to paddle the gorge and wanted it left for future generations to be able to paddle.</p> <p>The Waitaha is described by a number of submitters as both inspirational and motivational for new kayakers and that as technology and training improves more kayakers are likely to be able to paddle rivers such as this.</p> <p>Grant Timlin submitted that these young people kayaking the Morgan Gorge are the Sir Ed Hillarys of our time. Almost all of our lowland rivers are degraded. Please leave the upland rivers, particularly the Waitaha River to roar and rumble through the gorges unimpeded so tall poppies of the future have a place to grow.</p> <p><b>How a Waitaha Kayak Trip is undertaken</b> A number of kayakers that have paddled the river including Morgan Gorge explained how a trip down the river and/ or through the Morgan Gorge is planned and undertaken.</p> <p>What was clear from these trip descriptions was that they required a high degree of advanced planning, not only would out of town kayakers have to plan a trip to the West Coast (the best time being Feb – March) but the trip involves organising helicopter access, correct flow levels and local knowledge.</p> <p>It seems that sometimes the whole river is paddled from just below Moonbeam hut (or from Lake Ivory) offering a 3-5 day experience and sometimes just the sections of the river such as from the top of the Morgan Gorge which could be a 6-9 hour adventure.</p> <p>The river and specifically rapids in the Morgan Gorge need to be well scouted first, sometimes the day before the planned trip or during the preceding week/weeks. Some</p>		<p>“AEE and Recreation Report: At the regional level the effect of the scheme on West Coast recreation and tourism generally will be very slight due to the high number of alternatives available for all activities affected by the scheme and the relatively low level of use of the Kiwi Flat area.</p> <p>There is a high level of choice for high-grade kayaking options on the West Coast and the Waitaha contributes to a relatively abundant kayaking opportunity setting. Over 58 runs on the West Coast. The loss of kayaking opportunity has to be considered at a <i>regional</i> scale. There are a range of river catchments in this part of the West Coast; although each is different/unique, they are all wild rivers and share common elements, e.g. indigenous vegetation cover, hot springs, gorges, and waterfalls. The level of natural character would be the same/similar for other upper catchments on West Coast: (Landscape Report, pp 11, 36, 37).</p> <p>In terms of the whitewater characteristics, there are 14 grade V rivers on the West Coast and there are 31 grade IV to V rivers: (Recreation report, pp 6, 54 -see also p 30 for rankings of the Waitaha River, compared to other West Coast rivers).”</p> <p>“Rob Greenaway response: Any definition of a recreation resource as unique must be done with caution where a resource is identified as unique there is no option but to assess adverse effects on it as</p>	<p><b>including no take days/ceases to abstraction.</b></p> <p>The Department <b>nevertheless</b> has reservations about the adequacy of that mitigation in light of the fact that the river would change from its natural state and would no longer be available to kayakers except on a very small number of ‘cease to abstract’ days. The Department agreed with Westpower that the scheme would likely result in net ‘high’ adverse effects on kayaking the Morgan Gorge...</p> <p><b>Low Use</b> At paragraph 4.426 <b>the report states that Westpower has provided a detailed description and assessment of the recreation use of the Waitaha Valley and</b> the Department agrees that the Waitaha study area receives low use from kayakers (50 – 100 PA), and trampers and hunters (&lt;150 PA). The Department, however, considers that this level of use is not uncommon for Backcountry – Remote Zones on the West Coast due to its remoteness and the fact that</p>	<p>The Hearing Chairman considers there is <del>now</del> sufficient and adequate information about effects on kayaking to satisfy section 17U(2)(a).</p>

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		<p>parts of the river are portaged by kayakers while others will paddle through (depending on the conditions on the day and the difficulty of the rapid).</p> <p>In addition, the kayak parties all float out onto the Kiwi Flat area (which is the entrance to Morgan Gorge and the location of the proposed intake structures) where they 'pause' and get out of the kayaks and walk onto the swing bridge to make a decision on whether to paddle the Gorge or not. It was submitted that this location is a key focal point of the kayak trip. It was also submitted that this stage of the trip can come at the end of a long day and the additional 1530m of portage resulting from dewatering of the Gorge would ruin the trip.</p> <p><b>Errors and missing Information (page 63-109 WWNZ Submission)</b>  WWNZ states that <i>"in paras 4.366 to 4.431 (of the DOC report) DOC presents data from Westpower and Whitewater NZ on flow impacts of the scheme on recreation values. Peppered through the document are many comments from Westpower, which, as outlined earlier, are often irrelevant or incorrect or misleading. And that there is a severe lack of critical analysis of all this data in the DOC report which ultimately means it is virtually impossible to tell what the real impacts of the proposed scheme are, and therefore whether the mitigation proposed is acceptable, and is sufficient, or not. Ultimately it means some areas where mitigation is required are not even recognized, and so none is given, and so the information, process and analysis is still not complete for the decision maker to make a decision."</i></p> <p>WWNZ submits that para 4.374-4.384 show that the kayaking resource in the Morgan Gorge will be completely lost if the scheme goes ahead (Note: not including the two no take days as mitigation)</p>		<p>significant, but this would result in significant adverse effects assessments for almost all development proposals as a matter of course.</p> <p>Waitaha River is one of 14 grade 5 runs accessible by helicopter only on the West Coast and Morgan Gorge constitutes a smaller cadre of rarely paddled challenging settings. I am comfortable that regional effects on kayaking of the scheme are low due to the availability of alternatives. Even without the Waitaha the West Coast would remain a kayaking mecca."</p> <p><b>Low Usage</b>  Westpower response: "AEE and Recreation Report: Fewer than 10 individuals might kayak the Upper Waitaha Gorge and/or Morgan Gorge in any one year, although these sections might not be run at all for long periods and there is a limited pool of suitably skilled kayakers.</p> <p>Since 2002 and over a period of 13 years there have been 6-7 attempts to kayak the Morgan Gorge and that usage of the Morgan Gorge section of the river is expected to continue to be low and there may be many lengthy periods of time when it remains un kayaked.</p> <p>This low usage number is directly relevant to the number of no take days</p>	<p>it is relatively hard to travel through.</p> <p>No specific comments were made in the Officer's report in regard to substituting other class V rivers for the class V runs on the Waitaha nor on the Waitaha providing a number of different individual runs.</p> <p><b>Comments in the Officer's Report in regards to whether there are no adequate methods or no reasonable methods for remedying, avoiding or mitigating the adverse effects of the activity on kayakers are presented in section 3.52 of this table below.</b></p>	

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		<p>WWNZ is critical of the use of the word 'may' in paragraph 4.388 ... <i>the situation would remain that when the power scheme is operating at capacity no days may be suitable for kayakers to complete a run of the Waitaha River, including Morgan Gorge.</i> And they claim this is misleading and it should state <i>no days will be suitable.</i></p> <p>WWNZ claim that Westpower is incorrect with their claim that 2 no -take days is all that would be needed (para 4.389-4.395) as mitigation because there will be other augmented flows when kayakers can use the resource. And states further that the loss of each of the 60 days when Morgan Gorge is able to be kayaked is not capable of being mitigated, and 2 days being offered as access to the resource is far from sufficient.</p> <p>WWNZ also submit that para 4.397 which quotes from Westpower's application is untrue and misleading: '<i>When flows are suitable for kayaking in the Gorge (naturally or via a cease to abstraction) there should be no experience of hydro developments until the powerhouse is encountered near Alpha Creek</i>' and that kayakers would experience the hydro scheme (p72):</p> <ul style="list-style-type: none"> <li>• at the weir and structures at the entrance to the Morgan Gorge and the loss of the entrance rapid to the Morgan Gorge</li> <li>• at the sediment flushing pipe whose exit point (and possibly detritus or 'marking' from which) will be part way up a cliff somewhere part way down the Morgan Gorge</li> <li>• at any point where the penstock coming down to the powerhouse will be visible from the river below the Morgan Gorge</li> </ul>		<p>that is appropriate to be offered in mitigation of adverse effects. However, despite these low use levels the catchment is an important recreation setting due to its accessible but remote natural setting and the characteristics of the whitewater resource).</p> <p>Rob Greenaway (Westpower's expert) also responded: "The effect of the scheme on kayaking in the Morgan Gorge and the whole river is high. I could only use a higher level of assessment if the kayaking option was unavailable to a significant degree. This would be the case if the proposal affected a stretch of kayaking water which was more frequently kayaked and did not require significant advanced planning to access."</p> <p><b>References:</b>  AEE  Vol1: page, 31 107-110  Appendix 19 The Recreation Report  Response to request for further information on kayaking 30 April 2015  Comments on WWNZ (Jan) report - provided to DOC 30 April 2015  Comments on WWNZ (May) report - provided to DOC November 2015  DOC Officer's Report page 78</p> <p><b>The response to effects being adequate from loss of natural flows are presented in section 3.52 of this table below.</b></p>		<p><b>In regards to the WWNZ submission 'Errors and missing information in the DOC report'</b>  It is recommended the submissions are allowed and the comments are noted.</p> <p>The Hearing Chairman acknowledges that Westpower and WWNZ disagree on some of the data presented in the application and in particular whether there would be any days other than the two 'no take' days proposed that the river could be kayaked.</p> <p><b>He has considered this matter further at section 3.52.</b></p>

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		<ul style="list-style-type: none"> <li>from signage all over the river warning of dangers and hazards associated with the hydro scheme</li> <li>For those kayakers portaging the Morgan Gorge, after doing a Waitaha Gorge run, they may experience a very different lower part of the river below the Morgan Gorge (due to there being less water)</li> </ul> <p>In regards to the reach below the Morgan Gorge, this is part of the Waitaha Gorge Run and is highly valued and will be affected, the recreation report implies small contributions from side streams would ameliorate impacts, WWNZ claim that this would not be the case and the flow contributions would not be sufficient to make this reach kayakable. (Refer page 31, WWNZ Submission)</p> <p>WWNZ disagrees with DOCs statement in the report at paragraph 4.398 <i>'The Department agrees with Westpower that the challenge in protecting the regional kayaking resource, with the Morgan Gorge in mind, would be establishing a protocol for ceases to abstraction that is suitably flexible for kayakers. The .....'</i></p> <p>WWNZ (Page 64) submit that DOC has ignored the extensive evidence WWNZ has provided to demonstrate that the kayaking runs in the Waitaha River, and in the Morgan Gorge in particular, are outstanding and of national and international significance. Therefore, an assessment of 'ceases to abstraction' predicated on the Morgan Gorge kayaking run only being of regional importance will likely be flawed and reach incorrect conclusions, including the conclusions around the amount and degree of mitigation required. WWNZ submits that DOC needs to find out and have agreement from parties that consent conditions are agreeable and workable, the proposed condition on no take days is unnecessarily</p>		<p><b>DOC Report Criticisms</b>  <b>From Westpower's Analysis of submissions:</b>  "Westpower considers that the Department's report was based on a careful analysis of the application including the expert reports and the nature and level of effects and a sound understanding of the legal and planning framework."</p>		

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		<p>restrictive and unworkable. Particularly: the concessionaire can withhold granting the no take day, all communications have to be in writing and the cease of water would only be from 7.00am – 5.00pm. no take day conditions would need rewriting if the scheme was to go ahead. (WWNZ)</p> <p>WWNZ submits that paragraph 4.413 is unfair and the lack of agreement between WWNZ and Westpower is nothing to do with diverse views of WWNZ members but everything to do with what is proposed, and the special place it is proposed in, and the conflict that this poses at so many levels.</p> <p>WWNZ submit that paragraph 4.423 is used out of context. And they submit that the following quote from their report to DOC more correctly states the true value. <i>“The West Coast of the South Island has a number of rivers that provide outstanding kayaking and rafting whitewater and amenity values over a range of classes of difficulty (England, 2011). Other than the Waitaha River only one other river offers such a range and variety of extremely challenging whitewater for the most expert of kayakers, namely the Hokitika River, and some of its tributaries such as the Mungo and Whitcombe Rivers. However, a number of the Waitaha runs are more challenging still, thus resulting in its pinnacle status. There is no other resource offering the same mix and level of extremely challenging whitewater that can substitute for the Waitaha River. Thus, its loss would be a travesty for the New Zealand and international whitewater kayaking community”</i></p> <p>Specifically, WWNZ gives examples of errors and missing information: Paras 4.371 and 4.372 which provides data from Westpower's application are irrelevant to the discussion on</p>				



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		<p>impacts as the data bears no relation to required flows to kayak the Morgan Gorge.</p> <p>Para 4.373 which is about the proposed 'no take days' enabling the kayaking of Morgan Gorge to continue in addition to when the flow through the Gorge is sufficient to kayak. WWNZ states that this is wrong because the Morgan Gorge will not be able to be paddled on any other days besides the suitable no take days with the scheme in place. WWNZ state that this error is repeated in para 4.387 and 4.396, 4.397, 4.407 and these are misleading.</p> <p>Para 4.383 contains a mistake: that the section of river below Morgan Gorge to the Power house is largely a grade 2 experience. This is incorrect WWNZ describe it as Class IV easing to Class III easing to Class II as the river is descended. They also state on p40 of their submission in regards to this part of the abstraction reach, the degradation in Class and difficulty in the whitewater and rapids below the Morgan Gorge as the river is descended is one reason why the river is accessed even by experienced kayakers on foot from the road end to make this short run. It offers the opportunity for kayakers to access the river at different points commensurate with their ability and the degree of challenge they would like to experience and run. It also offers them a chance to test themselves on more difficult whitewater piece by piece - a classic technique where 'creek' boaters learn the art of making steep creek descents by running one rapid, then another above it, and so on, until the whole difficult and steep run can be linked together.</p> <p>4.408 and 4.409 are misleading (these paragraphs refer to Westpower's comments that there is a high level of choice for high-grade kayak options on the West Coast, and the Waitaha contributes to a relatively abundant kayaking opportunity) and they state there is no resource offering</p>				

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		<p>the same mix and level of extremely challenging whitewater that can substitute for the Waitaha.</p> <p>Para 4.423 data is used out of context.</p> <p>The information on Kayaking effects is Insufficient:</p> <p>WWNZ submits (page 31-43) a critique of the key documents that the application relies heavily on and claims these key documents fail to correctly represent some of the important key values of the catchment and therefore the true values of the impacts are severely underestimated. Particularly:</p> <ul style="list-style-type: none"> <li>• Literature referred to in the Greenaway report is out of date and prior to when different reaches of the Waitaha were first run and underestimates the national and international importance of all the runs in the Waitaha River.</li> <li>• The Greenaway report assumes other Class V runs elsewhere on the Coast offer suitable substitutes when they don't.</li> <li>• Some literature referred to does not recognise the significance of the kayaking resource for visiting overseas kayakers and outdoors people.</li> <li>• WWNZ did not agree with some aspects of the RiVAS report referred to.</li> <li>• The flows needed for kayaking the Morgan Gorge referred to in the Greenaway recreation report are incorrect.</li> <li>• The recreation report fails to assess the significance of all the runs on the Waitaha River which is needed as the development will impinge on them all.</li> <li>• Suggestions in the Recreation report that there are many class V runs on the West Coast that will offer a substitute for runs on the Waitaha are wrong (the reasons for this are explained in the submission)</li> </ul>				

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		<p><i>“The Greenaway Recreation report (Westpower’s recreation report) seems a poor attempt to gather outdated info. It should have covered what flows kayakers can paddle the gorge in, how many times it has been paddled and what experience the kayakers who paddles the Gorge and no consultation was held with these people (15 or so) The reports attempts to quantify the values of the gorge were poor and sources outdated.”</i></p> <p>WWNZ submits that the Waitaha River, with its quality wilderness settings, natural features and quality high Class kayaking runs, is one of the most valued jewels in the crown of the outstanding West Coast rivers; the other is the Hokitika and its tributaries.</p> <p>WWNZ submit (Page 41) that the effects on Morgan Gorge for kayaking will be significant and the ‘significant ‘ category would possibly also apply with regards to the residual effects, even if cease to abstraction were provided and a similar assessment would apply to the run below the Gorge.</p> <p>A number of submitters commented that low usage of the river due to its extreme nature, technical difficulty and difficulty of access should not detract from the value of the area.</p>				
2.4	Submissions related to 17U(2)(a) ‘sufficiency / adequacy of information to enable	<p><b>Inadequate information on the impacts on the whitewater as a natural feature as a component of natural character</b></p> <p>WWNZ submitted that: The status of whitewater as a natural feature and as a component of natural character - matters of national importance under the RMA 6(a) and 6(b). The submitter quantifies in terms of natural character the Whitewater</p>	WWNZ		The Officer’s report at paragraph 4.66 acknowledged there would be effects from ‘altered flows’ and at paragraph 4.69 and 4.102 conclude that the local effects of the change in river flow through the abstraction	Provisions of the RMA are not relevant in considering concession applications. The Hearing Chairman recommends the submission in regards to RMA matters is not allowed.

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	assessment of effects'	values at various scales - Landscape scale, River Reach scale, Whitewater features scale - detailed descriptions for each scale are given. The submitter contends that a comprehensive impact assessment of natural values is required for the Morgan Gorge. The application is incomplete as it doesn't fully assess the Whitewater values and the impact on them and does not provide mitigation for these impacts.			<p>reach on natural character would be moderate.</p> <p>At paragraph 4.96 the Officer's report stated the Department agreed with their consultant that the assessment of effects (on Natural Character and Visual amenity) is substantive and thorough.</p> <p>At Paragraph 4.97 the Officer's report stated the Department agreed with their consultant that Morgan Gorge would more than likely be worthy of inclusion as an outstanding natural feature.</p> <p>The Department noted at paragraph 4.104 that there does not appear to be any mitigation measures concerning the change of water flow in the abstraction reach.</p>	<p>However, the Hearing Chairman notes that issues relating to <b>effects on</b> landscapes, natural features and natural character are relevant and are considered in the report under section 3.3.</p> <p>The Hearing Chairman considers the information available is adequate to enable an assessment of effects on the natural character values of White Water.</p>
2.5	Submissions related to 17U(2)(a) 'sufficiency / adequacy of information to enable assessment of effects'	<p><b>Values of the Area – Lack of Understanding</b></p> <p>Federated Mountain Clubs submit that there is a lack of understanding of the values of the area and that were an assessment to take place it would be considered worthy of National Park or Conservation Park status.</p> <p>Please also read the submissions summarised in section 3.51 in relation to tramping.</p>	Federated Mountain Clubs	See section 3.51 in regards to Westpower's reply in relation to tramping	The Officer's report at paragraph 4.428 states the Department agrees with Westpower that effects on trampers and hunters would largely be localised changes to what is currently an undeveloped back country setting and acknowledges the	<p>The submission as to values is relevant under the Conservation Act 1987 and the Hearing Chairman recommends it is allowed.</p> <p>The Hearing Chairman considers that many submissions have contributed</p>

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					experience may be diminished by the presence of a functioning hydro scheme and associated infrastructure.	to a greater understanding of the significance of the Waitaha River Valley, both as regards recreation and as regards its intrinsic values.  The Hearing Chairman notes however that whether or not the area would be considered worthy of a National Park or Conservation Park status is outside the scope of this process.
<b>3 17(U)(2) (b)</b>	Submissions relating to 17(U) (2)(b) - there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects	<p>Many submitters stated that mitigation was not adequate or could not be mitigated, objections and comments are broken down into the different headings below:</p> <p>3.1 Submissions relating to the Effects on Aquatic/freshwater values</p> <p>3.2 Submissions relating to the Effects on Terrestrial Ecological Values</p> <p>3.3 Submissions relating to the Effects on Natural Character, Landscape and visual amenity</p> <p>3.4 Submissions relating to the Effects on River Dynamics &amp; Natural Hazards - Hydrology</p> <p>3.5 Submissions relating to the Effects on Recreational Effects</p> <p>3.51 Tramping</p> <p>3.52 Kayaking</p> <p>3.53 Tourism</p> <p>3.54 Hot springs</p> <p>3.55 Fishing</p> <p>3.56 Future Canyoning Opportunities</p> <p>3.6 Submissions relating to the Effects on Cultural Values</p> <p>3.7 Health and Safety Issues</p>		<p>Westpower's response (Ref Paul Radich - the Statutory Paper)</p> <p>Item 39          "In terms of section 17U(2)(b), on the basis of expert advice Westpower has proposed extensive measures to avoid, remedy and mitigate adverse effects. The decision-maker was advised that consideration could be given to declining the application under section 17U(2)(b), if there were not appropriate measures to avoid, remedy or mitigate adverse effects. With respect, the decision-maker appropriately did not select that option. There has been no new information provided through submissions or the hearing that should lead the Department to changing its view on this matter."</p> <p><u>References:</u>          AEE          Vol 1: Section 7 Table 12</p>	<p>The Officer's Report stated at paragraph:          4.454 There are several areas, however, where the Department has concerns about the adequacy of information provided by Westpower and/or the adequacy or reasonableness of the methods proposed by Westpower to be undertaken to avoid, remedy or mitigate the adverse effects of the proposal.</p> <p>4.487 The first area of concern is the degree of adverse effects on the natural landscape character at the intake and the powerhouse sites. Both Westpower and the Department consider the adverse effects of the</p>	See comments under headings below.

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		A few submitters supported the application in regards to it having low ecological or environmental effects (eg Tony Kokshoorn, Lindsay Molloy, Westland Milk Products, Unions West Coast, Bruce Smith, Greg Gamble)		160, 171, 202 Appendices 6-21 Radich letter 14 July 2016 DOC Officer's Report 85-90 Appendix 7 page 176-178	proposed scheme to be significant on these areas. ...  4.488 Secondly, the adverse effects of the scheme on the natural state of the river and on recreational users of the river, in particular kayakers, would be high. In recognition of this, Westpower has proposed mitigating these effects with a Special Condition that would provide for two cease to abstract/no take days per annum. Whitewater New Zealand would have the opportunity to nominate these days with at least 7 days' notice to the nominated day. While the information indicates that the abstraction reach is kayaked very infrequently because of the technical difficulties it presents you will have to determine whether the proposed cease to abstract days are an adequate mitigation measure for the kayaking that does occur and also for changing the natural state of the river.	
3.1	Submissions relating to 17(U) (2)(b) -	<b>Submissions relating to effects on aquatic /freshwater values</b>	Forest and Bird	Westpower's response (Ref Analysis of Submissions):	The Department's Officer's Report concludes at paragraph 4.276 that	Submissions on freshwater impacts are relevant and the Hearing Chairman

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	there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects	<p>Several submitters raised concerns around the effects on freshwater values:</p> <p>Makere Stewart-Harawira submits that there will be impacts on fresh water and water flows. Particularly impacts of dams on long finned eel (classed as threatened), dams impede eel migration which is an essential part of the eels lifecycle. Also noted effects on eels from Oxygen depletion stating that the first years of reservoir filling up depletes oxygen and eels will either die or move away. This submitter also noted impacts of the dam on sediment and erosion due to sediment restrictions and flow on effects of this altering the river bed below. Submitter also noted the impact on the area upstream of the dam on aquatic plants and animals due to it being a 'reservoir' and the effects of oxygen depletion due to the decomposition of submerged vegetation and soils.</p> <p>Forest and Bird submitted that the application should be declined as the adverse effects cannot be adequately mitigated they note the three at risk species within the diversion reach. And note the 'Tributary' is acknowledged as a biodiversity hotspot. They also note effects such as fish stranding and displacement and impeded passage and mortality. They note further that many conditions appear to rely on monitoring and reporting for an adaptive management regime with a level of uncertainty of the long term effects on koaro population upstream of Morgan Gorge and At Risk species in the abstraction reach.</p> <p>Forest and Bird submit that the level of uncertainty around the impacts and effectiveness of conditions is not good enough and that the conditions for freshwater impacts fail to provide any assurance that the impacts on aquatic values can be avoided, remedied or mitigated and are entirely contrary and inconsistent with the purpose for which the land is held.</p>	Makere Stewart-Harawira	<p>(From the application "AEE and Fish Report: Eight fish species are found in the Waitaha River, in decreasing order of abundance these were koaro, brown trout, longfin eel, torrentfish, lamprey, redfin bully, common bully and shortfin eel. Freshwater crayfish were also recorded from a single tributary. Of these, koaro, redfin bully, torrentfish, longfin eel and lamprey are listed as declining. In the latest assessment of their conservation status, freshwater crayfish/kōura are also listed as being in gradual decline.</p> <p>Notwithstanding the survey findings, none of these species are unique to the Waitaha Catchment and all of these species are quite common in other West Coast catchments."</p> <p>Shelley McMurtrie Principal Aquatic Ecology Scientist EOS Ecology Aquatic Research &amp; Science Communication Consultants MSc (Hons) BSc (Hons) Zoology, EIANZ (Westpower's freshwater expert) response: "The Waitaha in the area of the scheme is not considered to be a longfin eel fishery.</p> <p>Koaro was the most abundant fish species found, and the only fish species found above Morgan Gorge. However, the abundance of koaro in the mainstem was particularly low given the unstable nature</p>	<p>Westpower had "<i>adequately described the values of the Waitaha's freshwater communities including the underlying hydrological and sediment regime that may be affected by the schemes construction and ongoing operation. If the Concession is granted the conditions would need to include a number of additional recommended special conditions discussed above that the Department considers necessary to reduce any potential effects.</i>"</p> <p>In regards to Forest and birds submission on conditions for freshwater impacts, a number of conditions are proposed in the Officer's Report that rely on using a monitoring and evaluating and adaptive management approach.</p> <p>e.g. the proposed conditions at paragraph 4.256 and 4.257 requires that both the weir and tailrace are designed, managed and maintained to prevent the upstream movement of koaro and requires monitoring and mitigation to ensure recruitment levels of koaro</p>	recommends they be allowed. The Hearing Chairman notes the submissions, however is satisfied that in regard to effects on Freshwater values the effects would be adequately mitigated by way of proposed conditions, if the application were to be granted. He recommends that you not accept submissions to the contrary.

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		<p>Forest and Bird submitted that the conditions for freshwater impacts fail to provide any assurance that the impacts on aquatic values can be avoided, remedied or mitigated and are entirely contrary and inconsistent with the purpose for which the land is held.</p>		<p>of the Waitaha mainstem and low density of invertebrates (their food source) it would be used more as a migration route for fish accessing tributary habitats than as a permanent habitat  Torrentfish were found in the Waitaha mainstem downstream of Morgan Gorge although in low numbers.”</p> <p>“(From the AEE and Appendix 11): There will be effects on aquatic ecology/Benthic communities during the construction and operation phases. However, the effects subject to the implementation of the recommended avoidance and mitigation measures will be minor or less than minor.</p> <p>There will be effects on fish during the construction and operation phases. However, overall the effects will be minor or less than minor subject to the implementation of avoidance/recommended mitigation measures.</p> <p>Shelley McMurtrie response: An especially comprehensive baseline survey of benthic invertebrates, periphyton, and fish was undertaken as part of the concession application process.</p> <p>The recommended mitigation package is designed to remedy effects such as fish stranding, displacement, impeded passage, increased access for trout and eel and mortality to larval koaro and the</p>	<p>are sustained to a certain level.(no more that 10% difference of that occurring now)</p> <p>This is the same for the design of the turbine and monitoring of koaro entering into the scheme intake and turbine (4.258). And the same for effects on fish and invertebrates from ramping or flow changes or residual flow where monitoring is required to evaluate the response of fish, macro invertebrates and periphyton communities within the abstraction reach to ensure mitigations are put in place in the case of a decline in fish populations (4.266 and 4.274)</p> <p>The report also states at 4.276 “the Department also acknowledges and agrees with Westpower’s consultant that there is a level of uncertainty that remains regarding the long term effects of the Scheme on the koaro population upstream of Morgan Gorge and ‘At Risk’ native fish in the abstraction reach.” The</p>	



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				<p>monitoring programme is designed to accurately document it.</p> <p>The scheme cannot significantly impact on the long-fin eel because this species is not present above the proposed site of the intake, and very few individuals are located within the abstraction reach.</p> <p>There are a number of factors that reduce the likelihood of mortality rates of koaro juveniles as a result of the scheme. Including for example the fact that juveniles are hatched and washed out during elevated flow (freshes) when there will be water going through Morgan Gorge (thus some will never go through the bypass structure) (please refer to Shelley McMurtrie's response for further examples)."</p> <p>"It is noted that Westpower accepts the majority of the additional conditions proposed in the Department's report, with some yet to be finalised.</p> <p>Shelley McMurtrie response: The comprehensive monitoring programme indicates a desire by the applicant to be transparent in their activity, and is a reflection of the value placed on those environments. The additional sampling to be undertaken as part of the monitoring programme will build up information to separate out natural effects from any scheme effects. Maintaining the ability for koaro to continue to gain access to Kiwi</p>	<p>Officer's Report advised the decision maker that he would <i>"need to decide whether the proposed mitigation measures would avoid, remedy and mitigate adequately the effects on freshwater values or whether the information available is insufficient or inadequate to assess the effects such that the proposed hydro scheme should be declined pursuant to 17U(2)(a) of the Conservation Act 1987."</i></p>	

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				<p>Flat whilst keeping other fish species out will be ensured through the design of the intake weir structure, with monitoring of their access over this structure providing the ability to modify it in the unlikely event that this should be needed.”</p> <p>In Regards to Koaro “IFIM modelling predicts that suitable habitat will increase for this species within the abstraction reach.” Shelley McMurtrie   EOS Ecology, p2</p> <p><u>References</u>  AEE  Vol 1: p25 -27, 89 - 96; p 105  Table 12 p128 -130  Appendix 10 The Benthic Report  Appendix 11 The Fish Report  Shelley McMurtrie’s response  DOC Officer's Report 43-59, 87-88</p> <p>AEE  Vol 1: p 40, 69, 94-96 191  Appendix 6 Hydrology Report p20-25  Appendix 11 The Fish Report p3-4, 84-100  Appendix 12 Instream Habitat Flow Assessment pages 5, 95-100  Shelley McMurtrie’s response  DOC Officer's Report 43-59, 87-88 and Appendix 7</p> <p>AEE  Vol 1: iv-vii, p 95-96, 169-172  Section 9 Conditions  Appendix 10 The Benthic Report</p>		

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				Appendix 11 The Fish Report Shelley McMurtrie's response DOC Officer's Report 43-59, 87-88, Appendix 1 Appendix 7 page 183		
3.2	Submissions relating to 17(U) (2)(b) - there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects	<p><b>Submissions relating to Effects on Terrestrial Values</b></p> <p>Neil Silverwood equipment used for the project may introduce pest plant species (see also Alice Shanks and Lindsay Young).</p> <p>A number of submitters noted that the effects on bats cannot be adequately mitigated for as you cannot avoid bat roosting trees because such trees cannot be identified.</p> <p>Many submitters raised concerns in regard to the effects on Whio and the importance of the Morgan Gorge for them.</p> <p>Sekita-Ra Mennie submitted that it was not acceptable to scare blue duck off and expect them to come back.</p> <p>Victoria University Canoe Club submit that not enough assurance has been provided regarding mitigation for the endangered species which appears to be wholly inadequate and uncertain.</p> <p>Michael Motz -Alpine Kayak Club president submits that fragile ecosystems with threatened species that would be destroyed if the proposal is implemented. Westpower has given no assurance that the impacts can be properly avoided or mitigated.</p> <p>F&amp;B submits that that the wrong tests have been applied in assessing the impacts of the vegetation removal. The</p>	<p>Forest and Bird</p> <p>2864 Forest and Bird Template Submissions</p> <p>Michael Motz - Alpine Kayak Club Victoria University Canoe Club Sekita-Ra Mennie Green Party Template (2343 signatures)</p>	<p><b><u>From Westpowers Analysis of Submissions it states</u></b> in regards to Weeds  “There is the potential effect of weed incursion and dispersal and establishment of weeds in an area particularly during construction.”</p> <p><b>Rhys Buckingham (West Powers expert) Vertebrate Ecologist Wildlife Surveys Ltd BSc</b></p> <p>also comments that the “proposed pest (and weed) control management plan conditions as outlined in Section 12, Appendix 1, Page 126 and 145 of the Officer's Report will go some way to benefit some species (especially blue ducks, small passerines and probably lizards and invertebrates).” Westpower's submissions Rhys Buckingham Page 3</p> <p><b><u>References</u></b>  <b><u>AEE</u></b>  Appendix 15 Flora Report  DOC Officer's Report: p34, 145</p> <p><b><u>In Regards to Vegetation</u></b>  TACCRA response:</p>	<p><b><u>In Regards to Weeds</u></b>  The Departments Officers Report concluded at paragraph 4.137 ... All appropriate and adequate avoidance and remedial actions have been proposed focusing on on-going weed control and no further conditions are recommended.</p> <p><b><u>In regards to Whio</u></b>  The Departments Officer's report concluded at paragraph 4.306 that: The Department agrees with Westpower's summary of effects on blue duck and that if the additional proposed measures discussed in the report (including scaring ducks off prior to blasting, and including a condition on instigating a whio nest egg operation, or funding a captive breeding blue duck programme or extending the predator control commitments if needed) were</p>	<p>Submissions on terrestrial values are relevant and the Hearing Chairman recommends they be allowed. The Hearing Chairman notes the submissions, however is satisfied that the effects on whio, birds, bats and lizards would be adequately mitigated by way of proposed conditions, if the application were to be granted. He recommends that you not accept submissions to the contrary.</p>

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		<p>proposal will result in an overall loss of indigenous vegetation, significantly impacting on the naturalness of the area, and habitat for important species, they note the following points:</p> <ul style="list-style-type: none"> <li>• Loss of bat habitat would be of national and international significance given their critical threat status.</li> <li>• There is no certainty whether bat habitat would be destroyed and this alone is contrary to the purpose for which the land is held, and Doc's Bat Recovery Plan.</li> <li>• The weir site is thought to be the Whios most productive site at Kiwi Flat and the area is assessed as having high significance and natural heritage values for Whio according to the West Coast Regional Policy Statement, the Westland District Plan and the CMS. They state that Doc is unconvinced the weir design will provide for Whio ducklings and koaro movement through the gorge. It is submitted that the adaptive management approach proposed for whio is not appropriate (item 75-78)</li> <li>• Lizard effects are not fully identified and assessed, or mitigated. The application is therefore failing to give effect to s 17U, s25 and various CMS policies.</li> <li>• The lizard conditions are inappropriate (item 85) stating that the requirement to store and obtain approval for threatened lizards is unlawful. A condition requiring a future approval is not lawful...</li> </ul>		<p>“There will be vegetation clearance or disturbance, including within riparian margins during construction activities and the permanent removal of vegetation including within riparian margins in areas permanently occupied by the scheme. However, not all species present are indigenous. The alluvial flats areas adjacent to the Waitaha River at the proposed powerhouse site carry an exotic vegetation component intermixed with indigenous species. Further, given that the project only affects a very small total area of indigenous vegetation, this is minor compared to the area that remains unaffected, plus the conditions proposed to mitigate the minor effect it may have are deemed adequate to cover any risk. Combined, these factors support considering habitat loss as minor.”</p> <p>AEE Vol 1: Pages 78-82 Section 9 conditions Appendix 15 Flora Report Amended Headworks Proposal March 2015 Appendix 4 TACCRA Ltd response Rhys Buckingham response DOC Officer's Report: Page25, 29-34, 86 Technical officer's report page 2-3 Appendix 1 conditions Appendix 7</p>	<p>adhered to then they would be adequate to avoid , remedy and mitigate the potential effects.</p> <p><b><u>In regards to Birds and Bats</u></b> The Officer's report concluded at paragraph 1.163 that if Westpower could avoid felling any bat roost the effects would be less than minor. Effects on forest birds would also be considered negligible if Westpower could avoid important food source trees. And that if Westpower adheres to the (additional) proposed conditions it is considered that effects on fauna values would be adequately avoided, remedied and mitigated</p> <p><b><u>Lizards</u></b> The Department recommended some additional conditions at paragraph 4.183 and concluded at paragraph 4.188 that if the Westland green gecko or a unique clade of the speckled skink is present then there would be a significant local effect and that the minister needs to decide whether the proposed</p>	

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		<p>The loss of naturalness and intactness is not adequately mitigated ... item 96 , 97 The loss of habitat of a critically endangered species cannot be considered "minor".</p> <p><b>Submissions in Support</b> Westland Milk Products submitted that the scheme would provide opportunities for enhancement of habitat through weed and pest control.</p>		<p><b><u>In regards to Whio</u></b> Westpower responds <b>in their Analysis of submissions</b> “AEE: 31 ducks were recorded in the Waitaha catchment in 2007 which is 1% of the national total. Current population is at some risk from adverse natural factors particularly predation. Although the weir is within part of the most productive blue duck territory at Kiwi Flat in 2007-2008, evidence strongly indicates this part of the territory had low direct blue duck occupancy”</p> <p>“Construction effects such as clearance of vegetation, disturbance and noise will be minor, less than minor or nil.</p> <p>Effects of the operation such as the potential for trout access to Kiwi Flat, duckling access through the Gorge to Kiwi Flat and ongoing operation will be minor, less than minor or nil. Overall Westpower assessed the adverse effects as being likely to be minor and state that: There is in fact the potential for benefit in terms of new habitat created due to lower flow (p131 AEE, p 67 Appendix 13).”</p> <p>“Westpower has proposed a number of special conditions such as a monitoring programme to avoid, remedy or mitigate the potential effects of the scheme on blue duck and sustain a blue duck population.”</p> <p>Fred Overmars response:</p>	<p>mitigation measures would avoid, remedy and mitigate adequately the effects on lizards or whether the information available on lizards is insufficient or inadequate to assess the effects.</p>	

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				<p>Consulting Ecologist Sustainability Solutions Ltd BSc Diploma in Natural Resources Master of Applied Science (Westpower's blue duck technical expert) "Westpower proposed conditions requiring the weir to be designed to provide for koaro and whio duckling access while preventing trout and salmonid access. While there is some detailed investigation yet to be carried out to confirm whether the weir could be designed in such a manner, the evidence for feasibility looks strong to me.</p> <p>The conditions provide for the provision of good baseline information about the receiving environment. The conditions provide for effective monitoring of adverse effects using appropriate indicators. The thresholds are set to trigger remedial action before any effects associated with the scheme become damaging. Any effects that might arise can be remedied before they become irreversible."</p> <p><b>References:</b> AEE Vol 1 p 27, 82-82, 97 -103 , 174, 184-185 Appendix 13 The Blue Duck Report Pg 25 DOC Officer's Report page 59-66, 88 p 100 4.556 p 101 4.564-4.568 p 110 4.607 p 112 4.626</p>		

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				<p>p 117 8.1</p> <p>AEE Vol 1 p 98-100, Table 12 p131 Appendix 13 the Blue Duck Report Pg 25, 67 DOC Officer's Report page 59-66 and 88</p> <p>AEE Vol 1: p46, 100-103 p155 C15.11 p158 C18.19 and 18.20 Section 8 pages 137-141 Section 9 conditions Appendix 13 the Blue Duck Report DOC Officer's Report 34, 59-66, 88, 100, 101, 110, 112, 117, 120-121, 147, 149, 155-156</p> <p><b>Birds</b> From the Analysis of Submissions "Rhys Buckingham:...effects on faunal values ...would be minor or negligible ..." less than 5 ha of forest habitat are effected of which very little compromises prime forest.</p> <p>"AEE: Area's significance is largely defined by the relative intactness of the proposed footprint, the presence and representativeness of threatened and at risk species and the potential distinctiveness of at least one species (western weka)."</p> <p>Vol 1: 83-84; Section 9 conditions</p>		

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				<p>Appendix 16 Birds and Bat report  DOC Officer's Report  Pages 34-38  Pages 59- 66  4.457 p86  4.485 p90  4.541 p98  4.554 p100  4.566 p102  4.607 p110  4.626 p113  8.1 p117  Appendix 1  Appendix 7  Rhys Buckingham's response</p> <p>“Mr Rhys Buckingham: In general, there is agreement between Westpower and the department that effects on faunal values by the scheme would be minor or negligible providing Westpower adheres to the proposed mitigation and conditions.”</p> <p>Adverse effects on birds caused by the scheme are considered negligible because &lt;5 ha of habitat are affected of which very little comprises prime forest bird habitat. With respect to the critically endangered grey duck, the area is already frequented by mallard ducks, and mallard/grey hybrid ducks are also likely to be currently present.”</p> <p>References  AEE  Vol 1: 83 - 84;</p>		



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				<p>Section 9 conditions  Appendix 16 Birds and Bat report  Rhys Buckingham's response  DOC Officer's Report  Pages 23, 34-38  Pages 59- 66  4.457 p86  4.485 p90  4.541 p98  4.554 p100  4.566 p102  4.607 p110  4.626 p113  8.1 p117  Appendix 1  Appendix 7 p175-177</p> <p>From the Analysis of Submissions paper:  “AEE and Bird and Bat Report: The design of the Scheme has largely contributed to the assessed negligible adverse effects on terrestrial fauna. Irrespective of this, Westpower has offered further mitigation and associated monitoring which will further reduce the negligible effects.  Rhys Buckingham: If Westpower adheres to the proposed conditions it is considered that effects on fauna values would be adequately avoided, remedied and mitigated.”</p> <p><b><u>AEE</u></b>  Vol 1: 83 - 84;  Section 9 conditions  Appendix 16 Birds and Bat report  Rhys Buckingham's response</p>		

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				<p>DOC Officer's Report  Pages 34-38  Pages 59- 66  4.457 p86  4.485 p90  4.541 p98  4.554 p100  4.566 p102  4.607 p110  4.626 p113  8.1 p117</p> <p><b>Bats</b>  Westpower responds (from Westpowers Analysis of Submissions):  “AEE: Loss of faunal habitat and potential direct loss of fauna during the construction phase are the main adverse effects on terrestrial fauna. However, overall the effects are considered negligible given the small size of the footprint and that it largely avoids significant habitat such as mature forest. Mr Rhys Buckingham (Westpower’s bat expert) states: Bat feeding habitat within the footprint (&lt;5 ha) is a very small proportion of available feeding habitat in the area. Therefore I consider loss of bat feeding habitat negligible. There might in fact be minor positive effects on bat foraging habitat.  The potential loss of bat roosting trees during construction is a potential significant effect on both a local and national scale. However, with stringent and detailed conditions to ensure trees occupied by bat roosts will not be felled or</p>		

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				<p>interfered with and the likelihood of potential roosting trees being found in the footprint being low due to the reduction and refinement of the headworks footprint area I consider the risk to bats as minor.”</p> <p><b>References:</b>  AEE  Vol 1: p 83-84  Appendix 16 Birds and Bat report  Amended Headworks Proposal March 2015 Appendix 4  Rhys Buckingham's response  DOC Officer's report  P34-38 86, 90, 98,100, 102, 110, 113, 117  Appendix 2  Appendix 7 p 175-177.</p> <p>“Rhys Buckingham: Bat roosting habitat will not be destroyed during the Scheme’s construction stage, as the stringent and detailed conditions ensure trees occupied by bat roosts will not be felled or interfered with. Furthermore, the likelihood of potential roosting trees being found in the footprint is low due to the reduction and refinement of the headworks footprint area.”</p> <p><b>References:</b>  AEE  Vol 1: 46; 49; 170; 193  Appendix 16 Birds and Bat report  Rhys Buckingham's response  DOC Officer's Report  Page 34 - 38</p>		

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				<p>Appendix 1 Appendix 2 Appendix 7 p 176-178</p> <p><b>Lizards</b> From Westpower's the Analysis of Submission paper:</p> <p><del>Effects on lizards will be negligible ... and "no mitigation is necessary ...."</del></p> <p>From Westpower's analysis of submissions "AEE: No records of lizards in the project area. Two gecko species are expected to occur in the project area which it is noted is larger than the project footprint. Skinks may occur in the project area."</p> <p>References:</p> <p>AEE Vol 1: p24, p 84-86 Appendix 17 the Lizard Report DOC Officer's Report pages 38-42, 86-87</p> <p>Effect of the development on geckos will be negligible because the habitats that are similar to those in project area occur widely in the catchment.</p> <p>If skinks are present then they may be potentially affected. However, the total area likely to be affected is very small and the effects of this on conservation status of skinks (if indeed any are present),</p>		

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				<p>cannot be predicted until their specific identity is known.</p> <p><b>References</b>  Appendix 17 the Lizard Report  DOC Officer's Report pages 38-42, 86-87,  Appendix 7 178-180</p> <p>No mitigation for lizards is necessary because the areas likely to be affected by the project are very small in comparison to the habitat available and the lizards that are potentially present are expected to be widespread.</p> <p>However, in order to obtain better information on the lizards of the project area, any lizards detected during environmental and engineering surveys for the Scheme, and during the construction phase, must be captured and forwarded to DOC staff at Hokitika so that their identity can be confirmed by genetic testing. Westpower will obtain the appropriate wildlife permit for collection of lizards prior to construction.</p> <p><b>References</b>  AEE  Vol 1 p24, p84-86, 155  Appendix 17 the Lizard Report  DOC Officer's Report pages 38-42, 86-87  90, 100, 110, 113, 117, 178  Appendix 1 p148-149  Appendix 7 178-180</p>		

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3.3	Submissions relating to 17(U) (2)(b) - there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects	<p><b>Submissions relating to Effects on Natural Character, Landscape and Visual Amenity</b> The following key points were made by many submitters in regards to effects on Natural Character, Landscape and Visual Amenity:</p> <p><b>Impacts on the whitewater values including scenic:</b> Alan Petrie submitted that when the volume of water is reduced in a river the "feel" of the river is impacted, there would be a reduction in rapids, less whitewater and less riffles. The margins of the river would result in woody shrubs and grasses and the ephemerals that are associated with a wild and scenic river would be affected, such as the sound of water splashing over and around boulders.</p> <p><b>The mitigation proposed will not mitigate impacts of intrusion of the man-made structures and altered river flows and; there is no mitigation that can compensate for the change from an outstanding wild and remote experience to a significantly modified and industrialised environment as a result of the reduced water flow, weir and infrastructure</b></p> <p>The West Coast Branch of the Green Party submits that the alteration of flows and man-made structures would significantly change the character of this place. It would no-longer be a remote setting. And the Source to sea nature of the river would be modified, it will destroy the essence of the place and will not be a wild place any more.</p> <p>Robin Pieper submits that this concession without appropriate conditions will irreversibly and adversely alter the natural character and ecological health of the rivers and surrounds, in addition to severely impacting on recreational activities in the area. The mitigation is</p>	Many submitters including Forest and Bird, Forest and Bird and 2864 Forest and Bird Template submissions plus 74 WWNZ template submissions plus Alan Petrie Ben Gaia Permolat Trust Kevin England Graig Potton – Nelson Forest and Bird Neil Silverwood Katarina Te Maharoa on behalf of the Waitaha Taiwhenua o Waitaki Katherine Gilbert	<p><b><u>In regards to the river being nationally and internationally important</u></b> Westpower states <b>in their Analysis of Submissions:</b> “Please refer to assessment of the significance of the river outlined above as per AEE and Landscape Report and James Bentley’s response.”</p> <p><b><u>Reference:</u></b> <b>AEE</b> <b>p31 , 107-110</b> <b>Appendix 9 The Landscape report</b> <b>Appendix 19 p55-56</b> <b>James Bentley response:</b></p> <p><b><u>In regards to Whitewater</u></b> <b>In Westpower’s analysis of submission Westpower state; Please refer to assessment of effects outlined above as per AEE and Landscape Report and James Bentley’s response.</b></p> <p>Westpower respond (<b>James Bentley – Boffa Miskell Ltd- response item 4</b>) that: In terms of river flow, there would be a moderate level of effect on the perceptual aspects of natural character effects through the abstraction reach.</p> <p><b><u>References:</u></b> <b>AEE</b> <b>Vol 1: Table 12 p132 ,164, 173,</b> <b>Appendix 6 The Hydrology Report pages 20-25 Appendix 9 The Landscape Report p 50-53</b></p>	<p><b>In regards to the river being nationally and internationally important</b> No comment was made in this regard in terms of Natural Character, landscape and amenity values</p> <p><b>In Regards to the Impact on Whitewater</b> The Department noted at paragraph 4.104 that there does not appear to be any mitigation measures concerning the change of water flow in the abstraction reach.</p> <p><b>In regards to Industrial Intrusion</b> The Department agreed with Westpower’s view at paragraph 4.101 in the Officer’s Report that the visual amenity effects are high because of the industrial style modifications. And at paragraph 4.103 that the Natural Character effects at the intake and powerhouse are high.</p> <p>At paragraph 4.104-105 the Department notes that despite Westpower reducing the potential impacts at both the headworks and the power</p>	<p>The Hearing Chairman recommends the submissions relating to natural character, landscape and visual amenity are relevant and allowed. (While the Conservation Act does not use the terms “natural character” or “visual amenity” specifically, they are relevant under the definition of “conservation.”)</p> <p>The Hearing Chairman considers that the submissions have added to the understanding of the natural character, landscape and visual amenity values of the area under application and the effects on those values.</p> <p>The Hearing Chairman considers some of the key submissions to be:</p> <p>-that the area is located within an outstanding natural landscape and the Morgan Gorge itself is an outstanding natural feature.</p> <p>-that the area’s values are of national significance.</p> <p>-that submitters value the river’s wild character and the</p>

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		<p>extremely minimal compared to the losses and not appropriate given the value of the Waitaha River.</p> <p>Forest and Bird submits that the design elements are inadequate window dressing - you cannot mitigate the loss.</p> <p>The NZ Recreation Association submits that the scheme is an unacceptable industrial intrusion for those that use the area/ unacceptable commercial utilisation of Stewardship land.</p> <p><b>Impact on the high natural values/scenic values/landscape values/scenic values of Morgan Gorge</b></p> <p>A range of comments were made by many submitters in regards to the impacts on these values the following are key:</p> <p>WWNZ submit a detailed critique of the Boffa Miskell Natural Character, landscape and visual amenity effects that forms part of the application. In particular WWNZ provides a detailed rebuttal for each (11) of Boffa Miskells arguments for diluting the adverse effects and in conclusion question how the adverse effects on these values could be considered consistent with the provisions of the Act and the CMS nor not contrary to the purpose for which the land is held. (Page 54-59 of WWNZ submission)</p> <p>Mic Hopkinson comments that he has paddled many of the rivers classed as wild and scenic, he submits that they are not and that the Waitaha has no such visual intrusions (as these other rivers) and is in every sense pristine. He submits further that few such wild and scenic and pristine rivers exist on the planet. The remote, pristine nature of South Island, West Coast Rivers, is probably unique.</p>	<p>Rachel Laurance Zak Shaw Kaith Mofett West Coast Branch of the Green Party Clare Backes Dave Ritchie Douglas and Rosemary Rankin Waitaha Executive for the Grandmother Council of the Waitaha Nation Robin Pieper NZ Federation of Freshwater Anglers Council of outdoor recreation association of NZ</p>	<p><b>James Bentley response:</b></p> <p><b><u>In regards to significant industrial intrusion into otherwise pristine landscape and environment And the impact on Natural Character of the River, Gorge and Surrounding Area.</u></b></p> <p>Westpower responds <b>in the Analysis of Submissions table in regards to the impact of built infrastructure:</b> AEE and Landscape report: Visual amenity effects at the intake and powerhouse sites would be high. Natural character effects at the intake and powerhouse sites will be high.</p> <p>AEE and Landscape report. James Bentley's <b>reconfirmed his findings on the effects of the scheme as set out below:</b> response-“There will be effects to the natural character, landscape and visual amenity aspects of the Upper Waitaha catchment at a variety of scales that would be more than minor. The scheme would have an industrial appearance. At a broad Upper Waitaha catchment scale the effects of the scheme would be low or moderate to low. The effects of the Scheme on Morgan Gorge, whilst smaller in scale than the Upper Waitaha catchment will not affect the overall biophysical, associational and sensory values of the gorge to a significant degree and therefore not reduce its</p>	<p>house the effects at both would remain high.</p> <p>The Department also stated at 4.105 that as some adverse effects would be high the Minister will need to consider;</p> <p><i>“a) Whether the proposed mitigation measures are adequate and where there are no or inadequate mitigation measures you will need to consider whether the effects are such that the proposed hydro scheme should be declined pursuant to section 17(2)(b) of the Conservation Act “and;</i></p> <p><i>“b) Whether granting the proposed activity would be contrary to the provisions of the Conservation Act or the purposes for which the land is held pursuant to 17U(3) of the Conservation Act 1987.”</i></p> <p><b>In regards to Change of landscape, visual amenity and natural character</b></p> <p>4.427 The Department agreed with Westpower's statement that “The scheme</p>	<p>fact it is currently unmodified by human activity.</p> <p>-that the area has high intrinsic values, not just values from the perspective of human use</p> <p>-that the area's values should be preserved for future generations.</p> <p>-that the proposed scheme would be an unacceptable “industrial intrusion” into the landscape .</p> <p>– that no mitigation would compensate for the change from an outstanding wild and remote landscape to one that is modified and industrialised as a result of the reduced water flow, weir and infrastructure.</p> <p>The Hearing Chairman found these submissions persuasive.</p> <p><b>Broad (Upper Catchment) Scale effects (excluding effects on Morgan Gorge)</b></p> <p><b>Submitters did not tend to break up the issue into broad vs local effects. Their concerns, as noted above,</b></p>

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		<p>The pristine values are a more valuable asset to NZ than the hydro proposal.</p> <p>Barnabas Young submits that he has travelled the world and Morgan Gorge is one of the most spectacular places ever visited.</p> <p>Zak Shaw takes 30 tourism students into the mouth of Morgan Gorge each year and submits along with Whitewater NZ that the scheme will impact severely on the on the natural features and wilderness and scenic values of the spectacular, powerful, majestic, water carved, fluted, schist rock Morgan Gorge.</p> <p>Neil Silverwood submitted that he was a professional photographer who has spent his lifetime exploring Westlands river valleys, and recently photographed Kiwi Flat and Morgan Gorge (abseiled in at various locations) and has never seen a location as wild as Morgan Gorge. Believes it ranks among the most beautiful and dramatic locations in NZ.</p> <p>Keith Moffet submits that he has tramped all around the Waitaha valley and mountains and not enough emphasis has been placed on the effect the proposed scheme will have on the broad scale landscape of the Upper Waitaha Catchment as a whole. The sum is more than the parts.</p> <p>Shaun Barnett submits that he is a trumper, writer and photographer and has spent over 400 days in the backcountry, including many trips to the West Coast and most of its major catchments. The most impressive schist gorges he's seen are those of the Morgan Gorge.</p> <p>The schist is wonderful and the Waitaha is among the most precious of our beautiful and wild rivers.</p>	<p>Phillip Paterson Tony Baldwin Mic Hopkinson Dave Quant Nigal Parry Alan Petrie Shaun Barnett Federated Mountain Clubs Richard Suggate</p>	<p>'outstandingness' as an outstanding natural feature.</p> <p>At a local landscape level the effects of the scheme within the Upper Waitaha catchment would be high.</p> <p>In terms of river flow, there would be a moderate level of effect on the perceptual aspects of natural character effects through the abstraction reach. For Landscape there would be a high level of effects, again at the local scale. At the broader scale this would drop to low.</p> <p>There would be no effect to the landscape values associated with the Waitaha River hot Springs within the gorge. For Visual Amenity, the Scheme would have high visual effects from a number of close viewpoints such as the powerhouse site, reducing to moderate to low levels for more distant viewpoints.”</p> <p><del>James Bentley response: I reconfirm my findings on the effects of the scheme as set out above.</del></p> <p><b>References:</b> AEE Vol 1; 73-77, 163-164, 173- Appendix 9 The Landscape Report p33-</p> <p><b><u>In regards to Change of landscape, visual amenity and natural character</u></b> From Westpower's analysis of Submissions table it states: AEE and Recreation Report: There will be</p>	<p>has the potential to affect the quality and nature of the recreation experience in the area under application by changes to the remote-backcountry characteristics of the Kiwi Flat and Douglas Creek settings (via the installation of hydro diversion structures, access and the powerhouse) and an altered flow regime in the Morgan Gorge and much of the Douglas Creek reaches.”</p> <p>The Department at paragraphs 4.448, 4.449 and 4.451 considers the local scale effects on landscape, visual amenity, and natural character to be high.</p> <p><b>In regards to Outstanding Natural Feature and Landscape</b> The Officer's report at paragraph 4.97 agrees that the Waitaha upper catchment would meet the accepted test of an outstanding natural landscape, and the Morgan</p>	<p>generally related to the river and the landscape as a whole. However, the Hearing Chairman has found it helpful to consider adverse effects on landscape, natural character and visual amenity at the local and broad scales.</p> <p>Westpower's landscape experts considered that at a broad scale, the proposal would have low, or moderate to low, adverse natural character, landscape and visual amenity effects. The Department's landscape expert concluded that at a broad scale effects on landscape and natural character would be greater than low.</p> <p>Taking into account the experts' views and submissions, the Hearing Chairman considers that the adverse effects on landscape, natural character and visual amenity at the broad scale would be moderate.</p> <p><b>Local scale effects</b> Westpower's landscape expert concluded that adverse effects on natural character,</p>



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		<p>The Green Party submit that the Green Party would normally support run of the river hydro schemes but that the environmental cost of this proposal on unmodified public conservation land far outweighs their support for locally owned development.</p> <p>A submitter compares the landscape value to that of the pancake rocks and states: disappointing after Westpower's wonderful efforts at the Amethyst Creek Power Station. Imagine the furore over putting such a scheme on the Pancake rocks</p> <p>Many submitters stated that there is wide agreement that <b>the area under application is in an outstanding natural landscape with Morgan Gorge being an outstanding natural feature and one of the most spectacular gorges in the country.</b></p> <p>A number of people commented that the area deserved a higher protection status because of the outstanding natural landscape through the Morgan Gorge. Suggestions such as world heritage protection, national park, a wild rivers park.</p> <p>WNNZ submit that the scheme features would be 'in your face' and an industrial intrusion in the natural environment for kayakers. The place is held in high regard even by those that don't use the place.</p> <p>The Waitaha Executive Grandmothers Council of the Waitaha Nation submit that the industrial intrusion is not appropriate, due to the outstanding natural values, and they state that the application is not appropriate at many levels.</p> <p>Many submitters submitted that we should keep these values for future generations.</p>		<p>temporary construction activities at Kiwi Flat and at the powerhouse site and the introduction of headworks and generation infrastructure and weir into setting which have only minimal developments for recreation purposes.</p> <p>The introduction of development structures into a predominantly unmodified backcountry remote recreation setting and flow effects along the abstraction reach will result in a residual 'high' net effect on Waitaha Catchment recreation values in the Kiwi Flat area and from the top of Morgan Gorge to Douglas Creek due to the development of the Scheme. This is essentially due to the change from an unmodified environment in terms of these types of structures to one containing these structures.</p> <p>"The intake is the most sensitive ... [but] careful design will avoid more significant effects with further refinements to the design continuing to mitigate", (AEE p 74). Amongst other measures, there will be limited vegetation clearance in the area and recolonization of vegetation will occur naturally after construction, (AEE p 75). Furthermore, all surface components will be able to be removed should use of the hydro scheme cease: (AEE p 34).</p> <p><b><u>In regards to Outstanding Natural Feature and Landscape</u></b></p>	<p>Gorge would more than likely be worthy of inclusion as an outstanding natural feature.</p> <p>The above comments from paragraph 4.104-4.114 apply. In addition, the Department noted at paragraph 4.104 that there does not appear to be any mitigation measures concerning the change of water flow in the abstraction reach.</p> <p><b>In Regards to Intrinsic Values</b></p> <p>The Departments Officer report makes the following comments; 4.430 The Department considers that both national and international visitors, and in particularly kayakers, regardless of whether or not they have the ability to paddle the Morgan Gorge, highly value and appreciate the intrinsic worth of retaining rivers on the West Coast and around the world that can flow uninterrupted and are free of hydro schemes and their associated structures.</p>	<p>landscape and visual amenity at both the intake site and the power house (including access road) would be high, even after the proposed mitigation (James Bentley Right of Reply page 3). The Departments's expert (in assessing the original application) agreed that visual effects to the powerhouse and intake would be high, but following the further design changes considered the visual effects at the intake to be acceptable. He did not explicitly address whether the effects would still be high for the powerhouse site after the design changes, though he noted a better certainty of outcome had been provided by a number of additional conditions resulting from the proposed changes to the original application.</p> <p>Taking into account the experts' views and the submissions, the Hearing Chairman considers that the natural character, landscape and visual amenity local scale effects at both the intake site and the powerhouse are high.</p>

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		<p>A number of submitters commented that the Morgan Gorge was of world class status in regards to its outstanding natural and scenic values.</p> <p>Makere Stewart-Harawira submits that the Morgan Gorge is one of the most spectacular in the country, the weir and infrastructure would have unacceptable and inappropriate impact on this taonga.</p> <p>Sarah Wild who states she has visited the Waitaha Valley, hot pools and Moonbeam hut and it is an awe-inspiring place and submits that with manmade structures at both ends of the Gorge would largely reduce its naturalness, and there would be loss of remoteness.</p> <p>Many submitters submit that it is a special place with international significance</p> <p>Richard Suggate submits that the mitigation proposed by Westpower will not mitigate the impacts of the intrusion of manmade structures and altered river flows on this landscape. This is a truly wild river and its intrinsic character that includes the native flora and fauna would be permanently destroyed by imposing a hydro scheme on public conservation land. And the construction of a weir and associated infrastructure close to where the Waitaha enters the gorge will have an entirely unacceptable and inappropriate impact on the overwhelming naturalness of this special place.</p> <p><b>Impact on Wild River</b> 75 submitters plus all the Forest and Bird, Whitewater NZ and Tai Poutini Polytech template submissions submitted on the impacts on the Waitaha being a 'wild river'. The following were key comments in regards to impacts on a wild river:</p>		<p>Westpower's response <b>from their Analysis of submissions table:</b> AEE and Landscape Report: Whole of the Upper Waitaha Catchment is an ONL at both a district and regional scale and the Morgan Gorge is an ONF within the landscape. Landscape has a high level of naturalness. James Bentley response: Confirm that the Upper Waitaha catchment holds ONL values and the gorge is an ONF. Morgan Gorge is one of the many gorges on the West Coast. Its combination of elements have come together to create a distinctive and highly impressive gorge, which is different to, and equally as unique as, other gorges on the West Coast."</p> <p>AEE Vol 1: pages 31, 107-110 Appendix 9 The Landscape report James Bentley response: DOC Officer's Report p15- 29, 85</p> <p>AEE p31 , 107-110 Appendix 9 The Landscape report Appendix 19 p55-56</p> <p>AEE Vol 1: 20-22, 72-74 Appendix 9 The Landscape report p2</p> <p>James Bentley response: James Bentley</p>	<p>4.471 Many kayakers hold the belief that it is critical that the unspoilt character of the Waitaha River including the Morgan Gorge is retained. They consider that the application is inconsistent with Conservation Act 1987, in which conservation is described as 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.</p>	<p>Both Westpower's and DOC's experts consider the natural character (perceptual aspects) effects on water flow through the abstraction reach to be moderate. The Hearing Chairman agrees.</p> <p><b>Mitigation</b> The Hearing Chairman acknowledges that since the initial application a number of changes were made, to the initial designs and location of works at both the powerhouse and intake sites. Through that process, Westpower has proposed (or accepted) a number of measures to minimise effects on landscape, visual amenity and natural character, including:</p> <ul style="list-style-type: none"> <li>- Explore the practicality of facing visible parts of the intake weir and portal structures</li> <li>- Implement a Planting Rehabilitation Plan and strategy at Alpha Creek and around the powerhouse</li> <li>- Bury the transmission lines at least 200m down stream of the powerhouse</li> </ul>

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		<p>Many submitters submitted that the Waitaha is one of 1% of the earths rivers remaining unmodified left in the world, and stated let's not repeat the mistakes of the past.</p> <p>Many submitters submitted that the Parliamentary Commissioner for the Environment's May 2012 report 'Hydroelectricity OR Wild Rivers' recommended that her officials identify important wild and scenic rivers running through stewardship land and reclassify the land if they consider rivers need protection and the intent of this message should be applied to the Waitaha. It was submitted that the intent of this message should be applied to the Waitaha. Also submitted in relation to the Parliamentary Commissioner's report was that one specific recommendation was that "<i>Where such conflicts exist between hydroelectricity and wild and scenic rivers – climate change versus natural heritage – I have concluded that we need to pay more attention to the protection of rivers</i>". Submitters ask that the Director General and the Minister would consider the PCE's recommendations, and advice provided in these reports.</p> <p>Bronwyn Judge submits that its value is in its holistic nature from Mountains to the Sea not the component parts. ...Waitaha is in a good position to have a protection order put on it</p> <p>Don Allardice stated that as a New Zealander running whitewater tours in Austria and producing a water craft called the riverbug, I operate on one of the few remaining rivers with unbroken stretches of whitewater in the European Alps. They are under increasing pressure. Saddened to see New Zealand rivers coming under a similar threat. The Waitaha is a wild and pristine valley and should be allowed to remain so for generations to come.</p>		<p>Principal Senior Landscape Planner Boffa Miskell Limited Bachelor of Landscape Architecture (Hons), Post-Grad Dip Landscape Architecture Registered Member, NZ Institute of Landscape Architects (NZILA) Member, Resource Management Law Association (RMLA) Chartered Member of the Landscape Institute, UK (Westpower's Landscape expert) has provided a 4 page response and concludes:</p> <p>"1. At a broad, Upper Waitaha Catchment scale, the effects on natural character, landscape and visual amenity would be low or moderate to low. This is principally due to the small and defined footprint of the Scheme within a large landscape. Remoteness values would be affected, however, the Scheme is not occurring within a National Park or one of New Zealand's highest rated conservation areas. The river is not subject to a Water Conservation Order. There are areas of modification, such as an existing bridge, tracks and huts, as well as an existing gold mining permit. The area is not actively managed by the Department of Conservation, so pests are present. Helicopters frequent the Upper Waitaha Catchment, dropping off hunters and kayakers to a range of destinations within the Upper Waitaha Catchment. The</p>		<ul style="list-style-type: none"> <li>- All structures constructed and coloured in keeping with their surroundings. Colour the powerhouse Ironsand and roughen the concrete walls.</li> <li>- Design elements of the powerhouse include having part of the building underground with a height of 8m and an angle monopitched roof with windows, and trims and ancillary building treatments kept to a minimum.</li> <li>- Realignment of the walking track to avoid the powerhouse site</li> <li>- Works to be implemented consistent with the revised headworks and powerhouse proposal 15 April 2016</li> <li>- Development of a Landscape Management Plan to provide in detail for the above (and additional) mitigation</li> </ul> <p>The Hearing Chairman considers that Westpower has gone to considerable lengths to avoid, remedy or mitigate the effects on landscape, both in their original application documents and also in their</p>

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		<p>Forest and Bird Nelson submitted that there are few rivers left in the world that can be seen as wild. <i>“We should be doing what we can to preserve them especially within the DoC estate.”</i></p> <p>Keith Morfett submits that <i>“rivers that flow all the way from mountains to the sea unimpeded are becoming rare. Increasing scarcity leads to increasing value. The whole is more than the sum of its parts”</i> - Character and integrity impact of the depowering of the water - impact on 'Mana' no appropriate mitigation.</p> <p>Keith Riley submits that this proposal is not in the best interests of future generations. We should not lose another river of national significance, we have already lost many.</p> <p>Miriam Odlin stated that she was an electrical engineer and a whitewater kayaker and states; I think this would be an irreversible loss to our natural and recreational heritage to swap the untouched nature of this river for 20 MW. An injustice to our children and great grandchildren.</p> <p>Dave Ritchie, Director of Experiential Learning at Tai Poutini Polytechnic submits that he considers the Waitaha represents the very thing that drives motivation to learn -an aspirational goal. Its very existence is critical to our collective identity as New Zealand's, a people more than almost any others in the world, who are connected so overtly to our wild places</p> <p>Jessica Matheson comments that she has been to the Waitaha many times, climbing into the Morgan Gorge. And she has spent her life working on rivers of the world and states that: it breaks my heart that it could be given up just like that. Only 1% of the world's rivers still flow freely.</p>		<p>Scheme is also 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. The Upper Waitaha Catchment is therefore not truly pristine.</p> <p>2. The effects of the Scheme on Morgan Gorge, whilst smaller in scale than the Upper Waitaha Catchment, will not affect the overall biophysical, associational and sensory values of the gorge to a significant degree and therefore not reduce its ‘outstandingness’ as an outstanding feature. Essentially, the weir will appear close to the entrance of the gorge, along with the intake structure. The river will maintain its course through the gorge despite reduced flows. The associated cliffs and natural eroding of the broader Morgan Gorge by fluvial processes will continue.</p> <p>3. At a more local scale and despite the Scheme’s small footprint, I consider that there would be high natural character, landscape and visual amenity effects at both the intake and powerhouse sites. This is predominantly due to the introduction of two nodes of intensified industrialised-style modification occurring within an area retaining very little modification and holding high natural character values. Since the application was lodged, further measures have been undertaken to refine the design of the intake and power house to integrate these structures into the landscape, such</p>		<p>“Amended Headworks proposal March 2015 and revised headworks and powerhouse proposal 15 April 2016” .</p> <p>The Hearing Chairman notes also that the Department’s expert stated that the visual effects at the intake site (given the improvements) were ‘acceptable’. And that there had been an improvement over the application period regarding how the potential adverse effects have been addressed and avoided, remedied or mitigated, such that the Departments expert agreed with Westpower’s expert’s overall conclusion which was : <i>“that these further refinements to the scheme better assisted in integrating this proposal into this highly natural environment taking into account the landscape values. And that the iterative design led approach has led to the best probable result achieved. And that the further iteration of the visual aspects of the scheme has provided further clarity to the components of the scheme.”</i></p>

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		<p>Mic Hopkinson submits that nationally there is no national evaluation of our rivers while there are proposals to modify Arnold, Wairau, Matiri, Mokihinui, Ngakawau, Matakītaki, Taipo, Nevis and further down the track the Kakapotahi and the Totara. We have no framework to establish minimum ecological or recreational flows. The framework should come first instead of death by a thousand cuts. The lack of planning can be seen where Trustpower mitigation for Arnold offers accommodation at Murchison while Network Tasman is planning to build a hydro on the Matakītaki one of the most popular teaching rivers in the Murchison District. (From my Mokihinui Submission)</p> <p>Dean Arthur submits that the West Coast is last bastian of wild rivers in NZ.</p> <p>Rob Depp submits that the Waitaha is one of the most spectacular river valleys in the world</p> <p>Carey Lintott submits that the impact on this wild river will permanently and irreversibly alter an accessible, yet wild and pristine natural resource appreciated by New Zealanders and others from all different walks of life, and take away the right of our future generations to experience true NZ wilderness in yet another area.</p> <p>Stephanie Bowis states that she has visited the area less than a handful of times and submits that it is integral to NZ. Knowing it is there is valuable. Wild scenic areas are by their nature less heavily visited so have less of our voices defending them. If only people knew how valuable it is and how it would never be the same again, it would lose it's spirit, if the proposal went ahead. It should remain wild and scenic, a whole river system that is truly special.</p>		<p>as reducing the impact of the portal holes at the intake and refinement of design to the powerhouse. Mimicking nature with unnatural faced rock, can create effects greater than if they were left unaltered, so where possible we have left these as engineered profiles.</p> <p>4. In terms of river flow, there would be a moderate level of effect on the perceptual aspects of natural character effects through the abstraction reach. This level of effects was concluded based on the managed water flow through the abstraction reach. Natural freshes and floods would continue to occur and there would be no lake. The river would essentially continue to operate as it does naturally, albeit with reduced river flows during drier periods. Sediment would continue to be transported by the river. Abiotic and Biotic natural character effects would be minor for the abstraction reach.</p> <p>5. For Landscape there would be a high level of effects, again at the local scale. At a broader scale, this would be lower. There would be no effect on the landscape values associated with the Waitaha River Hot Springs within the gorge.”</p> <p>“There will be high natural character, landscape and visual amenity effects as a result of the introduction of this run-of-the-river scheme within the Upper Waitaha Catchment. I have been clear on this from the start. I have worked alongside Westpower to ensure that the</p>		<p>However, the Hearing Chairman has noted above that even with improved design and proposed mitigation, Westpower's experts concluded that local effects on landscape, visual amenity and natural character remain high. Westpower considers that these local effects are acceptable. Their landscape expert considers that the scheme will sit within its landscape and respond to its setting and that a sense of wildness and remoteness will remain within the upper catchment. He considers that the landscape will still be outstanding.</p> <p>The Hearing Chairman does not accept that the high adverse effects at the local scale or the moderate effects at a broader scale are acceptable, given that the area is held under the Conservation Act for protection of its natural resources (including landscape) and the high values of this area.</p>

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		<p>A submitter (asked for name to be withheld) commented at the hearing that the NZ Conservation Authority wrote a report on Protecting NZ Rivers, and there should be a national policy network of protected rivers.</p> <p><b>Impact on Wilderness Values</b> Keith Morfett submits that: The proposed industrial intrusion will significantly diminish the wilderness experience and gave an example of how you might describe the experience in the future: "first pick up the track near the power station, follow this until you come across the intake weirs and tunnels into which much of the river is diverted - you have now reached Kiwi Flat, first hut in the Upper Waitaha."</p> <p>Blair Trotman submits that he is an avid kayaker, hunter, mountaineer and general outdoors lover and his three main passions are all contained in the Waitaha catchment and can be utilized year round in a pristine untouched wilderness setting. To have such a public asset stripped of it's pristine wilderness status under the guise of needed power is both a tragedy and an embarrassment.</p> <p>Lawrence Simpson submitted that he would be devastated if we were to destroy this part of the West Coast for a measly amount of power.</p> <p>Dani Farkas submits that it is not just a river, but a gorge full of beauty and opportunity. Please keep the wilderness wild!</p> <p>Penelope Todd the New Zealand Author submits that we should hold on, nourish and cherish every remnant patch of unspoiled wilderness. I set my three novels, the Watermark trilogy at the mouth of the Waitaha, aware each time I visited of the potency and importance of this river ....conveying the life-stuff of our planet from the mountains</p>		<p>extent of human modifications are contained as much as possible, and where possible, placed underground. Landscape values will largely be retained. A sense of wild and remoteness will still be retained within the upper catchment. The landscape will still be outstanding.</p> <p>The mitigation measures proposed, and the iterative design process, has enabled the Scheme to sit within its landscape and 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 major effects. I have attended the hearing throughout and listened attentively to the submitters speak to their submission. In my opinion, nothing in those submissions has persuaded me to change my position.</p> <p><b>Overall</b>, it is considered that 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 under the RMA). At a broader scale the effects are moderate to low (or minor under the RMA).”</p> <p><b>And</b> “AEE and Landscape Report: Westpower has proposed a number of special</p>		<p><b>Even with the proposed mitigation, there is no getting around the fact that the intake and power house structures are an ‘industrial intrusion’ into a remote backcountry landscape that submitters and experts alike agree is outstanding.</b></p> <p><b>And in terms of the natural character effects within the abstraction reach; realistically, there is no mitigation that Westpower can propose to avoid, these effects, as they are a direct result of the scheme’s operation.</b></p> <p><i>In conclusion</i></p> <p>The Hearing Chairman therefore recommends that you accept submissions that: (i)The area that would be affected by the activity holds very high natural character, landscape and visual amenity values, including intrinsic values, (ii)The activity would have significant adverse effects on those values, and (iii) those adverse effects cannot be <b>adequately</b> mitigated.</p>

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		<p>to the sea....Leave the Waitata to its natural and beautiful way.</p> <p>Nick Pascoe submits that the scheme destroys a wilderness icon for no sure benefit, and ruins our reputation as good caretakers of our land.</p> <p>Paul Current submits that even if we did need the power it shouldn't be in one of our prime areas of wilderness and spectacular whitewater gorges. There are fewer and fewer truly wild places.</p> <p>Douglas and Rosemary Rankin submit the scheme would destroy the intact wilderness of Upper Gorge, the Mauri and natural whitewater features.</p> <p>James Mackay submits that the Wilderness values are worth more than electricity</p> <p>Emma Richardson submits that wilderness is becoming increasingly scarce across the world and tourists are coming to visit because of this wilderness</p> <p>David Vass submits that this is remote backcountry, inappropriate place for industrial development.</p> <p><b>Impact on Intrinsic values</b>  Many submitters commented on the impact on the intrinsic values:  Keith Riley submits that knowing that these places exist is important for people's well-being and their existence goes some way to safeguarding the options of future generations.</p> <p>Bronwyn Judge submits that the intrinsic value is beyond estimation and no matter how particular we are to itemise the individual components of the Waitaha River system its</p>		<p>conditions to avoid, remedy and mitigate the potential effects.  James Bentley report: Conditions are recommended, including development of a landscape development plan, to avoid effects being to a degree or scale which is inappropriate to the landscape, features and setting within which the scheme is located.”</p> <p><b>References:</b>  AEE  Vol 1: p73-74, Table 12 p132, 164  Appendix 9 The Landscape report p49-65  James Bentley response:  DOC Officer's Report 14-28,85</p> <p>AEE  Vol 1 p73-74,,164  Appendix 9 The Landscape report p 45-69  James Bentley response</p> <p>AEE  Vol 1: p 123, 137-139  Appendix 9 The Landscape report 69-71  Amended Headworks Proposal March 2015  Revised landscape proposal April 2016  James Bentley response:  DOC Officer's Report 14-28,85-86  Appendix 1</p>		<p>The Hearing Chairman considers that the effects on natural character, landscape and visual amenity values are closely linked to the effects on the experiential elements of recreation, which are considered under section 3.5 below.</p> <p>The Hearing Chairman recommends that the application be declined pursuant to 17(U) (2)(b) as there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects on natural character, visual amenity and landscape values.</p>

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		<p>value lies in its holistic nature as a total river environment from Mountains to the Sea.</p> <p>Alice Shanks and Linsay Main submits that the intrinsic ecological and landscape vales of "Wild rivers' and "Wilderness" are important to our personal sense of national identity. We wish it to remain for our grandchildren.</p> <p>Richard Suggate states that the mitigation proposed by Westpower will not mitigate the impacts of the intrusion of manmade structures and altered river flows on this landscape. And that <i>“This is a truly wild river and its intrinsic character that includes the native flora and fauna would be permanently destroyed by imposing a hydro scheme on public conservation land.”</i></p>				
3.4	Submissions relating to 17(U) (2)(b) - there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects	<p><b>Submissions relating to Effects on River Dynamics &amp; Natural Hazards – hydrology</b></p> <p>A small number of submitters had concerns around safety issues due to flash floods.</p> <p>John Rice submitted that the earthquake risk should be considered carefully.</p> <p>Sally Jackson submits that fluctuating levels would compromise the soaking opportunities and put bathers at risk of being swept into the river which would result in almost certain death.</p>		See responses below under 3.7 in this table in regards to Flooding and Earthquakes.	<p>See responses below under 3.7 in this table in regards to Flooding and Earthquakes.</p> <p>See responses below under 3.54 in regards to effects on hot springs users.</p>	
3.5	Submissions relating to 17(U) (2)(b) - there are no adequate or reasonable	<p><b>Submissions relating to the Effects on Recreational Values</b></p> <p>There were many submissions relating to effects on recreation values. These have been broken down into the topics below.</p>				It is recommended these submissions, both objections and in support of the scheme, are allowed. Effects on recreation are relevant, as fostering recreation is a



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	methods for remedying, avoiding or mitigating the adverse effects	3.51 Tramping 3.52 Kayaking 3.53 Tourism 3.54 Hot springs 3.55 Fishing 3.56 Future Canyoning Opportunities				<p>Departmental function under section 6(e) and is also part of the definition of "conservation".</p> <p>The Hearing Chairman considers that the submissions in objection to the scheme combined with those from section 2.5 of this table (Values of the area) and from section 3.3 (Natural Character, landscape and visual amenity) contribute to a greater understanding of the significance of this area to all recreationists, particularly trampers and kayakers.</p>
3.51	Submissions relating to 17(U) (2)(b) - there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects	<p>A range of submissions where made in relation to the high value of this area for tramping and kayaking and the impacts this scheme would have on these recreation activities and that it must be kept for future generations.</p> <p><b>Tramping Values</b>            Federated Mountain clubs stated that they represent 20 000 members, they submit that the Waitaha and Morgan Gorge as a destination is held in awe and reverence throughout the tramping, kayaking and hunting communities. They submit that if the scheme went ahead parts of it would be sullied, other parts ruined-with mitigation impossible.</p> <p>Many submitters stated wanted to keep the existing experience to share it with future generations.</p> <p>A number of submitters including the Tararua Tramping Club stated that tramping in the Waitaha Valley (up to</p>	Kevin England Neil Silverwood Katarina Te Maiharoa on behalf of the Waitaha Taiwhenua o Waitaki Permolat trust Geoff Spearpoint Keith Morfett Keith Riley West Coast Branch of	<p>Westpower responds:  <b>From their Analysis of Submissions</b>            "AEE and Recreation Report: Regionally significant in the lower valley (Kiwi Flat area) for tramping but nationally significant in the upper valley particularly at Ivory Lake."            "Regionally significant for hunting"</p> <p><b>References:</b>            AEE            Vol 1: p30, 107-110, Table 12 p 131-132            Appendix 19 The Recreation Report P7-9, 47-49, 52-56, 59-51, 63-69            Officer's Report p 68,            and</p>	<p>The Officer's report did not specifically comment on the significance of the value that the Waitaha Valley place offers to trampers. However at paragraphs 4.338 and 4.340, the report noted the effects on the remote like characteristics of the area which currently contains very little modification within the back-country remote zone.</p> <p>Also at 4.349 that the construction of an alternative track away from the powerhouse would help minimise the impact of the scheme.</p>	<p>The Hearing Chairman considers some of the key submissions to be:</p> <p>-The intactness and integrity of the Waitaha Valley in its entirety is important, rather than parcelling up the experience into individual segments. For example, while the Ivory Lake Hut would not be directly affected by the proposed activity, the overall experience of tramping to the Hut would be.</p>

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		<p>Ivory Lake) is the pinnacle or crown jewel or 'Everest' of tramps in this country.</p> <p>A number of submitters stated that tramping the Waitaha valley was the highlight of their tramping life.</p> <p>Submitters commented that there would be unacceptable effects on the sense of remoteness and the incredible value of peace and solitude and physical challenges tramping the Waitaha offers.</p> <p>Mitchell Everly submits that Ivory Lake (head of the valley) has a reputation as the holy grail of NZ huts – (profiled in US Backpacker magazine as best back-country hut in the world) experienced international trampers could come here to do this trail and come across the hydro construction. Although the upper valley and Ivory hut will not be directly affected, the industrial construction, and human interference will be a major turn off. Ivory hut will no longer be the best hut in the world.</p> <p>The Permolat Trust (19) states that they are a community based organisation actively involved in the maintenance of the tracks and huts in the Waitaha and have a keen interest in preserving access to these remote areas for those seeking a more challenging outdoor experience. This type of opportunity is unique and not found anywhere else in the world. They submit that they believe there is a much greater and longer-term value in preserving this beautiful river in its current unmodified state.</p> <p>Neil Silverwood submitted that there would be impacts on the remote tramping experience and wilderness feel of Kiwi Flat and trip to Ivory Lake, the voice of the river will all but be silenced.</p>	<p>the Green Party Clare Backes Shaun Barnett NZ Federation of Freshwater Anglers Douglas and Rosemary Rankin Tararua Tramping Club WWNZ Federated Mountain Clubs Dan and Kath Lane on behalf of Te Whare o te Kaitiaki Ngahere Inc Soc Forest and Bird Michael Motz - Alpine Kayak Club president Marcus King</p>	<p>“AEE and Recreation Report: There would be only indirect effects on all land based recreational activities with all of those activities being able to continue and that all forms of recreation, with the exception of kayaking in the Waitaha Valley, would retain their regional and local significance.</p> <p>The effects on tramping and hunting will be "high" at Kiwi Flat due to the change in remote characteristics of visitor experience through the imposition of new infrastructure in a backcountry-remote setting but may moderate over time as the scheme settles into the landscape. Similar reductions in effect in the remainder of the valley.</p> <p>The effects on tramping and hunting in the Upper Waitaha Valley through a change in perception of control of a river in an otherwise undeveloped valley setting will be low to nil.”</p> <p><b>From Westpower's Analysis of Submissions:</b> “Rob Greenaway response:” <b>Consultant recreation &amp; tourism planner</b> <b>Rob Greenaway &amp; Associates</b> <b>Dip Parks &amp; Recreation Management (Distinction)</b> <b>Member:</b> <b>NZ Association for Impact Assessment</b> <b>NZ Recreation Association (Fellow)</b> <b>Sir Edmund Hillary Outdoor</b></p>	<p>And at 4.428 that the effects on most trampers and hunters accessing the Waitaha Valley would largely be localised changes to what is currently an undeveloped back-country remote setting</p> <p><b>In Full:</b> <b>4.338 The Department considers that the access road would have a physical presence in what is the start of a largely unmodified natural environment. The new access road would however, provide improved foot access up the lower Waitaha River to the start of the tramping track near the powerhouse.</b></p> <p><b>4.340 The Department considers that the physical presence of elements of the power scheme including the access road, tunnel portal exit, penstock, power house, switchyard and tailrace would affect the remote-like characteristics of the area. This is predominately due to the industrial style modification occurring within an area that currently contains</b></p>	<p>- The Waitaha has high intrinsic values, outstanding natural beauty, remoteness, solitude and wilderness qualities.</p> <p>-Tramping in the Waitaha is a 'pinnacle experience' for back country tramping in New Zealand. The experience should not be judged on the basis of the numbers of trampers. Even trampers who may never visit the Waitaha treasure it, in the same way that people who will never climb Mt Everest value it.</p> <p>-For a back country area, the Waitaha is relatively accessible. It also offers different levels of tramping experiences.</p> <p>- The proposed activity would have significant adverse effects on the values of the area and on the tramping experience, and these effects cannot be mitigated.</p> <p>The Hearing Chairman found these submissions in objection to the scheme persuasive.</p>

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		<p>Marcus King submits that he has tramped up the Waitaha several times and consider this to be a very special region of NZ. He states that his trips to Ivory lake are amongst the best in over 40 years of tramping.</p> <p>Amy Mannering submits that she personally thinks the Waitaha is one of the great assets of the West Coast.</p> <p>Mike Dunn submits that he's tramped the West Coast rivers on long trips and they are a gem, and he's always wanted to head into the Waitaha Valley.</p> <p>Both Mark Watson and Hannah Black submit that however small a scheme it would destroy the sense of wilderness this valley provides to users seeking a remote experience. they add that many levels of experience are available in this valley from day tramps to multi day adventures and they're classics.</p> <p>Keith Morfett submits that the value of this rugged pristine catchment to trampers and mountaineers has not been adequately addressed. Waitaha is high on many experienced trampers bucket list. Mr Morfett noted that Ivory Lake Hut was voted Wilderness Magazines' Hut of the year 2016.</p> <p>Keith Riley submits that the loss of this recreational amenity has international significance.</p> <p>The West Coast Branch of the Green Party (2343 signatures) submitted that the catchment and its tracks and huts are treasured by many, including those who will never get there. Ivory Lake hut is considered to be one of the best destinations for trampers in the country.</p> <p>Alan Cutler who states he is a qualified Landscape Architect (BSc, Dip LA), and practiced for 30 years</p>		<p><b>Recreation Council</b> (Westpower's recreation expert) "confirm that the effects on tramping and hunting in the Kiwi Flat area will be high due to the location of new infrastructure in a back-country remote setting."</p> <p><b>References:</b> AEE Vol 1: 107-113 Appendix 19 Recreation Report p9, 63 DOC Officer's report 67- 83,</p> <p><b>Mitigation</b> "AEE and Recreation Report: On 16 January 2015 in response to a request for further information regarding alternative track access. Westpower confirmed that it would be viable to construct a track via Alpha Creek to reach a higher terrace and bypass the powerhouse site and that this could potentially be of a higher standard and improved grade to the existing track to Kiwi Flat."</p> <p><b>References:</b> AEE Vol 1 p109-110; 155-156 Appendix 19 The Recreation Report p66 Response to request for further information 16 Jan 2015 (Alternative Track Access) DOC Officer's Report p 70-71, 111, 114, 149-150</p>	<p>very little modification within the backcountry- remote zone.</p> <p>4.349 The Department considers that the construction of this alternative track away from the proposed powerhouse would help to minimise the impact of the scheme, particularly for those people who tramp down the Waitaha Valley.</p> <p>4.428 The Department agrees with Westpower's assessment that the effects on most trampers and hunters accessing the Waitaha Valley would largely be localised changes to what is currently an undeveloped backcountry-remote setting. Access from Macgregor Creek to near the power house would be improved but overall the tramping and hunting experience would remain 'hard won', the experience may be diminished by the presence of a functioning hydro scheme and associated infrastructure.</p>	<p>It is clear from submissions that the area is highly valued by trampers for its beauty, remoteness and unspoilt character. The Waitaha is highly regarded for back country tramping in New Zealand and this is supported by Westpower's expert who comments in The Recreation Report that the Waitaha Valley is regionally significant for tramping and the Upper Waitaha Valley is nationally significant for tramping particularly at Ivory Lake. The Report also states that use for tramping was low and the national significance setting is due to its landscape setting and identification as a 'classic' tramping destination.</p> <p>The local effects on tramping at Kiwi flat are acknowledged by all the experts as high. Westpower's expert (in the Recreation Report) also stated the effects on trampers would range from moderate to nil for the remainder of the Waitaha Valley, depending on the influence of the structures at the Morgan Gorge on visitor experience, personal attitudes to the scheme, and whether visitors experience</p>

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		<p>(gaining comprehensive experience), and was a past Associate Member and Registered Member of NZ Institute of Landscape Architects. He notes that this experience has included preparing and presenting evidence at the Environment Court on ONF and ONL. He submits that he is an experienced trapper and mountaineer and has visited many of the region's major rivers and catchments. He is familiar with the Waitaha River catchment and has been "blown away" by the grandeur of the river gorge and the wild and scenic values of the outstanding natural landscape.</p> <p>Mr Cutler states the memories of one visit have stayed vivid for over 30 years. Aland comments that he is an experienced kayaker and has paddled a number of wild and scenic rivers throughout NZ, he is envious of and has great respect for those who have paddled the gorge. Alan submits that from his assessment the proposal would significantly compromise public use and enjoyment of the river corridor and the parcel of public land adjoining the lower Waitaha River and Morgan Gorge.</p> <p>Dan and Kath Lane on behalf of Te Whare o te Kaitiaki Ngahere Inc Soc submit that the weir, flushing channel, building and road will all severely denigrate the experience.</p> <p>Forest and Bird submit that the numbers using the Waitaha should not detract from its value for tramping and whitewater kayaking. The Department has a statutory function to foster recreation while the impacts of this proposal is significant. The scheme will remove one of the premier difficult whitewater runs, and introduce industrial machinery and infrastructure to an area where there's only a track and huts. This is contrary to the purpose for which the land is held and fostering recreation.</p>			<p>4.353 A permanent foot access track would also be required from the existing DOC track on the true right of the river at the top of the Morgan Gorge down to the intake site. Westpower state that the track would be constructed to DOC standard with vegetation clearance kept to a minimum.</p> <p>4.354 It is recommended that should the hydro scheme be approved then the following additional special condition be included as 17.6 and 17.7:</p> <ul style="list-style-type: none"> <li>The Concessionaire shall build and maintain foot access from the existing track on the true right of the Waitaha River to the intake. The access track must be maintained to Tramping Track Standard described in the New Zealand Handbook Tracks and Outdoor Visitor Structures SNZ HB8630:2004.</li> </ul>	<p>the Kiwi Flat area during their visit to the Valley.</p> <p>Taking into account submissions, as well as the experts' views, the Chairman considers the indirect effects on the overall experience of tramping throughout the Waitaha Valley to be at least at the moderate end of Westpower's expert's scale and maybe even higher due to the perceptual/experiential effects of the scheme.</p> <p><i>Mitigation measures</i></p> <p>The Chairman took into account the mitigation measures proposed or accepted by Westpower for trampers;</p> <ul style="list-style-type: none"> <li>Alternative track access between Macgregor Creek and Kiwi Flat located to avoid the powerhouse, this would be to a higher track standard than current.</li> <li>Provision of construction information that might affect recreational users on Westpower's website and other user groups' websites if they agree.</li> </ul>

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		<p>Stephanie Bowis states that she is a backcountry remote trumper, she Actively seeks landscapes and solitude, the Waitaha place has high intrinsic values. Spring 2001 submitter visited the Gorge, appreciated the wilderness and spirit of the Waitaha, journey from lower flats up to the Mouth of Morgan Gorge, feel the energy, roar and spray up to 20 m away.</p> <p>Dave Quant submits that the scheme would completely destroy the experience of a backcountry adventure.</p> <p><b>Proposed mitigations for trampers</b> A few submitters made suggestions for mitigation measures if the scheme did go ahead:</p> <p>Geoff Spearpoint submitted that there are some notable exceptions in the report around public access provision. <i>“If it goes ahead there are some bottom lines that must be addressed: enduring public access by vehicle to at least the edge of conservation land. There is little in the report around the effect on the main users of the valley - trampers and hunters and how the scheme may be made to benefit those groups, and mitigate the intrusion.”</i></p> <p>Mr Spearpoint submits that access over the years has been eroded and this is a chance to improve it if it's to go ahead. The proposed 6km roadwalk is unacceptable and on this basis it should be declined. He submits that Westpower should secure public access via 2wd the same as for their staff and contractors - to the site of the scheme or at least as far as MacGregor Creek and preferably within 1km of the power house. The road should be maintained by Westpower. And that:</p> <p><i>“Access during the 4 year construction period should remain guaranteed at all times. There is no provision that</i></p>			<p>4.363 Westpower states that construction activities, especially at the down-river end of Kiwi Flat, and at the powerhouse, would take three to four years. Construction noise and human activity, especially at the head-works, during this period would be 'significant' during the construction process and incompatible with the experiences associated with a remote recreation setting.</p> <p>4.364 Westpower proposes that a special condition be included in the concession:</p> <p>17.1 During the construction period, the Concessionaire shall provide information on construction activities that may affect recreational users within the area surrounding the construction footprint.</p> <p>This information shall be made available on the Westpower website, and on appropriately located signage approved by the Grantor. The information shall include:</p>	<ul style="list-style-type: none"> <li>• Appropriately located signage</li> <li>• The mitigation measures for landscape and visual amenity effects (including the revised headworks and powerhouse proposal 15 April 2016)</li> </ul> <p>The Chairman considers that improved access into the valley by improvements to track standards would be a positive effect on tramping.</p> <p>However, the Chairman does not consider that these measures are adequate mitigation for the adverse effects on the remote and unspoilt character of the area.</p> <p>The Hearing Chairman notes New Zealand Energy's submission in support of the scheme but recommends that you not accept the submission that for people to enjoy and or benefit from these resources commercial and industrial activities must co-exist with recreational users.</p> <p><i>In conclusion</i></p>

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		<p><i>I could see for a public bridge over the outlet flow below the power house for recreationists.</i></p> <p>Stephen France highlighted existing access issues and suggests that locating the public road end at the power station would help ameliorate negative effects on recreational users. (specific conditions are proposed to this effect.)</p> <p>Mr France noted this would also remove the visual impact of a recreationists coming up the valley on foot, public carpark would create natural special barrier between built/farm environment and relatively undisturbed wilderness</p> <p>Mr France suggests a footbridge across the Waitaha at the location of the powerhouse allowing access to the easier gradient of the older track on the true left and avoid the need to relocate parts of the track on the true right.</p> <p>Gary Huish submits that the access on the south bank provides unparalleled views in the area. (The change to the north back while solving access is a poorer substitute and it would be good to see this remedied)</p> <p>Sally Jackson commented that: <i>“the landowner on the true left has told me they were never approached about access. It’s possible that public access could return to the true left which is shorter and requires less maintenance.”</i></p> <p><b>Submissions in Support</b> New Zealand Energy commented that it would be great if as a result of the power station a wheelchair track could be built into the Morgan Gorge. And that for people to enjoy and or benefit from these resources commercial and industrial activities must co-exist with recreational users.</p>			<p>a) A description of the type, timing sequence and location of construction activities;</p> <p>b) Potential hazards (including in-river hazards) arising from construction activities, including advice on avoiding hazards and construction activities generally; and</p> <p>c) Any effects on the flow regime.</p> <p>4.365 The Department supports this initiative and should the hydro scheme be approved it is recommended that the proposed special condition be reworded to include that the information is also made available on the Department’s web site, and those of key stakeholders such as <a href="http://www.remotehuts.co.nz">www.remotehuts.co.nz</a> and the Whitewater NZ website.</p> <p>4.426 Westpower has provided a detailed description and assessment of the recreation use of the Waitaha Valley. The Department agrees that the Waitaha study area receives</p>	<p>The Hearing Chairman recommends you accept submissions that the proposed activity would have significant adverse effects on the values of the area and on the tramping experience, and these effects cannot be adequately mitigated.</p> <p>The Hearing Chairman recommends that the application be declined pursuant to 17(U) (2)(b) as there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects on <b>tramping values</b>.</p> <p>If, contrary to this recommendation, you were minded to grant the activity then the mitigations suggested by submitters should be investigated further.</p> <p>For example: The issues raised by Mr Spearpoint in regards to access over the outflow outlet would need further consideration. And Sally Jackson’s comment in regard to landowner access on the true left of the River,</p>

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					<p>low use from kayakers (50 – 100 PA), and trampers and hunters (&lt;150 PA). The Department, however, considers that this level of use is not uncommon for Backcountry – Remote Zones on the West Coast due to its remoteness and the fact that it is relatively hard to travel through.</p> <p>4.427 The Department agrees with Westpower's statement that "The scheme has the potential to affect the quality and nature of the recreation experience in the area under application by changes to the remote-backcountry characteristics of the Kiwi Flat and Douglas Creek settings (via the installation of hydro diversion structures, access and the powerhouse) and an altered flow regime in the Morgan Gorge and much of the Douglas Creek reaches."</p> <p>4.428 The Department agrees with Westpowers assessment that the effects on most trampers and hunters accessing the Waitaha Valley would largely be localised</p>	<p>would require further consideration.</p>

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					<p>changes to what is currently an undeveloped backcountry-remote setting. Access from Macgregor Creek to near the power house would be improved but overall the tramping and hunting experience would remain 'hard won', the experience may be diminished by the presence of a functioning hydro scheme and associated infrastructure .</p> <p>4.435 The Department agrees with Westpower that the noise effects from construction would be of a temporary nature. Proposed special conditions include the development and implementation of a construction noise management plan. The plan would address the following:</p> <ul style="list-style-type: none"> <li>a) criteria and standards for construction noise;</li> <li>b) general noise management methods;</li> <li>c) specific noise management for helicopters movements, traffic, blasting, piling, the protection of recreational users and wildlife (including blue duck);</li> <li>d) contingency measures;</li> </ul>	



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					<p>e) training; and f) complaints.</p> <p><b>DOC comments on mitigation for trampers in Officer's Report</b></p> <p><b>Road Access</b> Paragraphs 4.338, 4.339 4.349 detail mitigation for trampers and that the proposed access road would provide improved foot access up the lower Waitaha River to the start of the tramping track but private land issues would prevent improved public access by vehicle.</p> <p>In regards to foot access on the true left of the Waitaha as requested by Stephen France and Gary Huish, paragraph 4.345 of the Officer's report notes Westpower suggested this possible mitigation but noted it would be subject to landowner approval, it is noted further that the Department considered landowner approval to shift foot access to the left back is unlikely to be provided.</p>	

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3.52	Submissions relating to 17(U) (2)(b) - there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects	<p><b>Recreation Values Continued... Submissions relating to effects on kayaking values:</b></p> <p><b>Encumbrances</b> WWNZ submitted that kayakers would no longer be able to descend the river free from encumbrances.</p> <p><b>Mitigation proposed will not mitigate impacts of intrusion of manmade structures and altered river flows</b></p> <p>Diversion and landscape intrusions are unable to be mitigated</p> <p>Many submitters submitted that 'There is no mitigation that can compensate for the change from an outstanding wild and remote experience to a significantly modified and industrialised environment as a result of the reduced water flow, weir and infrastructure'</p> <p>Tony Ward-Holmes submitted that the mitigation methods are inadequate; there is no mitigation methods for the adverse effects associated with the reduction in flow. The applicant has taken steps to minimise the effects associated with the construction of the infrastructure associated with the scheme. However these effects remain significant. The fact is that there are no adequate methods to mitigate the adverse effects.</p> <p><b>Loss of natural flows - mitigation offered for kayaking Insufficient, unworkable or inappropriate</b></p>	54 (Plus the template submitters) WWNZ Forest and Bird West Coast Branch of the Green Party NZ Federation of Freshwater Anglers Council of Outdoor Recreation Associations NZ Mic Hopkinson NZ Kayak School	<p><b><u>From Westpower's Analysis of Submissions Encumbrances</u></b> Westpower responds that "WWNZ notes itself that it is common for sections of the river to be portaged, especially at the Morgan Gorge itself (pages 12,15, 24). It is because most kayakers portage the Morgan Gorge that it was considered in the preliminary assessment to be the appropriate location for the weir."  <b><u>AEE</u></b> Vol 1: v, 108-110, 123, 162-163 Appendix 19 The Recreation Report 8, Table 1 p9 DOC Officer's Report 67-83</p> <p><b><u>From Westpowers Analysis of Submissions</u></b> <b><u>In regards to loss of natural flows</u></b></p>	<p><b>Encumbrances and loss of natural flows</b></p> <p>The Officer's report at paragraph 4.427 agreed with Westpower's application that noted that the quality and nature of the recreation experience in the area would be affected by the installation of hydro diversions structures, access and powerhouse and the altered flow regime.</p> <p>The Officer's report at paragraph 4.429 and 4.430 also noted the impacts on all kayakers who paddle down through the extraction reach section to the proposed tailrace location would face an additional 1.5km portage.</p> <p>In the Officer's report it is recognised that the information provided by WWNZ is at odds with the information provided by Westpower in regards to whether the river (through the Morgan Gorge section) would be able to be paddled during natural flows at all and notes specifically at</p>	<p>Many of the submissions that are summarised under section 2.3 above are also relevant under this section.</p> <p>The Hearing Chairman considers some of the key submissions summarised in this section to be:</p> <ul style="list-style-type: none"> <li>-that there was no adequate mitigation for the proposed reduction in flow and the creation of the weir and other structures. In tandem these changes would significantly affect the river's wild and unencumbered nature.</li> <li>-that working around "no take"(cease to abstract) days does not line up with the way kayaking trips are planned and carried out.</li> <li>-that even with the "no take" days there would be very few days where the flow would be sufficient for kayaking.</li> <li>-that the value of the river to kayakers should not be judged by the number of kayakers who have the ability to kayak the river.</li> </ul>

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		<p>It was submitted by WWNZ that the effect of the scheme on the river flow is not low or minor but high and that loss of the flow will prevent current use of the resource.</p> <p>Extra 1.5km portage with no mitigation.</p> <p>Many submissions were made around the proposed no – take days and supported WWNZ's view.</p> <p>“Wendy Davis submitted that the proposed no take condition is <i>tortuous, inflexible, untimely, time-limited and very poorly responsive, in complete contrast to what we had suggested.</i>”</p> <p>Bill Thomson submits that two ‘no take’ days is a difficult request system entirely different to the needs of a kayaking community for a remote river with variable rain patterns.</p> <p>Keith Riley submits that the proposal will physically remove the kayaker's ability to paddle the Morgan Gorge. Mitigation is highly restrictive and unlikely to align with the numerous factors required for a successful descent.</p> <p>The scheme will totally remove the ability for kayakers to run the gorge and the reach below the gorge to the powerhouse.</p> <p>No mitigation has been provided for the loss of whitewater and water flow through the Morgan Gorge and the 1.5km below the Gorge down to the power, WWNZ submit that they have not calculated the significant impacts on the stretch below the Morgan Gorge as they didn't expect the scheme to be granted in principle.</p> <p>A minimum of 7 days notice is too long to forecast flow</p>		<p><b>“AEE and Recreation Report: There will be a modified flow regime between the top of Morgan Gorge and the powerhouse tailrace.”</b></p> <p>Westpower states “that while there will still be an opportunity to kayak the part of the river occupied by the Scheme the kayaking use will be constrained by residual flow effects in the abstraction reach and the construction of a weir at Morgan Gorge.</p> <p>The Morgan Gorge will retain its ability to challenge highly skilled kayakers albeit with additional restrictions on its use due to the need to confer with Westpower if a cease to abstraction is required to provide a natural flow.</p> <p>The change from an uncontrolled river for kayaking may remove a key quality which makes the Morgan Gorge internationally significant for the activity (albeit rarely used). The scheme may sustain nationally significant kayaking values on the river with the retention of current kayaking opportunities above Morgan Gorge. The effects on kayaking on the Morgan Gorge will be high due to the change in its natural flow regime and requirement to cease abstraction to retain kayaking options. The effects on kayaking the whole river will be "high" due to the change from a natural to a controlled river and</p>	<p>paragraph 4.388 that, the situation would remain that when the power scheme is operating at capacity no days may be suitable for kayakers to complete a run of the Waitaha River, including Morgan Gorge.</p> <p>Paragraph 4.431 of the Officer's report notes Westpower's conclusion that mitigations are available to avoid and mitigate the scale of effects on kayaking through a number of the proposed conditions including no take days/ceases to abstraction. But states that the Department nevertheless has reservations about the adequacy of that mitigation in light of the fact that the river would change from its natural state and would no longer be available to kayakers except on a very small number of ‘cease to abstract’ days.</p> <p>The Department in the Officer's report paragraph 4.431 agreed with Westpower that the scheme would likely result in net ‘high’ adverse effects on kayaking the Morgan Gorge.</p>	<p>-that it is possible more people may be able to kayak the river in future, with changes in ability and technology.</p> <p>-that extra portaging, that would be required if the scheme proceeded, will detract from the experience.</p> <p><b>The Hearing Chairman found these submissions persuasive, though he considers that the number of additional days (on top of “no-take” days) that the river could be kayaked is uncertain.</b></p> <p><b><i>Use of abstraction reach as a whole</i></b></p> <p><b>It is clear from submissions that while few people presently kayak the Morgan Gorge itself, more people kayak the abstraction reach below the gorge and others kayak the whole river starting at a location above Morgan Gorge and portage the Morgan Gorge, putting in again below it. Kayakers also develop their skills by kayaking different parts of the abstraction reach below</b></p>

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		<p>No allowance for the increasing standards and abilities of kayakers has been made, numbers able to paddle it are increasing, e.g. Huka Falls, Mt Everest examples.</p> <p>The proposed regime favours the industrial venture over the recreation. Fails to mitigate the loss of amenity.</p> <p>There is no known and proven weir design that achieves objectives for fish movement, kayak access into the gorge and blue duckling access</p> <p>Victoria University kayak club submits that Westpower making the river available for a few days a year effectively means it is unavailable for international kayakers - Submitter discusses the reasons for this. (Rod Deppe)</p> <p><b>Further mitigations proposed for kayakers if scheme was to go ahead</b></p> <p>WWNZ submits that conditions for new track and maintenance should be for the whole term. A number of mitigations are proposed for track access to various parts of the river for kayak access and hot springs.</p> <p>i. On Pg 68 of their submission WWNZ claim the proposed condition for a track on the true right into Kiwi Flat is only for the duration of the construction and it should be for the duration of the consent.</p> <p>ii. On Pg 69 WWNZ recommend further mitigation in addition to maintaining the existing access track adjacent to the river in the form of provision of bridges across the Waitaha at the lower end of what is described as the class IV run and at the location where kayakers put into the river below the Morgan Gorge after portaging around the Morgan Gorge and at the top of the class IV run. This would allow foot access to the true left so walkers can access the hot</p>		<p>modifications to Morgan Gorge and the reach below the Gorge.</p> <p>The effects on kayaking between Morgan Gorge and Douglas Creek will be high due to the change in the natural state of the river.</p> <p>Effect on kayaking the Upper Waitaha Gorge (including Waitaha Gorge and Kiwi Flat) will be "low".</p> <p>On a regional level the effects of the scheme on all activities will be low as there are numerous alternative backcountry-remote and whitewater settings. The West Coast will remain a kayaking destination of repute."</p> <p>Rob Greenaway (Westpower's recreation expert) response: "WWNZ contends that the assessment of effects on kayaking should be very high. I do not consider that a higher effect assessment is correct because the kayaking opportunity remains (given the allowance for some natural available flows and ceases to abstraction on an as required basis) for most users of the resource albeit with an additional portage requirement when flows are inadequate."</p> <p><b>References</b>  AEE  Vol 1; p107-110; 123-124 Table 12 p131-132, 162-163, 165, 175-178, 181, 185, 201  Appendix 19 The Recreation Report p7-8, Table 1 pg, 61-63, 66</p>	<p>Existing Mitigations for kayakers also include;</p> <ul style="list-style-type: none"> <li>Alternative track access between MacGregor Creek and Kiwi Flat would be provided and routed to avoid the power house. para 4.346 and 4.350</li> <li>Maintenance of foot access from the existing track on the true right of the Waitaha to the intake.</li> <li>Track access allowing access to the bottom of Morgan Gorge would be maintained to a higher standard than exists currently. Para 4.351</li> <li>The weir design must provide for foot and kayak access no more difficult than already exists. Para 4.358-4.360</li> <li>The provision of Two no take days. para 4.405</li> <li>Real time flow data and video footage would be provided on Westpower's website.</li> </ul>	<p>the Gorge piece by piece until the whole run can be linked together .</p> <p><i>"no take days"</i></p> <p>Westpower considers that, given the low numbers of people who kayak the gorge, two "no-take" days is adequate mitigation for the effect on kayakers.</p> <p>The Hearing Chairman disagrees, for the following reasons:</p> <p>First, offering "no take" days does not line up with the way trips are planned. Planning seems to vary, but it is clear that for the more difficult descents the kayakers have to not only plan to be on the West Coast at the right time of the year and during the right weather conditions, but also to check the conditions of the gorge rapids (and other difficult rapids) prior to starting. This can involve paddling the river within the weeks or days before the trip to 'scout' it out and/or - when flying in - stopping to check rapids. Also the time it takes</p>

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		<p>springs or for kayakers to walk up further to run some of the last class IV rapids in the Morgan Gorge from the hot springs down. WWNZ notes that access further up from the upper class IV put in point on the true right is not possible</p> <p>iii. WWNZ claim that the proposed conditions do not include the provision of the section of the existing track adjacent to the river past the powerhouse up to the bottom of the Morgan Gorge and ask that this be provided.</p> <p>iv. WWNZ state that all track consent conditions need to specify the grid co-ordinate start and finish points of these tracks, and the tracks be uniformly graded and wide enough and clear enough of vegetation to ease the burden of portaging bulky kayaks through the bush and built to suitable tramping track standards for the duration of the consent.</p> <p>v. On P69-70 WWNZ submits that the construction of a 4-5 m weir to pass the residual 3.5 cumecs down a 1 m wide chute, or the about 20 cumec flow to provide for the kayaking resource, and that can provide a safe passage down into the Morgan Gorge, is not a trivial matter.</p> <p>WWNZ state that <i>"weirs are notoriously lethal and kill swimmers and paddlers alike, and other people accidentally caught in them, in the recirculations or 'suck back' formed at their bases. Weirs are mostly designed to dissipate energy not keep people safe. Currently access via the river into the Morgan Gorge is safe, the weir will pose a potentially lethal structure. Thus, the design of the weir needs to be done by an internationally recognised and proven whitewater engineering expert skilled in the art of</i></p>		<p>Response to request for further information on kayaking 30 April 2015  Comments on WWNZ (Jan) report - provided to DOC 30 April 2015  Comments on WWNZ (May) report - provided to DOC November 2015  DOC Officer's Report 67-83, 88</p> <p><b><u>In regards to Loss of Natural Flows Altered River Flow</u></b>  Westpower responds in their Analysis of Submissions:  "AEE: proposed water take is a maximum of 23 cumecs and residual flow of 3.5 cumecs below the intake. While the preferred kayaking flow for Morgan Gorge is unclear, mid-range flows of 11.8 - 23.3 which currently occur for 40% of the time annually will be available under the scheme for 7% of the time annually (146 days per year to 26). Over summer that flow range will be available for 13% of the time compared to 33% naturally (30 days per year to 12).</p> <p>Flows above 23.3 would be reduced from 40% of the time to 15% on an annual basis and 23% over summer. Flows above 11.8 naturally occur for 80% of the time and would with the scheme in place, occur only for 22% of the time, and 35% of the time in summer (a change of 292 days per year of flows over 11.8 to 80 days)."</p> <p>And</p>	<p><b>In regards to WWNZ requests for additional mitigation</b></p> <p>i. Paragraph 4.346 of the Officer's report provides for alternative access on the true right of the Waitaha and the proposed condition does make it clear that the proposed track on the true right would be for the duration of the concession.</p> <p>ii. This request would require further consideration.</p> <p>iii. Currently the condition proposed in paragraphs 4.352 seems to already provide for the provision of the section of the existing track adjacent to the river past the powerhouse up to the bottom of the Morgan Gorge already. However it does not appear that this has been reflected in the additional proposed conditions in Appendix 1 (17.2 (b)) and would need additional wording or an additional condition added to the proposed conditions.</p>	<p>to carry out a trip seemed to vary, with one submitter describing his example as a 6-9 hour adventure. The Hearing Chairman does not consider that a relatively inflexible regime of "no take" days lines up with the flexibility required to plan and execute a trip down the Morgan Gorge.</p> <p>Second, as noted above, it is not just use of the gorge that will be reduced. The scheme would considerably reduce use of the abstraction reach below the gorge. It would also reduce the use of the rest of the river as kayakers would be less likely to paddle the river at all due to the extra 1.5 km of portage that would likely be required. The Hearing Chairman does not consider two 'no take' days to be adequate mitigation for these losses of opportunity.</p> <p>Third, the Hearing Chairman considers that the adverse effect on kayaking goes further than simply reducing the number of days that the river can be used. It is not just a matter of numbers. The Hearing Chairman</p>

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		<p><i>designing safe river structures in-keeping with the natural environment (such as Scott Shipley of the USA, who designed and oversaw construction of the whitewater features in the Hawea Whitewater Park near Wanaka), and also providing safe foot access around the weir. The design also needs to be done in consultation with whio and koaro experts to ensure conditions are appropriate to maintain those fauna and exclude others. The extra Department recommendations around safety in para 4.360 are insufficient to guarantee an appropriate outcome, as are Westpower's recommended conditions in 4.358. Robust consent conditions need to be constructed if the concession is to be granted.</i></p> <p>vi. WWNZ also submit that DOC has suggested an additional consent condition where they will review the number of no-take days on a five yearly basis. WWNZ requests that these conditions need to be rewritten significantly so as to more fairly protect the recreation resources, not diminish their accessibility even further.</p> <p>vii. Paul Current submitted that a considerable section below the gorge will be dry (Morgan Gorge). And states as a minimum we would require no take days to be Friday to Monday (inclusive) throughout summer and in addition a hidden/natural looking weir.</p> <p><b>Submissions in Support</b> A few submitters in support of the application commented that mitigations were available for kayakers. (Tony Kokshoorn, Lindsay Molloy, Union West Coast and New Zealand Energy)</p>		<p>“Martin Doyle response:” From Westpowers Analysis of submissions. <b>Consulting Hydrologist NZCS (Water Technology) Grad. Dip (Hydrology) NZ Dip. Field Hydrology</b> (Westpower's expert): “WWNZ's preliminary assessment concluded that the opportunity to kayak Morgan Gorge would reduce from 51.9 days per annum to 8.8 days under the operational scheme. These numbers aligned with my analysis” <b>Mr Doyle then comments that:</b> “Using a revised methodology, WWNZ has reassessed the flows and now concludes that there will be a complete loss of kayaking opportunity. This analysis is not correct.” He explains that “the data shows that there were at least 2 available days for kayaking the Morgan Gorge in December 2007 after applying the operating rules of the proposed scheme.”</p> <p>“WWNZ's revised methodology was not applied in calculating the kayaking opportunity pre scheme.” “Taking into account the points made by WWNZ I have carried out a further analysis for the full 6 year flow record collected on the Waitaha. This analysis <b>considers the time spent in the flow range 17.5-22.5 cumecs (the flow range suggested by WWNZ as being suitable for kayaking Morgan Gorge) but only when the flow is dropping and only when the flow occurs in the window of 6am to 7pm</b></p>	<p>iv. This request would need further consideration.</p> <p>v. Proposed conditions for the weir are discussed in the Decision in Principle Officers Report at paragraphs 4.355-4.360 and provides that; a suitably qualified and experienced engineer with experience in the design and operation of weir structures and a person with experience in water safety, particularly in kayaking on rivers, would have to certify the safety features and that the weir would be designed in consultation with WWNZ.</p> <p>vi. This request would need further consideration.</p> <p>vii. This request would need further consideration.</p>	<p><b>accepts submissions (summarised at section 2.3 of the table) that kayakers' experience would be diminished by their knowledge that the river is no longer unencumbered and wild. And also, that that the river's intrinsic values would be diminished.</b></p> <p><b>In conclusion the Hearing Chairman does not consider “no take” days would compensate for the current unfettered access, even if the number of such days was increased somewhat.</b></p> <p><b>He acknowledges that the “real time” information flow potentially could be useful for kayakers in planning trips, and could be seen as a positive effect of the scheme for kayakers, but this in itself does not adequately mitigate for the adverse effects on kayaking.</b></p> <p><b>Number of additional days (over and above “no take” days)</b></p> <p><b>Submitters disagreed with Westpower about the number</b></p>

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		<p>New Zealand Energy submitted at the hearing that they did not accept the approach taken by WWNZ as it instils doubt around what really are the true values that need to be assessed and how they can be managed. New Zealand Energy then discussed the benefits of each competing use of the Waitaha River as a resource and compares the current kayak use with the potential production of power, they state that kayaking would be only 0.002% of the benefit otherwise afforded to 31,200 people who would be using this renewable energy power.</p> <p>New Zealand Energy also submit that the wild and scenic values won't be lost and that <i>"in fact there will be more people that will be able to enjoy those values as well."</i> They comment that it would be great if as a result of the power station a wheelchair track could be built into the Morgan Gorge. And that for people to enjoy and or benefit from these resources commercial and industrial activities must co-exist with recreational users.</p> <p>They summarise: <i>"that the presence of a hydro-power scheme on the Waitaha River will have a negligible effect on kayaking values and more likely because of better access will increase the number of kayakers using the river."</i></p>		<p>acknowledging that a kayaker would not attempt Morgan Gorge on a rising river and only in daylight hours."</p> <p>The results demonstrate that there would not be a total loss of kayaking opportunity. There would be a minimum of 20 5 hour kayaking windows over a six year period and 10 minimum 7 hour kayaking windows over a six year period for a 17.5-22.5 cumec flow range, with the scheme operating as proposed."</p> <p>From Martin Doyle's paper on the submissions:  <i>"For a 5 hour window, the scheme reduces opportunities to kayak Morgan Gorge from 102 to 20 over a 6 year period (17 opportunities per annum reduced to 3.3 opportunities).</i></p> <p><i>For a 7 hour window, the scheme reduces the opportunities to kayak Morgan Gorge from 92 to 10 over a 6 year period (15.3 opportunities per annum reduced to 1.7 opportunities). Either way there is not a total loss of kayaking opportunity as stated."</i></p> <p><i>The following points were also noted by Mr Doyle in regards to WWNZ's estimated flow range for Morgan Gorge;</i></p> <p>WWNZ's proposed window of opportunity is based on a flow range estimate of 17.5 - 22.5 cumecs. This precise and narrow flow range is unlikely</p>		<p><i>of additional days that kayaking would be possible.</i></p> <p><i>The number of additional days available depends largely (though not entirely) on the flow range needed for kayaking.</i></p> <p><i>WWNZ estimate the necessary flow range (without the scheme in place) to be 17.5 to 22.5 cumecs. With the scheme in place they consider that there will be no additional days, over and above no-take days, suitable for kayaking the gorge. This is because, in WWNZ's view, the required flow range would likely only be available during heavy rain, when the river would likely be rapidly rising or dropping , making conditions unsafe.</i></p> <p><i>Westpower's hydrologist, on the other hand, estimates that even if the flow range is 17.5 – 22.5 as suggested by WWNZ, the minimum opportunities for kayaking would be (in a 6 year period) 20 x 5 hours windows and 10 x 7 hour windows. He uses different parameters from WWNZ's to reach this estimate. His</i></p>

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				<p>to be correct as it has been based on limited data from a small number of Morgan Gorge kayaking runs and the ability to visually estimate flow accurately is limited.</p> <p>Because the estimated flow range is unlikely to be accurate, a further analysis using a slightly wider flow range of 16-24 cumecs was undertaken. The results demonstrate how sensitive the analysis is to the choice of flow range, with there being 37 minimum 5 hour kayaking windows and 24 minimum 7 hour kayaking windows over the six year window <b>with this extended flow range.</b></p> <p>“If the flow range was (say) 12-22 cumecs, extended periods of kayaking opportunity exist even if the scheme was operating as planned.”</p> <p>With respect to <b>a comment made by WWNZ in their submission (page 46) in regards to Amethyst, Mr Doyle states;</b></p> <p>“This example is used by WWNZ to describe why the Amethyst is different to the Waitaha. However the Amethyst River typically drops from high flows over a short period which is relevant to the opportunities for kayaking on the Waitaha. If a relatively generous flow range of 8-20 cumecs is selected for the Amethyst River, the window of opportunity is typically 3-4 hours. That this window is being utilised parallels the Waitaha situation, should the scheme be built.”</p>		<p><b>parameters include; that kayaking will occur only when the flow is dropping and only when the flow occurs in the window of 6am to 7pm (acknowledging that a kayaker would not attempt Morgan Gorge on a rising river and only in daylight hours.)</b></p> <p><b>Westpower's hydrologist further notes that as there have been very few trips through the gorge, it is not possible to be definitive about the required flow range and therefore about the number of additional days. If the flow range was expanded slightly to 16 – 24 cumecs, this would give (in a 6 year period) 37 x 5 hour windows and 24 x 10 hour windows.</b></p> <p><b>The Hearing Chairman is not prepared to assume that the flow range is likely to be broader than the 17.5 – 22.5 cumecs put forward by WWNZ. This range may result in no additional days (WWNZ view) or on average over a 6 year period 1.7 days per year for a 7 hour window and 3.3 days per year for a 5</b></p>



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				<p><b>References:</b>  AEE  Vol 1  Appendix 6 The Hydrology Report  Response to request for further information on kayaking 30 April 2015  Comments on WWNZ (Jan) report - provided to DOC 30 April 2015  Comments on WWNZ (May) report - provided to DOC November 2015  Appendix 19 Recreation Report  P7-8, 13-15  Martin Doyle's response</p> <p>Westpower responds in their <b>Analysis of Submissions</b> in regards to <b>Mitigation Offered for kayaking Insufficient, Unworkable or inappropriate</b></p> <p>"AEE and Recreation Report: Westpower has proposed a number of special conditions to avoid or mitigate potential effects and to retain an opportunity for kayaking use.  No take days, or ceases to abstraction will enable kayakers of the Morgan Gorge to continue at agreed times, in addition to when the flow through the Gorge is sufficient to kayak (Recreation report page 62)</p> <p>The conditions that Westpower has proposed to WWNZ (in subsequent consultation with it - but in relation to which WWNZ has declined to engage) include there being two occasions per</p>		<p>hour window (Westpower hydrologist's view).</p> <p>The Hearing Chairman concludes that it is not possible to determine with certainty how many additional days would be available for kayaking.</p> <p><i>Mitigation measures</i></p> <p>The Hearing Chairman took into account the suite of mitigation Westpower proposes or accepts:</p> <ul style="list-style-type: none"> <li>• A minimum of two "no take" days each year, subject to a protocol (including 7 days notice, request made through WWNZ)</li> <li>• A possibility of additional "no-take" days on request from WWNZ</li> <li>• The Department may review the number of 'no take" days and their management on a 5 yearly basis</li> <li>• The protocol to be reviewed annually</li> <li>• "real time" flow data and camera footage on website to assist kayakers to plan trips</li> </ul>

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				<p>year on which the intake will cease a no-take day by 7 AM on the nominated day, a protocol to be prepared in consultation with WWNZ on the no take regime, a requirement for safety features of the weir are to be designed in consultation with WWNZ, with those features to achieve an overall standard of difficulty for kayak and foot access into Morgan Gorge no greater than that which already exists. The design plans for the safety features of the weir are to be certified by a suitably qualified and experienced engineer with experience in design and operation of weir structures and by a person with experience in water safety, particularly in kayaking on rivers.</p> <p>Also a channel section at the intake weir has been incorporated to concentrate the residual flow into a chute in order to retain the opportunity for kayakers to kayak this section of the river. The lower face of the weir will be designed so as to allow kayaking access to the Morgan Gorge.”</p> <p>“Rob Greenaway response: The proposed flow regime allows for some natural available flows using the narrow flow range proposed by WWNZ and ceases to abstraction can provide amenity on an as required basis. With such mitigation the effects on kayaking on the Morgan Gorge and the whole river are high rather than significant.”</p>		<ul style="list-style-type: none"> <li>• Safety features of the weir to be designed, in consultation with WWNZ, to enable kayak access</li> <li>• Track access to bottom of the gorge is retained</li> <li>• Maintenance of foot access from the existing track on the true right of the Waitaha to the intake.</li> </ul> <p>He notes that Westpower's experts conclude that even with the proposed mitigation the adverse effect on kayaking the Morgan Gorge, the abstraction reach and indeed the whole river would remain high. The Department's experts concluded the final effects on the kayaking on the Waitaha River and in the Morgan Gorge would be "high". He agrees with these conclusions.</p> <p><i>Other issues raised by submitters</i></p> <p>Submitters also stated that it may not be possible to design a weir that is safe for kayak entry. The Hearing Chairman recommends that you do not accept this submission, as he</p>

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						<p>considers that the proposed conditions in the Officer's Report would be adequate to address the concerns around the weir.</p> <p>The Hearing Chairman notes New Zealand Energy's submission in support of the scheme but recommends that you not accept their view that the scheme would have a negligible effect on the kayaking values.</p> <p><i>In conclusion</i></p> <p>The Hearing Chairman recommends that you accept submissions that:</p> <ul style="list-style-type: none"> <li>- the adverse effects of the scheme on kayaking would be significant, both in terms of the quality of the experience and its availability.</li> <li>- the scheme would reduce kayaking opportunities for the whole river, but particularly for the gorge and the lower part of the abstraction reach.</li> <li>-that two "no take " days (or even an increased number)</li> </ul>

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						<p>would not be adequate mitigation for these effects.</p> <p>He considers that the number of additional days available for kayaking the Morgan Gorge is uncertain, and prefers to take a conservative view; namely that there are likely to be few such days .</p> <p>The Hearing Chairman recommends that the application be declined pursuant to 17(U) (2)(b) as there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects on kayaking values.</p>
3.53	Submissions relating to 17(U) (2)(b) - there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects	<p><b>Recreation values continued... Submissions in regards to impacts on Tourism values.</b></p> <p>51 Submitters plus all the Forest and Bird template submissions specifically submitted on the impact of the scheme on tourism values with key comments such as:</p> <p>Quentin Smith submits that NZ relies on its image, this proposal will threaten the ecosystem, tourists and foreign trade. The pristine values are a more valuable asset to NZ than the hydro proposal.</p> <p>Kevin England submits that the Waitaha River is Pinnacle of kayak sport in NZ, for technical difficulty, beauty and</p>	WWNZ Douglas and Rosemary Rankin Mic Hopkinson Zak Shaw Andrew England Nigel Parry Susi Thompson and Rob Bamford	<p>Westpower responded in their Analysis of Submissions paper that “the West Coast will retain its international reputation as a challenging kayaking setting with the scheme in place.”</p> <p>And</p> <p>“In considering the effects on the internationally and nationally significant status of kayaking opportunities on the river, it is important to note that this scale of significance relates as much to the West Coast complex of kayaking</p>	In regards to tourism the only related comment in the Officer’s report stated at paragraph 4.430 that the Department considers that both national and international visitors, and in particularly kayakers, regardless of whether or not they have the ability to paddle the Morgan Gorge, highly value and appreciate the intrinsic worth of retaining rivers on the West Coast and around the world that can	The Hearing Chairman recommends that submissions relating to impacts on tourism in the Waitaha Valley be allowed. Tourism is not a primary purpose of public conservation lands, nor is it part of the definition of “conservation”. But “allowing” tourism is a Departmental function under section 6(e). Impacts on tourism are, therefore, relevant, though of little

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		<p>uniqueness, Compare with Aoraki for climbers. Kayakers come from all over New Zealand to the West Coast.</p> <p>Forest and Bird submits that the Upper catchment of the Waitaha is highly valued for its sense of remoteness by trampers and hunters alike and is considered to be of international significance for kayakers.</p> <p>Blair Trotman submits that we market ourselves as clean and green, but this will take from us what we claim to be truly precious and worthy of a trip down under.</p> <p>Jeffrey Greenbaum stated that he is visitor to the South Island from USA and appalled at this antiquated concept for energy production which will endure for millennia. He submits that if we fail to protect our natural resources then visitors like him will no longer visit.</p> <p>Chad Stoesz comments that as an overseas visitor that has come to the South Island four times (spending thousands) he has walked up to Ivory Lake twice and states: I am deeply troubled by your decision. I did this gruelling exercise twice because this river valley is simply the most beautiful, challenging, and awe-inspiring place that I've ever visited. It's the finest example of why I and many others visit NZ. I intend to bring my children when they are old enough. It would be a shame to trek all the way to Kiwi Flat only to see this powerful river being mostly diverted, dewatering the Gorge, one of the most beautiful and rugged spots in your country. I challenge you to spend a few days walking up the Waitaha, I doubt you would then approve it.</p> <p>A number of submitters commented on the new marketing slogan for the West Coast: Zak Shaw submitted that the coast economy comes from tourism and the tourism slogan is "Untamed Natural</p>	<p>Richard Suggate Dan and Kath Lane on behalf of Te Whare o te Kaitiaki Ngahere Inc So</p>	<p>opportunities as it does to the values of any single river.”</p> <p>Westpower also note “the area is assessed as:</p> <ul style="list-style-type: none"> <li>regionally significant for angling (lower Waitaha River only, outside Scheme footprint); and</li> <li>locally significant for jet boating (lower Waitaha River only, outside Scheme footprint).”</li> </ul> <p><b>Westpower responds further in the Analysis of Submissions paper:</b> “AEE and Recreation Report. At the regional level the effect of the scheme on west coast recreation and tourism generally will be very slight due to the high number of alternatives available for all activities affected by the scheme and the relatively low level of use of the Kiwi Flat area. On a regional level the effects of the scheme on all activities will be low as there are numerous alternative backcountry-remote and whitewater settings. Rob Greenaway response: The effect on angling and jet boating is assessed as nil or nil/positive respectively. The West Coast will retain its international reputation as a challenging kayaking setting with the Scheme in place.”</p>	<p>flow uninterrupted and are free of hydro schemes and their associated structures.</p>	<p>weight compared to other impacts.</p> <p>He recommends submissions focussing on:</p> <ul style="list-style-type: none"> <li>- the social and economic aspects of tourism</li> <li>-tourism in the wider West Coast and New Zealand not be allowed as they are not relevant.</li> </ul> <p>The Hearing Chairman considers the key relevant submissions to be:</p> <ul style="list-style-type: none"> <li>-that tourism in the Valley itself would be affected by the activity as it would undermine the very reasons people visit the area.</li> <li>-that allowing the activity might prevent future tourism uses of the area.</li> </ul> <p>The Hearing Chairman recommends that you accept the submissions relating to effects on kayaking and tramping tourism. He found persuasive submissions from national and international kayakers likening the Waitaha and the Morgan Gorge to the “Everest” of whitewater sport: and also</p>

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		<p>Wilderness" the gorge could be a new attraction, Morgan Gorge could be a tourist icon. Zak submitted that the long term viability of the region will be based around its eco-tourism and adventure tourism potential. The area is used for tourism purposes, including training tourist guides through the Greymouth polytechnic.</p> <p>Philip Pearson comments that the new marketing slogan for the West Coast is "Untamed Natural Wilderness", Philip submits that this development will undermine the "Untamed awaits, natural awaits, wilderness awaits" message designed to support a tourism industry on the West Coast "forecast to boom" If you damage this brand you will cause long-term harm and are working against the interests of the people of the West Coast in the longer term.</p> <p>Colleen Phillip also submits that <i>"the new marketing strategy for West Coast is predicated on 'Untamed Natural Wilderness'"</i> and <i>"to damage this scarce wild river while promoting the Coast beggars belief."</i></p> <p>Alice Shanks and Linsay Main submit that declining the industrial use of this land and river retains potential eco-tourism, adventure tourism and other uses not yet envisaged.</p> <p>Jon Lasenby submits that the scheme <i>"threatens our brand as 100% pure."</i></p> <p>Bob and Mary Lancaster, from High Places comments that High Places is a 26 year old Inbound Adventure Tour Operator. They submit that the preservation of landscape values and the world-wide perception of NZ's 100% Pure image is the basis of their business, <i>"the Waitaha is like many other "Wild West Coast rivers" is part of an area of safeguarded "stewardship" land defined by Government as "...to protect...from development or extractive use until</i></p>				<p>submissions describing the attractions for trampers. However, as noted above, he recommends that you attach little weight to impacts on tourism.</p>

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		<p><i>their conservation value could be established. " The empowering photographs or the film of kayakers paddling down the gorge belie the need for further argument."</i></p> <p>NZ's appeal is its natural beauty AND the culture of preservation and protection of its wilderness areas. The US is in the process of removing its dams because of the problems they cause.</p> <p>Mic Hopkinson submits that NZ is being sold as an idyllic wilderness. Every state will be filmed and photographed, imagine the headlines: "NZ's Wildest River dammed" etc.</p> <p>Steve Maitland submits that going forward into the future tourism on the West Coast offers the most work positions for people and few destinations with wow factor, a photo of a kayaker taking a plunge is worth many millions of dollars in creating tourists desire to come here – inspirational.</p> <p>WWNZ submit that iconic rivers such as the Waitaha are a drawcard for travelling kayakers and overseas visitors and have considerable promotional values for NZ including being featured in films and media. Eg the first decent of the Waitaha Gorge was by an all women kayaking team in 1999, including international kayakers and made into a movie.</p> <p>David Vass submits that tourism is a main money earner on the West Coast- removing a potential drawcard makes no sense - better an upgraded track and some viewing platforms looking into the Gorge than reducing the river into a dribble.</p> <p>Rod Deppe submits that the number of international kayakers is large. Waitaha is the Everest of kayak destinations it is a beacon to international kayakers, low</p>				

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		<p>numbers paddling it does not mean it is of low value to kayakers generally, in fact it is the reverse.</p> <p>Carey Lintot submits that the scheme is contrary to NZ's tourism image as a destination offering untouched wilderness experiences. It could be worthwhile to look at how Morgan Gorge could be marketed as a tourism destination due to its accessibility.</p> <p>Dan and Kath Lane on behalf of Te Whare o te Kaitiaki Ngahere Inc Soc stated that they have taken tourist's up the valley over the past 10 years (25 since 2013): often day trips to the Hot Springs, sometimes to Kiwi Flat Hut when where they detour to the high rocky outcrop beyond the springs to view the incredible view up and down the gorge. They state that every one of those tourists have commented that it was one of the most amazing places they have been to while in NZ.</p>				
3.54	Submissions relating to 17(U) (2)(b) - there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects	<p><b>Recreation Values continued...</b></p> <p><b>Submissions relating to the effects on the Hot Springs</b></p> <p>Dan and Kath Lane on behalf of Te Whare o te Kaitiaki Ngahere Inc Soc notes that the report mentions the effects of the proposal on the hot spring experience to be on the reduced soundscape, but they submit that they believe the effects to be much greater.</p> <p>They submit that the report completely underplayed the role of the Hot Springs in the Morgan Gorge. The hot pools are listed in the guidebook 'Hot Springs of NZ'. They state that they provided info to Westpower but this was not included in the application. The Kiwi Flat Hut book does not pick these up.</p>	Dan and Kath Lane Neil Silverwood Sally Jackson	<p><b>Hot springs</b></p> <p>Westpower responds in their Analysis of Submissions in regards to the value of the hot springs.: "AEE and Recreation Report: Regionally significant for hot springs in the Morgan Gorge"</p> <p>"Springs are recognised by the Geopreservation society"</p> <p>"James Bentley (Westpower's Landscape expert) Response: In my view technical abseiling assistance and/or climbing experience is required to access the hot springs."</p>	<p><b>Hot springs</b></p> <p>No conclusions were made in regards to effects on the hot springs in the Officer's report. The hot springs were introduced at paragraphs 4.38. At 4.315 the values of the hot springs were described by Westpower as regionally significant. In Appendix 6 of the application effects on the hot springs were noted as including soundscape changes and changes to the natural character effects from residual flow. At Appendix 6</p>	<p>The Hearing Chairman considers the submissions in regards to effects on the hot springs are relevant and recommends they be allowed.</p> <p>He considers that submissions add to the understanding and knowledge of the level of use and recreational values of the hot springs. He considers that the hot springs and their significance in a local context had not been fully identified in the Officer's Report. He found persuasive</p>



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		<p>Several times per year they personally indulge in what they describe as the awesome and unparalleled hot springs that spurt forth from a cliff face in the middle of the gorge. They submit that they have been to many hot springs but none compare to sitting in a naturally gouged stone bath filled with piping hot water, while 1 or 2 metres from you is the raging torrent of the Waitaha through the gorge. (The submitter provided photos and showed them at the hearing. Some were published in August 2011 Wilderness Magazine in article "Hot Spring Heaven".</p> <p>At the hearing, they submitted that there would be an impact on the hot Springs that would affect day trips, and that no other hot springs compares to these. The thrill is the raging force of the river. The reduced flows would affect them. They noted they have taken at least 25 tourists there, it is an amazing place. It is mentioned in the guide to NZ hot springs. They were surprised DOC spent money on the track on the true right, and would like to see DOC reinvest into the track on the true left so the access to the hot pools is maintained and more people can enjoy the hot pools. They commented that access down to hot pools is steep and not for the faint hearted.</p> <p>Mr and Mrs Lane also submitted that the severe decrease in the water level will detract from the powerful experience bathing in the Morgan Gorge currently is. Another main concern was safety of those bathing in the pool - having 250-300m backwater at the top of the gorge that could sweep the visitors to their deaths if this were to be let loose (or a failure of the Weir). The flushing channel is also proposed to flush sediment back into the gorge close to the Hot Spring site, so bathers would either have an unsightly pipe to look at across the river or if it emerges upstream further they will have dirty water to look at.</p>		<p>Westpower responds in their Analysis of Submissions in regards to the effects on the hot springs:</p> <p>“AEE and Recreation Report: There would be only indirect effects on all land based recreational activities, with all of those activities being able to continue and that all forms of recreation, with the exception of kayaking in the Waitaha Valley, would retain their regional and local significance.</p> <p>The flow and location of the hot springs will not be affected by the Scheme. Changes in experiencing the hot springs will be limited to a change in the flow characteristics of the River and the accompanying soundscape. This is described by Boffa Miskell (2103, p65) as a “moderate level of effect on the perceptual aspect of natural character effects though the abstraction reach”, with “no effect on landscape values” at the springs. Overall the effects on the recreational attributes of the hot springs, as a destination in themselves, will be low. Their essential characteristics will remain, including the hot water, the difficult access and the sculptured, active, river setting.” P 65 Rec Report</p> <p>“Rob Greenaway response:” (Westpower’s recreation expert) “The scale of effects on the Hot Springs will be low.”</p>	<p>overall assessment of the effect by Westpower was considered as nil.</p> <p><b>In regards to risks to hot spring users:</b> However paragraphs 4.264 – 4.266 of the Officer’s report that refers to Fish stranding and management of ramping is relevant and states: “...Avoiding ramping (sudden increases in flow when the scheme starts up or reductions when it is throttled back) by smoothing out changes to be more gradual reduces the risk to stranding of fish and invertebrates as well as to humans who may be exposed to sudden flow increases if in the river. Westpower proposes a programme of monitoring (Condition 18.14) to both check for fish stranding and to inform Westpower as to whether further management of ramping rates is required to ensure that stranding does not eventuate. Such work is anticipated to occur during the commissioning of the scheme but further details of the programme would still need to be developed once</p>	<p>submissions that the raging torrent is part of the experience and this would be diminished at least some of the time by the decrease in flow.</p> <p>The Hearing Chairman recommends that you accept submissions that the decrease in flow would detract from the use and enjoyment of the hot springs. He does not consider there are adequate or reasonable methods for remedying, avoiding or mitigating the effects on hot spring users.</p> <p>While the effect on the springs is not a major factor in itself, the Hearing Chairman considers that this recommendation adds to the weight of the recommendation to decline under section 17U(2)(b).</p> <p>With respect to submissions on the safety of hot spring users, the Hearing Chairman considers it is not clear whether there would be any risk to hot pool users, for example if the water extraction at the weir changed or if there were</p>

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		<p>Neil Silverwood submitted that sitting in the hot pool a metre above class 5 rapids is an experience likely found nowhere else on earth. With the removal of much of the water the voice of the river will all but be silenced, with effects on this world class hot pool.</p> <p>At the hearing Mr Silverwood submitted further that the river has the wildest hot springs in the world, taking away the flow will diminish the experience it would change their character, the feeling of wilderness will be lost, he showed a number of photos.</p> <p>Sally Jackson submitted that the hot springs have been described as inaccessible despite the "Hot Springs of New Zealand" guidebook's three editions as well as the website "nzhot pools.co.nz" giving directions to them as a day hike. Ms Jackson provided 3 photos of 3 separate trips and commented that she had personally visited them many times and knows dozens that have. She comments that without exception people are mesmerised and that she has visited many (hot pools) in NZ and these are some of the most unique and outstanding. Many more have bathed in them than have ever kayaked in the gorge.</p> <p>Ms Jackson submits that fluctuating levels would compromise the soaking opportunities and put bathers at risk of being swept into the river which would result in almost certain death.</p>		<p>"James Bentley (Westpower's Landscape expert) response: the hot springs will remain under the scheme. I can also confirm that the flushing tunnel will not be visible from the springs due to the distance, a small bend in the river and the sheer size of the intervening boulders."</p>	<p><i>more information on scheme design and operation was available."</i></p> <p>Paragraph 4.265 states <i>"this work would also develop flow management methods and rules should unforeseen outages occur and address matters of public safety as well as ecological effects. The following condition is recommended."</i></p> <p>Paragraph 4.266 of the Officer's Report Also recommends a new Condition <i>"18.14 should be added to at the end with:</i></p> <p><i>The monitoring and mitigation programme shall develop flow change protocols that provide for the safety of downstream users at all times. This shall include the installation of warning notices and other devices that ensure the public are not caught unaware of increases in flow."</i></p>	<p>unforeseen outages affecting water flows As the Hearing Chairman is recommending that the application be declined, he did not seek further information on this aspect.</p> <p>If you were minded to approve the application, he recommends You seek assurance from Westpower in regards to any risk to hot pool users.</p>
3-55	Submissions relating to 17(U) (2)(b) - there are no adequate or	<p><b>Recreation Values continued...</b></p> <p><b>Submissions relating to the effects on Fishing</b></p> <p>The NZ Federation of Freshwater Anglers Inc submit that they understand the Waitaha below Morgan Gorge</p>	NZ Federation of Freshwater Anglers	There was no response from Westpower to the submission on angling however in the Decision in Principle Officers Report it is noted that in Westpower's 'summary of the assessment of effects', effects on	The Officer's report did not identify anglers as a recreational user of the Waitaha Valley/ scheme footprint. The Departments	The Hearing Chairman recommends that the submission in regards to effects on anglers is allowed. Protecting recreational

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	reasonable methods for remedying, avoiding or mitigating the adverse effects	supports a river fishery, providing anglers to fish and enjoy the remote natural environment as it is. This proposal would detract from that experience particularly with the development and siting of the power station and its supporting infrastructure.		anglers in the area above MacGregor Creek was assessed by Westpower to be nil.	<p>technical advisor for recreation noted in his advice for the Decision in Principle Officers Report that “no angling occurs above the Morgan Gorge”.</p> <p>The Officer Report provides no specific comment from the Department on the effects on anglers and had assumed there was none.</p> <p>Paragraphs 4.340 and 4.427 acknowledge effects on the quality and nature of the recreation experience from the industrial modifications occurring within a backcountry – remote zone.</p> <p>And 4.428 notes that the experience may be diminished by the presence of a functioning hydro scheme and associated infrastructure.</p>	<p>freshwater fisheries is a specific function of the Department under section 6(ab) of the Conservation Act 1987.</p> <p>The submission identifies there might be effects in regards to anglers that have not been considered. As the Hearing Chairman is recommending that the application be declined, he did not seek further information on these effects.</p> <p>If you were minded to approve the application, he recommends that more information on the effects on anglers should be sought.</p>
3.56	Submissions relating to 17(U) (2)(b) - there are no adequate or reasonable methods for remedying, avoiding or	<p><b>Recreation Values continued...</b></p> <p><b>Submissions relating to Effects on Future canyoning opportunities</b></p> <p>David Barnes from Backcountry Matters submits that participants in the burgeoning sport of canyoning also consider that the gorge will provide a very high class yet accessible venue for their activities.</p>	Backcountry Matters	There was no response to the submission in regards to effects on potential opportunities for canyoning being affected.	<p>The Officer's report did not comment on opportunities for canyoning.</p> <p>However paragraphs 4.340 and 4.427 acknowledge effects on the quality and nature of the recreation experience from the industrial modifications</p>	<p>The Hearing Chairman considers the submission in regards to effects on canyoning is relevant and recommends it be allowed.</p> <p>The Hearing Chairman notes that canyoning could be a potential future activity but</p>

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	mitigating the adverse effects				<p>occurring within a backcountry – remote zone.</p> <p>And 4.428 notes that the experience may be diminished by the presence of a functioning hydro scheme and associated infrastructure.</p>	<p>not enough information is known to comment further .</p> <p>As the Hearing Chairman is recommending that the application be declined, he did not seek further information on effects on canyoning.</p> <p>If you were minded to approve the application, he recommends further information be sought on effects on potential use of the Waitaha River for canyoning opportunities</p>
3.6		<p><b>Submissions relating to the Effects on Cultural Values</b></p> <p>Waitaha Executive Grandmothers Council of the Waitaha Nation submit there has been a lack of consultation with Tangata Whenua. This group claim they are Tangata Whenua of this area and have not been consulted. They claim they are participating in the Wai 2358 and expects this inquiry to have an impact on their water rights as Tangata Whenua in the Waitaha River. At the hearing this group reiterated their claim of Tangata Whenua and would like to be contacted for future activities associated with the Waitaha River, they stated that they claim the river.</p> <p>Katarina Te Maiharoa submits that a dam will diminish the Mana and Mauri of this river which values are to be upheld within the Treaty of Waitangi. She states that <i>“as an indigenous Waitaha descendent and Waitaha person, the river has my peoples name to it. This is to show how great it's Mana, and to help continue the knowledge of stories of peace. And to change and impact the river in</i></p>	<p>Makere Chapman Waitaha Executive Grandmothers Council of the Waitaha Nation Makere Stewart-Harawira</p>	<p>Westpower responds in their Summary of Submissions: “Ngati Waewae and Makawhio have the mandate from Ngati Tahu to speak on the application as the scheme is located within their rohe. Both Iwi are happy with the scheme and any concerns they may have had have been addressed.</p> <p>Submissions made on cultural issues have, with all due respect, been made by members of other hapu who do not have the mandate to speak on behalf of the Iwi whose rohe is subject to the scheme.”</p>	<p>The Officer's report at paragraph 4.313 agrees with Westpower's application that potential effects on cultural values are no more than minor and if the applicant adheres to the proposed conditions then the Department considered that the effects on cultural values would be adequately avoided, remedied and mitigated.</p>	<p>The Hearing Chairman considers that the submissions on cultural effects should be allowed.</p> <p>The Hearing Chairman recommends that they are not accepted because he is satisfied that the Department has consulted with its treaty partners who have stated they support the application and that any concerns have been addressed directly with the applicant. The Chairman is satisfied the Department has met its section 4 obligations under the Conservation Act</p>

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		<p><i>this way is offensive and disrespectful to those of the past, us now and to those in the future.</i>"</p> <p>Many submitters stated that the scheme would ruin the mauri and the mana of this magnificent wilderness taonga for current and future generations.</p>				
3.7		<p><b>Submissions relating to the Effects on Health and Safety Issues</b>            WWNZ submit that the construction of the weir as proposed will create a hazardous industrial structure lethal to kayakers</p> <p>On page 69-70 WWNZ submits that the construction of a 4-5 m weir to pass the residual 3.5 cumecs down a 1 m wide chute, or the about 20 cumec flow to provide for the kayaking resource, and that can provide a safe passage down into the Morgan Gorge, is not a trivial matter.</p> <p>WWNZ state that weirs are notoriously lethal and kill swimmers and paddlers alike, and other people accidentally caught in them, in the recirculations or 'suck back' formed at their bases. Weirs are mostly designed to dissipate energy not keep people safe. Currently access via the river into the Morgan Gorge is safe, the weir will pose a potentially lethal structure. Thus, the design of the weir needs to be done by an internationally recognised and proven whitewater engineering expert skilled in the art of designing safe river structures in-keeping with the natural environment (such as Scott Shipley of the USA, who designed and oversaw construction of the whitewater features in the Hawea Whitewater Park near Wanaka), and also providing safe foot access around the weir. The design also needs to be done in consultation with whio and koaro experts to ensure conditions are appropriate to maintain those fauna and exclude others. The extra Department recommendations around safety in para 4.360 are</p>	WWNZ Makere Stewart-Harawira Sophie Moulder Ben Gaia Sally Jackson Dan and Kath Lane	<p><b>In regards to the weir</b>            Westpower respond in their Analysis of Submissions paper that "Safety features of the weir will be designed in consultation with WWNZ and will be certified by a suitably qualified engineer and by a person with experience in water safety. Proposed condition 17.3. Proposed revised condition 30 April 2015."</p> <p><b>In Regards to impacts on Human Health from Dams</b>            Westpower responds in their Analysis of Submissions paper that "the Scheme is a run-of-river design with no instream storage (i.e. does not require the impoundment of water above the intake). It includes a low weir and diversion structure at the entrance to Morgan Gorge. There will be no lake formed as a result of this development, no submergence of native vegetation, or loss of use of the area up-river of the intake site."</p> <p>Comments on greenhouse gas emissions refer to reservoirs.</p>	<p><b>In regards to the weir</b>            In the Officer's report at paragraph 4.360 the Department considered the redrafted condition 17.3 with the additions of the words "<i>The safety features of the weir shall be designed in consultation with Whitewater New Zealand and in the case that Whitewater NZ does not comment on or agree with the design of the weir then the Department will make a decision</i>" would provide for the downriver face of the weir to be designed to allow kayaking access into Morgan Gorge and provide for safe foot access around the weir for re-entry into the river and to allow for the rescue of kayakers.</p> <p>In regards to geotechnical aspects of the scheme the Officer's report at paragraph 4.35 (following an</p>	<p>The Hearing Chairman considers most of the submissions on Health and Safety issues are relevant and recommends they be allowed (except in regards to mercury and greenhouse gas emissions as these were made in respect to a dam/reservoir and this application is not for a dam/reservoir).</p> <p>The Hearing Chairman considers the main relevant submissions to be:</p> <ul style="list-style-type: none"> <li>-that weirs can be very dangerous and must be designed by appropriate experts</li> <li>-that the construction of the tunnel will be dangerous</li> <li>-that earthquakes pose a risk</li> <li>-that the scheme will pose a danger to kayakers</li> </ul>

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		<p>insufficient to guarantee an appropriate outcome, as are Westpower's recommended conditions in 4.358. Robust consent conditions need to be constructed if the concession is to be granted.</p> <p>Makere Stewart-Harawira submits that in regard to the impact on human health, dams have been found to be associated with increased mercury levels, and that <i>"eating fish from hydro reservoirs have elevated risk of accumulating too much mercury (see submission for detail), on mauri of the river - (on health and wellbeing of ecosystems and communities)."</i></p> <p>And that regarding greenhouse gas emissions; most reservoirs (from hydro electric dams) are significant contributors to green house gas emissions.</p> <p>Ben Gaia submitted at the hearing that the river has frequent flash floods. And the rise and fall cannot be contained by a weir. People will drown. Ben also submitted that the tunnelling will be difficult because of hot springs, underground cave system, loose boulders. Tunnel crosses the Alpine earthquake fault.</p> <p>Sophie Moulder submitted that the scheme could be ruined by an earthquake.</p> <p>Sally Jackson submits that fluctuating water levels would compromise the soaking opportunities (at the hot pools) and put bathers at risk of being swept into the river which would result in almost certain death.</p> <p>Dan and Kath Lane on behalf of Te Whare o te Kaitiaki Ngahere Inc Soc submitted that a main concern they had was safety of those bathing in the pool - having 250-300m backwater at the top of the gorge that could sweep the</p>		<p><b>Flash Floods and Tunnelling</b> Westpower states <b>in their Analysis of Submissions paper</b> that "Westpower and its subsidiary businesses have a very good safety record which reflects the seriousness with which safety is viewed. Health and Safety has been raised as a potential construction issue, particularly in relation to river levels in weather events." And that "planning for construction of the scheme will have a significant focus on safety. As an example of this approach I can point to the construction at Amethyst Hydro where the activity took place in a catchment nearby to Waitaha, and without any lost time incidents."</p> <p><b>Earthquake</b> Westpower responded <b>in its Analysis of Submissions paper</b> to Sophie Moulder's comment that "while there are significant risks to the scheme from natural hazards in the area, including an Alpine Fault earthquake, the main impact of a future fault rupture and/or large earthquakes in the area is on the future maintenance and operation of the scheme itself and not on the environment."</p> <p><b>Hot pools</b> See response on hot pools at 5.34 above</p>	<p>independent review of the application by Resource Developments Consultants Limited) concluded that Westpower appears to have used appropriate methodology and analysis for that stage of the proposal.</p> <p>The report at paragraph 4.33 and 4.34 indicates further geotechnical investigative work would be required to address main risk items of tunnel instability prior to construction and compliance with the relevant new Health and Safety Acts (2015) and Approved Codes of Practice was required.</p>	<p>downstream of the weir and also to hot springs users</p> <p>The Hearing Chairman considers that the issues raised in the first 3 points above were adequately addressed in the Officer's Report and Westpower's response and will be dealt with in the proposed conditions. Therefore the Hearing Chairman recommends that these submissions not be accepted. In relation to the 4<sup>th</sup> point, the Hearing Chairman reiterates his recommendation at section 3.4. That is, that the Hearing Chairman considers it is not clear whether there would be any risk to hot pool users (and in this case, other recreational users of the abstraction reach) , for example if the water extraction at the weir changed or if there were unforeseen outages affecting water flows. But that as the Hearing Chairman is recommending that the application be declined, he did not seek further information on this aspect.</p>

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		visitors to their deaths if this were to be let loose (or a failure of the weir).				If you were minded to approve the application, he recommends you seek assurance from Westpower in regards to any risk to hot pool users and other persons using the abstraction reach.
4.00	Submissions related to S17U(3) the proposal is contrary to the provisions of the Conservation Act or the 'purposes for which the land is held'	<p>Many submitters submit that the proposed hydro scheme would be inconsistent with the purpose for which the land is held. There were a number of issues raised in this respect, these are described in 4.1, 4.2 and 4.3 below.</p> <p>4.1 Stewardship land should be assessed for its conservation values prior to considering applications like this</p> <p>4.2 The proposed hydro scheme is inconsistent with the purpose of stewardship land</p> <p>4.3 Inconsistent with the Conservation Act</p>				
4.1		<b>Stewardship land should be assessed for its conservation values prior to considering applications like this</b>	Forest and Bird WWNZ	Westpower responds in their Analysis of Submissions paper, "Concession application needs to be assessed under the current Stewardship status of the land."		Submissions on the issue of reclassifying stewardship land are not relevant considerations under the Conservation Act and the

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		<p>Many submitters submit that the stewardship land under application should have been assessed for its conservation values to see if it should be reclassified prior to considering an activity such as this.</p> <p>Neil Smart submitted that: The intention in creating stewardship areas was to protect them from development or extractive use until their conservation value could be established (refer Parliamentary Commissioners Report for the Environment August 2013).</p> <p>Many submitters stated that the area should have a higher conservation status, for example Friends of the Earth advocated in their submission that the area should be part of a high ice river reserve and stated it should be added to schedule 4 of the Conservation Act. Rangatata, Whitecombe, Wanganui and Waitaha all sourced from the headwaters of this region, could be a new national park or wilderness area status, should have world heritage status to protect the headwaters of this region.</p>	<p>Tararua Tramping Club  NZ Outdoor Recreation association  Friends of the Earth  Tony Ward-Holmes</p>			<p>Hearing Chairman recommends they not be allowed.</p>
4.2		<p><b>The proposed hydro scheme is inconsistent with the purpose of stewardship land</b></p> <p>Forest and Bird submit that the <i>“the finding that there are a high level of effects on the Morgan Gorge inevitably leads to the conclusion that the intrinsic values of Morgan Gorge are not maintained by this application, which must be declined under 17U(3)”</i></p> <p>And that the application will result in degradation of ecological values which are accepted to be significant at a local scale. The land is held for conservation purposes which provides for the preservation and protection(maintenance) of ecological values. Forest and Bird submitted that it is trite to say that the destruction of</p>	<p>Forest and Bird  2864 Forest and Bird Template submissions  Green Party submissions (2343 signatures)  Richard Reeves</p>	<p>Westpower's response includes a statutory paper <b>by Paul Radich</b>, and provides a response. Items 40 -44 specifically responds to submissions stating the proposed scheme is contrary to the provisions of the Act or inconsistent with the purpose of stewardship land:</p> <p>“40. Section 17U(3) of the Act states: <i>The Minister shall not grant an application for a concession if the proposed activity is contrary to the provisions of this Act or the purposes for which the land concerned is held.</i></p>	<p>The Officer's report states:</p> <p>4.499 The mandatory nature of the wording in section 25 of the Conservation Act 1987 suggests that it would not be lawful under the Act to allow an activity to occur which undermines the protection (i.e. undermines the maintenance as far as practicable in its current state) of natural and historic resources of the land.</p>	<p>The submissions in regards to the proposed scheme being inconsistent with the purpose of stewardship land are considered relevant and the Hearing Chairman recommends they be allowed.</p> <p>The purpose of stewardship land is essentially set out in section 25 of the Act which states: <i>“Every stewardship area shall so be managed</i></p>



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		<p>habitat of a critically endangered species of bat and threatened species of lizard is not contrary to the purpose for which the land is held.</p> <p>Forest and Bird submit further that it would be a clear situation of commercial use being given priority over a recreational use and that this would also be contrary to the purpose for which the land is held.</p> <p>Forest and Bird state that the Conservation Act defines conservation to include the provision of appreciation and recreational enjoyment of natural and historic resources. It also includes intrinsic values and provides for the safeguarding of options for future generations. And they submit that: The scheme, which effectively forecloses the future use of the Morgan Gorge for kayaking, certainly does not safeguard the option for future elite whitewater kayakers to descend this internationally significant run. Forest and Bird submit that this is contrary to the purpose for which the land is held.</p> <p>Richard Reeves submitted at the hearing that the area is 'backcountry' and the proposal would depreciate the amenity value significantly.</p> <p>Mr Neil also quoted the NZ Conservation Authority "<i>only activities with a truly minor footprint of effects can be approved by a concession...</i>"<i>the authority understands that this means that virtually no activity which involves a substantive footprint resulting in a loss of any natural resources (which are widely defined) in a stewardship area can be granted a concession</i>" refer 'Stewardship land Net Conservation Benefit Assessments in Land Exchanges' Report NZCA, 22 Jan 2016 Impacts on visual amenity, Neil submits that local landscape and Natural Character are all greater than minor.</p>		<p>41. An activity such as a hydroelectricity development cannot be said to be inherently inconsistent with the Conservation Act or the stewardship area status. That contention does not reflect the scheme or wording of the Act, which through Part 3B expressly provides for applications to be made for concessions for infrastructure in conservation areas, and as noted by the High Court, an assessment of effects and measures to address those effects.</p> <p>42. Consequently, there must be a threshold or materiality test that needs to be applied to determine whether section 17U(3) is triggered. Westpower acknowledges that there will be effects from the proposed scheme. However, those effects will be avoided, remedied and mitigated, and granting the concession, with appropriate conditions, would not be inherently inconsistent with the Act or purpose of this stewardship area.</p> <p>43. It has not been established that this application is inconsistent with the provisions of this Act or the purpose for which this land is held (stewardship area). Many of the submissions apply an 'absolute' standard to the use of this stewardship area, assert that the Minister has no discretion to grant this concession, and assert that the values of this area</p>	<p>4.500 However, the provisions of the Act require the Minister also to consider a number of other matters as set out in part 3B of the Act, including the effects of the proposed activity, and the possible safeguards and mitigation measures proposed. The Minister must also consider the natural and historic resources the stewardship area status seeks to protect and to question whether the granting of the application, with or without conditions, would provide appropriate protection of those resources.</p> <p>The Officer's report concludes in paragraph 4.501 that there are a number of significant adverse effects on natural resources from the proposed hydro scheme. The key issue is whether there are adequate or reasonable methods for mitigating these adverse effects.</p> <p>Paragraph 4.502 stated: If you consider the significant adverse effects (especially the effects on the natural landscape character at the intake and power house sites</p>	<p><i>that its natural and historic resources are protected.</i>"</p> <p>The purpose of stewardship land also includes "conservation" purposes more generally, and "conservation" includes recreation (section 2). <b>Therefore, recreation is also a purpose of stewardship land.</b></p> <p><i>Natural resources</i></p> <p><b>The Hearing Chairman notes that the purpose includes protection of the area's natural resources, which include landscape, landform and geological features (section 25 and section 2).</b></p> <p><b>At section 3.3 above, the Hearing Chairman has recommended that you accept submissions that the activity would have significant adverse effects on natural character, landscape and visual amenity which cannot be adequately mitigated.</b></p> <p><i>Recreation</i></p> <p><b>At sections 3.51 and 3.52 above, the Hearing Chairman has recommended that you</b></p>

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				<p>'cannot be altered'. Again, this does not accord with the scheme or text of the Act.</p> <p>44. Further, the Department's report appropriately recognises that this decision must be made in the context of the broader provisions under Part 3B of the Act, including the measures to avoid, remedy or mitigate adverse effects. The Department's report presented an option to the decision-maker to decline the application under section 17U(3). With respect, the decision-maker appropriately did not select that option. There has been no new information provided through submissions or the hearing that should lead the Department to changing its view on this matter."</p> <p><u>References:</u>  AEE  Vol 1 page vi, 160 -162, 202  Appendix 7 pages 188-189  Radich letter 14 July 2016  DOC Officer's Report pages 91 -92, 117-118</p>	<p>and the effects on recreational users, especially kayakers, in the abstraction reach) are not able to be adequately mitigated, you should consider declining the proposal on the basis that it is contrary to the Act and the purposes for which the land is held pursuant to section 17 U (3).</p>	<p>accept submissions that the adverse effects of the scheme on kayaking and tramping would be significant and cannot be adequately mitigated.</p> <p><i>Conclusion on "purpose"</i></p> <p>Protection of landscape and recreation are part of the purpose for which this land is held. The Hearing Chairing agrees with Westpower that infrastructure is not <i>inherently</i> contrary to the purpose for which public conservation lands are held. In this instance, however, the Hearing Chairman considers that the adverse effects on the scheme on landscape and recreation are sufficiently high that the scheme would be contrary to those aspects of the purpose. He does not consider that the positive effects of the scheme, for example the improved track standards and the real -time flow information, outweigh the negative effects.</p> <p>He therefore recommends that you accept submissions that the activity would be</p>

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						<p>contrary to the land's purpose.</p> <p>The Hearing Chairman recommends that you decline the application pursuant to 17(U)(3).</p>
4-3		<p><b>Many submitters stated the scheme was inconsistent with the Conservation Act</b>  Many submitters submitted that the scheme was inconsistent with the Conservation Act for a whole raft of reasons discussed already in this summary of submissions including inconsistent with 17U(2)(b), 17U(3), 17 U(4)(a).</p> <p>Katherine Gilbert submitted that it will destroy a significant natural place and it is unthinkable and she believes unlawful for DOC to agree to dewater the Morgan Gorge.</p> <p>A number of submitters including Paul Ewell-Sutton submitted that granting the concession was not safe guarding for future generations.</p> <p>Keith Morfett submitted at the hearing that it was inconsistent with Conservation General Policies 11.3a and d and 17 U(4) (discussed further under issue below)</p> <p>John Langley submits that there would be cumulatively substantial adverse effects and the proposed mitigation measures would cumulatively have too many unknowns and also concludes the risks substantially outweigh the benefits of the scheme.</p> <p>Richard Suggate submitted that it was inconsistent with S17 U (3) and 17U(2)(a) and 17 U(2) (b) and inconsistent</p>	<p>Forest and Bird  2864 Forest and Bird Template submissions  Green Party submissions (2343 signatures)  Richard Reeves  Katherine Gilbert  Keith Morfett  Paul Ewell Sutton  John Langley  Richard Suggate  WWNZ  74 WWNZ template submissions</p>	<p>Westpower provided a response in the Statutory paper by Paul Radich at items 8-20.</p> <p><b>“Conservation Act 1987</b>  8. This application relates to stewardship area land administered under the Act.</p> <p>9. The Act, as with most conservation legislation, is founded on the principle of striking an appropriate balance between protection, enjoyment and use of those places and resources, depending on the designation of the individual area concerned. Elements of this principle can be seen in the purpose and principle statements of other conservation legislation such as the National Parks Act 1980, Reserves Act 1977, Marine Reserves Act 1971, and the Marine Mammals Protection Regulations 1992.</p> <p>10. The key point is that the Act is not premised on absolute preservation/protection with no provision for use of conservation land or resources. The definition of "conservation" under the Act is as follows:</p>	<p>The Officer's report discusses the purpose of the Conservation Act in paragraphs 4.492-4.494 and 4.498 – 4.502 and provides some analysis in regards to the proposed hydro scheme at paragraph 4.501.</p> <p>The Officer's report concludes at 4.501 that there are a number of significant adverse effects on natural resources from the proposed hydro scheme.</p> <p>It is identified in paragraph 4.502 that the key issue in regards to whether the application is contrary to the Act and purpose for which the land is held is whether there are adequate or reasonable methods for mitigating these adverse effects particularly in regard to the natural landscape character at the intake and powerhouse sites and the effects on</p>	<p>The submissions in regards to the proposed scheme being inconsistent with the Conservation Act are considered relevant and the Hearing Chairman recommends they be allowed.</p> <p><b>Submitters considered the scheme to be contrary to a variety of provisions of the Act: 6(e), 17S(2), 17U(2)(a) and (b), 17U(3), 17U(4); and also contrary to the definitions of “conservation” and “preservation”.</b></p> <p><b>For the reasons set out in other sections of this report, the Hearing Chairman recommends that you accept submissions that the activity would be contrary to sections 17U(2)(b) (“effects”), 17U(3) (“purposes”), and 17W(1) (“CMS”) of the Act. More broadly, focussing on the Act as a whole rather than individual sections, he</b></p>

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		<p>with the definition of conservation and preserving natural resources.</p> <p>WWNZ submit that the application is inconsistent with the Act, especially with respect to stewardship land and inconsistent with General policies and is inappropriate to grant under 17S(2). At the hearing they submit further at item 44 that granting the concession would be inconsistent with and contrary to the management requirement in section 6(e) of the Act where within bounds DOC is required to foster the use of natural and historic resources for recreation and to allow for their use for tourism. By removing access to flows from kayakers to use the Morgan Gorge and a reach below it, DOC would not be fostering use of natural resources, but rather preventing their use, by taking the resource away and/or restricting its use.</p> <p>They submit further that the argument that there are plenty of other West Coast rivers that offer the same of similar recreational experience (kayaking) opportunities to the Morgan Gorge and the Waitaha river and therefore on balance the impacts can be tolerated. (item 45) ...is not a valid argument. (item 46). ... The Act requires that the natural resources of the Waitaha are to be conserved and their intrinsic values maintained, not possibly developed because there are other rivers in the region providing similar recreation opportunities. The submitter submits that the minister cannot grant the concession, because to do so would not maintain the natural character or intrinsic values of the stewardship land containing Morgan Gorge and Waitaha catchment held for conservation purposes, and would be a contravention of the Act.</p> <p>WWNZ submit that the scheme would be inconsistent with 17U(4)(a) (i) and (ii) or 17 U(4) (b) therefore the concession must be declined, see comments under alternatives. And that the application is also inconsistent</p>		<p><i>"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"</i></p> <p>11. "Preservation" is defined in section 2 as <i>"in relation to a resource, means the maintenance, so far as is practicable, of its intrinsic values"</i> (emphasis added).</p> <p>12. "Protection" is defined in section 2 as <i>"in relation to a resource, means its maintenance, so far as is practicable, in its current state; but includes (a) its restoration to some former state; and (b) its augmentation, enhancement, or expansion"</i> (emphasis added).</p> <p>13. A key element of the definition of "preservation" and "protection" is that the scheme of the legislation is not focussed on absolute protection or preservation.</p> <p>14. In particular, in 1996 Part 3B was introduced into the Act to provide a specific and detailed regime allowing for applications for concessions of this nature on public conservation land. The Act clearly contemplates and addresses the potential for applications for physical infrastructure.</p> <p>15. A number of the submissions stated that this concession could not be granted</p>	<p>recreational users particularly kayakers.</p>	<p>considers the activity would be contrary to the 'conservation' purpose of the Act.</p> <p>The Hearing Chairman recommends that the application be declined pursuant to 17(U)(3) as it is contrary to the Conservation Act.</p>

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		<p>with 17 U(2) - the application is not complete, inaccuracies in the application, no mitigation for some of the effects, mitigation in some circumstances is grossly inadequate, no performance bond, failure to outline some of the alternatives locations. The scheme is not appropriate to grant under 17 S (2) as reasons for the scheme are not supported by the evidence and/or not relevant under the Act (item 54-58)</p> <p>Forest and Bird submit that the scheme is contrary in terms of; the protection of the natural character of the river and the Gorge and the maintenance of the intrinsic values and the Public Conservation Land impacted.</p>		<p>because it is inherently inconsistent with the Act. That approach does not reflect Part 3B of the Act. There is an express statutory discretion for the Minister to consider and, if appropriate, grant this concession, and the submissions asserting that the intention to grant the decision is unlawful do not reflect the express provisions of the Act.</p> <p>16. In <i>Back Country Helicopters v Minister of Conservation</i><sup>1</sup> the High Court stated: [28] As will be apparent, the effects of the activity are at the heart of the required Ministerial analysis in granting or withholding a concession. Unstated in s 17U, but obviously relevant, is the extent to which effects may be avoided, remedied or mitigated by conditions. Section 17X allows the Minister to impose conditions on concessions. Foremost is the power to impose “such conditions as [the Minister] considers appropriate” for “the activity itself, the carrying out of the activity, and the places where it may be carried out.” (emphasis added)</p> <p>17. This authority reinforces the point that the consideration of effects is a key part of the concession decision. The granting of a concession for infrastructure is not inherently inconsistent with the legislation. Rather, a detailed assessment and consideration of the effects of the proposal and mitigation proposals is required. That is the exercise that</p>		

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				<p>Westpower and the Department has undertaken.</p> <p>18. Further, the Act is not a 'no-use', 'no-change' or 'no-effects' statute. Part 3B envisages that there can be use of, changes to and effects on conservation land and resources. For example:  (a) section 17U(1)(c) refers to "any measures that can reasonably and practicably be undertaken to avoid, remedy or mitigate any adverse effects of the activity"; and  (b) section 17U(2)(c) refers to there being "no adequate methods or no reasonable methods for remedying, avoiding or mitigating the adverse effects of the activity, structure, or facility".</p> <p>19. These sections contemplate that there can be residual adverse effects of an activity, as long as reasonable and practicable steps have been taken to avoid, remedy and mitigate those effects.</p> <p>20. In summary, there is nothing inherently unlawful about granting an application of this nature, nor is a hydro electricity development inherently inconsistent with the scheme or text of the conservation legislation."</p>		
5.00	Submissions related to S17U(4)(a) the activity could reasonably be	<b>Alternative Locations</b> Many submitters submitted that the application was inconsistent with 17U(4)(a) because there were alternative hydro power schemes already consented, schemes that were in modified environments that were more appropriate	Permolat Trust Neil Silverwood Zak Shaw	<b>Alternative Locations</b> Westpower response <b>from their Analysis of Submissions paper:</b> "The decision to proceed with the scheme on the Waitaha River has been subject to	<b>Alternative Locations</b> The Officer's report concluded at paragraph 4.508 – 4.509 that the Department considers that " <i>Westpower</i>	The Hearing Chairman recommends that most of the submissions relating to alternative locations not be allowed. This is because he

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	carried out elsewhere	<p>in terms of effects. The examples most submitters used were the Arnold and Stockton hydro schemes.</p> <p>Tony Baldwin submitted that the activity to be authorised is the "business of generating electricity" as well as building, operating and maintaining the structures. The submitter claims that under the Act, the activity at the alternative location does not have to be undertaken by the applicant, nor limited to only generation options undertaken by Westpower, or only options embedded within Westpower's network, nor limited to the West Coast. There are a significant number of fully consented new generation projects that appear to materially lower unit costs than the Waitaha. It is not sensible to build the Waitaha project ahead of other new generation options with a lower unit cost. Also from a legal perspective the application is not complete as it does not address alternatives as outlined above, alternatives include Lake Hawea control gates scheme, Lake Pukakai canal option, any other schemes in NZ already consented, Arnold and Stockton hydro schemes.</p> <p>Forest and Bird supported this view at the hearing that the structure or facility being applied for here is the hydro scheme, and that the activity is the generation of electricity and therefore the generation of electricity could reasonably be carried out in a different location (item 124 – 128 of Forest and Bird submission), Forest and Bird also submits that 17U(4)(a) does not require the activity, that could be carried out in another location be carried out by the applicant. (item 129). It is submitted that the generation of power could reasonably be carried out in another location and the Officer's report relies on Westpower's assessment of alternatives which was limited ....and does not satisfy the requirements of 17U(4)(a)(i) (refer item 133 and 134 -136) but needs to consider alternatives outside Westpower's</p>	<p>Keith Morfett Keith Riley Forest and Bird WWNZ Clare Backes West Coast Branch of the Green Party Robin Piper BackCountry Matters Council of Outdoor Recreation Association on NZ Mic Hopkinson Tony Baldwin</p>	<p>a comprehensive consideration of a wide range of alternatives, options and factors (i.e. technical, engineering, environmental, economic) and after undertaking appropriate investigations and receiving advice from relevant experts at all key stages.</p> <p>Westpower considers that the chosen option provides the best balance between making the most efficient and effective use of the renewable hydro resource for the benefit of current and future generations of the West Coast community whilst, as far as is practicable, avoiding or minimising effects of the development and operation of the scheme.</p> <p>Submitters have referred to a number of other 'alternatives' as follows: - The Arnold Scheme owned by Trustpower. Granted consent via the Environment Court in 2010 but it is our understanding is yet to be commissioned. - Amethyst joint venture between Westpower and Harihari hydro, commissioned in 2013. - Stockton Plateau mine drainage system proposed by Hydro Developments Limited, who were granted consents in January 2010. It is our understanding that this scheme is yet to be commissioned. - Enhancement of Lake Kaniere hydro scheme owned by Trustpower and first commissioned in 1911 and 1931.</p>	<p><i>carried out extensive investigation of a number of alternatives sites both outside of the Waitaha Forest Conservation Area and in other conservation areas on the West Coast that were within the Westpower distribution area (from Lyell in the North to Paringa in South Westland.)</i></p> <p>And was satisfied that <i>"the proposed hydro scheme structures and access road could be not be reasonably undertaken in another location that is either outside the conservation area to which the application relates or 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 nor does the Department consider that Westpower could reasonably use an existing structure or facility without the addition."</i></p>	<p>agrees with Westpower that the submitters' approach to the issue of alternatives is incorrect. Firstly, the Hearing Chairman does not consider that the 'activity' in question is the "activity of generating electricity" as submitters argue. Therefore, alternative locations for alternative forms of generating electricity are not relevant under section 17U(4). Second, the Hearing Chairman does not consider that alternative sites owned and operated by third parties are relevant under the same section, as these are outside the control of the Applicant.</p> <p>In regards to Ms Wilde's submission that there are other rivers more appropriate on Conservation Land, the Hearing chairman recommends the submission be allowed. The Hearing Chairman notes that the Applicant did consider alternative sites on public conservation land, and considers the assessment was</p>

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		<p>area of distribution, alternatives already consented to another party but not yet constructed.</p> <p>Forest and Bird submitted that several alternatives have been identified by Baldwin (submission 1163) including many already consented and not on Public Conservation Land that could be operational within the relevant timeframe. This therefore precludes the Minister granting this concession as per s 17U(4)(a)</p> <p>Sarah Wilde submitted that there were other rivers more appropriate on conservation land. (For this activity)</p> <p>Federated Mountain Clubs submitted that it would be appropriate to look at the expansion of any other scheme as an alternative</p>		<p>With respect, these 'alternatives' are not relevant considerations because they are either owned by other electricity generators and/or are already commissioned."</p> <p>Westpower also responded in the Statutory Paper at items 45-49. Specifically in response to submitters they respond:</p> <p><b>“Section 17U(4) - Alternatives</b> 45. Section 17U(4) of the Act states:</p> <p><i>(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—</i> <i>(a) could reasonably be undertaken in another location that—</i> <i>(i) is outside the conservation area to which the application relates; or</i> <i>(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</i> <i>(b) could reasonably use an existing structure or facility or the existing structure or facility without the addition.</i></p> <p>“46. The Department's report states:”</p> <p>(At paragraphs 4.508 and 4.509.) “The Department considers that Westpower has carried out extensive</p>		<p>adequate. Therefore the Hearing Chairman recommends that the submission not be accepted.</p>



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				<p><i>investigation of a number of alternatives sites both outside of the Waitaha Forest Conservation Area and in other conservation areas on the West Coast that were within the Westpower distribution area (from Lyell in the North to Paringa in South Westland.) Given the detailed assessment of alternative locations and the selection criteria, the Department is satisfied that the proposed hydro scheme structures and access road could be not be reasonably undertaken in another location that is either outside the conservation area to which the application relates or 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 nor does the Department consider that Westpower could reasonably use an existing structure or facility without the addition.”</i></p> <p>“47. Westpower agrees with that conclusion in the Department’s report.</p> <p>48. While submitters have referred to other potential alternative schemes, no evidence was provided on the detail or feasibility of these other schemes. In any case, with respect, these are not true ‘alternatives’ to the proposal which is the subject of this application. The interpretation advanced by Forest and</p>		

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				<p>Bird is not an appropriate interpretation of section 17U(4).</p> <p>49. Further, as noted by the Supreme Court in another context, the requirement for a decision-maker to be 'satisfied' (the same term used in section 17U(4)) is a very high statutory threshold. (Westfield (New Zealand) Ltd v North Shore City Council (2005) 11 ELRNZ 346 at [52].)</p> <p>There is nothing in the submissions to support the contention that the Minister could be 'satisfied' as to alternatives as required under section 17U(4), nor to support a change to the position in the Department's report as identified above."</p> <p>References:  AEE  Vol 1 4, 66, 183, section 11 186-194  Appendix 22  Westpower response to the Baldwin report 29 June 2015 and 23 September 2015.  Radich letter 14 July 2016  DOC Officer's Report page 92-94, 97</p>		
6.00	17W ...a concession shall not be granted ... unless the concession and its granting is consistent with the plan	<p><b>Inconsistent with the CMS</b>  A number of submitters stated the hydro scheme would be inconsistent with the West Coast CMS.</p> <p>The Green Party, Clare Backes and Jeremy Carrol submitted that in regard to: CMS 3.3.4.3 Policy 1: "The Department should seek to protect and preserve the natural character, integrity and values of landscapes, landforms, geological and soil features and processes in all</p>	Green Party Clare Backes Jeremy Carrol Forest and Bird Mic Hopkinson	<p><b><u>In regards to consistency with CMS</u></b>  Westpower responds specifically at item 52 and 53 of the Statutory Paper:</p> <p><b>“Section 17W(1) 52. Section 17W(1) states:</b></p> <p><i>Where a conservation management strategy or conservation management</i></p>	<p><b>In regards to consistency with CMS</b>  The Officer's report indicates that the proposed hydro scheme was considered to be consistent with most of the relevant CMS policies with the mitigation measures considered adequate</p>	<p>The Chairman recommends that the submissions on CMS provisions be allowed.</p> <p>Submitters argue that the effects of the proposed activity make it inconsistent</p>

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		<p>aspects of conservation management. That geodiversity and landscapes would not be protected</p> <p>Forest and Bird submitted that the adverse effects on Morgan Gorge mean that it is not consistent with the CMS. 3.3.4.3. The Officer's report distinguishes between local landscape effects and broad effects. It is submitted that this distinction is not borne out by the objectives and policies. Geodiversity is what the officer refers to as "local scale landscape" the CMS does not distinguish between geodiversity and landscapes: both have to be protected. Forest and Bird also submits that the applicant's conclusions that the buildings will have a high level of natural character effects (ref Officer's report) para 4.81) precludes a finding that the natural character, integrity and values of the Upper Waitaha, including Morgan Gorge are protected and preserved. The natural character of the Upper Waitaha, including Morgan Gorge as a wild mountain gorge is not maintained as far as practical. The integrity of the Morgan Gorge as a wild mountain gorge is not preserved. The application does not preserve and protect the natural character of landscapes, landforms or geological features and must be declined under section 17W as it not consistent with the CMS.</p> <p>Forest and Bird submits that the Officer's report reaches the conclusion in regard to section 3.3.3.5 objective 1 and 2 and policy 3 that the scheme is consistent with these policies objective 1 &amp; 2 and states that this is untenable. However, Forest and Bird submit that Policy 3 provides for increasing security range and population s(sic)... (item 104) In terms of bats, the conclusion that the measures to avoid remedy or mitigate adverse effects means that security, population size are not effected is neither reasonable nor relevant. A proposal that allows for the destruction of habitat of a critically endangered species, and other threatened species, is not consistent with an objective that</p>	Jo Parsons WWNZ	<p><i>plan has been established for a conservation area and the strategy or plan provides for the issue of a concession, a concession shall not be granted in that case unless the concession and its granting is consistent with the strategy or plan.</i></p> <p>53. Westpower's position is that the proposed activity is not inconsistent with West Coast Conservation Management Strategy. The Department's report largely supports that view, but also presents an option to the decision-maker to decline the application under section 17W(1). With respect, the decision-maker appropriately did not select that option. There has been no new information provided through submissions or the hearing that should lead the Department to changing its view on this matter."</p> <p><i>Westpower states from their Analysis of Submissions paper: "The CMS is an important matter in considering the application for concessions for the Scheme. This is for a number of reasons relating to: - The management and administration by DOC of conservation areas and natural and historic resources as required under section 17A of the Act - Section 17W of the Act, which provides for the consideration of the consistency between concessions and conservation management strategies and plans</i></p>	<p>including CMS 3.3.3.5 objective 1 and 2 and policy 3 referred to in F&amp;B submission.</p> <p>However, the Officer's report at paragraph 8.7 states that a number of CGP and CMS policies rely for consistency on the effects being adequately mitigated. In particular;</p> <p>At paragraph 8.7 the Minister was asked to consider whether the proposed hydro scheme was consistent with the following CMS sections:</p> <p><b>CMS 3.3.4.3 - Management of Geodiversity and landscapes policy 1.</b> Paragraph 4.573 notes the broad scale landscape effects are greater than low and acknowledged the local scale landscape effects would be significant at the top of Morgan Gorge, through the abstraction reach and at the powerhouse.</p> <p>The Minister was asked to consider whether the proposed measures to mitigate the effects would</p>	<p>with a number of provisions of the CMS.</p> <p>The Hearing Chairman refers to his recommendations on natural character, landscape and visual amenity at section 3.3, and on recreation at sections 3.51 and 3.52.</p> <p>The Hearing Chairman's conclusions on the above matters are relevant to his consideration of submissions on consistency with the CMS.</p> <p>The Hearing Chairman found submissions persuasive in relation to some of the CMS provisions. Namely that the activity would be inconsistent with the following provisions:</p> <p><b>3.3.4.3 - Management of Geodiversity and landscapes</b></p> <p><b>Objective 1</b> "To protect geodiversity and landscapes from adverse effects of human use or management"</p> <p><b>policy 1.</b> "The Department should seek to protect and preserve the natural character, integrity</p>

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		<p>provides for the maintenance of long term security and a policy that provides for increasing the security, range and population size of threatened species. (item 107) The Officer's report has confused the obligations to avoid remedy and mitigate adverse effects with the requirement for consistency with the CMS. Forest and Bird submit that when properly considered the application is not consistent with the CMS regarding threatened species. (item 108)</p> <p>Mic Hopkinson submitted that the scheme is Not compatible with CMS which defines the setting as backcountry remote.</p> <p>Jo Parsons submits that the scheme is inconsistent with section 3.5 Objective 3 to protect recreational opportunities..., and Section 3.6.1.1 provision of recreational opportunities – she submits that the Waitaha River is important locally, regionally, nationally, and internationally.</p> <p>WWNZ submits (p61-63) that the hydro scheme is incompatible and inconsistent with a number of the key objectives and policies. They state that provision for retention of natural features and recreation resources, and recognition particularly of the kayaking values on many of the rivers throughout the region is a clear aim of the CMS, as is enunciated by the overall outcomes and Hokitika Place outcomes. They submit that it is inconsistent with following CMS section:</p> <p>section 3.3.4.3 Objective 1 and policy 2: Because the outstanding wilderness and landscape values of the Waitaha River and particularly the Morgan Gorge will not be protected and there has been little recognition</p>		<p>- Section 17T(2) which provides that the Minister shall decline an application for concession which is inconsistent with a conservation management strategy. The Scheme, subject to the suggested conditions, is consistent with the CMS Objectives and Policies. The scheme is consistent with the relevant objectives and policies in the following sections of the CMS: SECTION 3.3 NATURE HERITAGE CONSERVATION SECTION 3.4 HISTORICAL AND CULTURAL HERITAGE CONSERVATION SECTION 3.5 AUTHORISED USES OF PUBLIC CONSERVATION LANDS SECTION 3.6 PEOPLES BENEFIT AND ENJOYMENT SECTION 3.7 OTHER USE OF PUBLIC CONSERVATION LANDS 3.8 OTHER MANAGEMENT RESPONSIBILITIES Section 4.2.6 Desired Outcomes for the Hokitika Place (please refer to Section 10 of the AEE for a full analysis of how the Scheme meets these CMS policies)."</p> <p><b>References:</b> AEE Vol 1 159-185 DOC Officer's Report p98 - 114</p>	<p>ensure consistency with policy 1.</p> <p><b>3.5 Authorised uses of Public Conservation Lands - objective 3.</b></p> <p>Paragraph 4.577 explains the adverse effects on kayaking would be high even after the proposed mitigation measures and asks the minister to consider whether the adverse effects were sufficiently mitigated to be consistent with objective 3.</p> <hr/> <p>In regards to <b>CMS Section 3.5 policy 1</b> The Officer's Report did not consider this policy.</p> <p><b>In regards to section 3.5 policy 2</b> The Decision in Principle Officers Report at paragraph 4.576 states "Discussions on the potential effects on recreational values are found in the assessment of effects section of this report. A number of measures are proposed including an alternative track up the true right of the Waitaha River to take trampers away from the</p>	<p>and values of landscapes, landforms, geological and soil features and processes in all aspects of conservation management"</p> <p><b>Hearing Chairman's view:</b> This policy seeks to protect and preserve landscape. The application would have significant adverse effects on landscape at the local scale, despite the considerable effort Westpower has put into mitigation. Therefore, the Chairman considers the scheme would be inconsistent with this policy.</p> <p><b>3.5 Authorised uses of Public Conservation Lands - objective 3.</b> "To protect recreational opportunities from adverse effects of authorised uses of public conservation lands."</p> <p><b>Hearing Chairman's view :</b> This policy prioritises protection of recreational opportunities over the adverse effects of 'authorised activities' (such as concessions). The application would have high adverse effects on kayakers' use of the whole Waitaha River, the</p>

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		<p>of the outstanding natural feature that is the Morgan Gorge and loss that will occur when it is dewatered.</p> <p>section 3.5 objective 3, policy 1 and 2: Because the kayaking values, particularly the outstanding values of the Morgan Gorge and just below and also the rest of the Waitaha River above Morgan Gorge would not be protected.</p> <p>section 3.6.1.1 objective 1: Because the loss of the Morgan Gorge and other kayaking runs in the Waitaha River catchment, including some of the most difficult in the country (the 'Mount Cook' of New Zealand Rivers) would not provide for a comprehensive range of kayaking runs (including such extremely difficult runs) throughout the country.</p> <p>section 3.6.1.4 objective 1: Because the extreme kayaking opportunity down the Morgan Gorge would be lost, and this would negatively impact on the other highly valued hard kayaking runs in the Waitaha River.</p> <p>section 3.6.4 objective 1: Because the extreme kayaking opportunity and technical challenge provided by the Morgan Gorge would be lost to New Zealand as well as international kayakers, negatively impacting on the other highly valued hard kayaking runs in the Waitaha River and reducing the quality of experiences available.</p> <p>section 3.7.2 policy 1: The loss of the Morgan Gorge kayaking run will be a significant adverse effect that cannot be avoided or minimised. With dewatering, the natural character of the Morgan Gorge (noise, Whitewater, hydraulic features, water flow) would not be maintained.</p>			<p><i>proposed powerhouse, ensuring continued access into the bottom of the Morgan Gorge for kayakers, designing the Weir in consultation with Whitewater New Zealand to provide for kayak access, providing information to the public on flow data and providing for two cease to abstract/no take days to allow for the potential kayaking of the Morgan Gorge.</i></p> <p>In regards to <b>CMS 3.6.1.1 (including objective 1)</b> the Officer's report at paragraph 4.584 states that <i>"the main thrust of section 3.6.1.1 is focused on recreational opportunities including the objective of avoiding or minimising conflicts between different recreation users. This section is therefore of limited use in the current context."</i></p> <p>In regards to <b>section 3.6.1.4 objective 1</b> The Officer's report at paragraphs 4.587 and 4.628-4.630 comment on this section of the CMS and considers that the hydro</p>	<p><b>Morgan Gorge and the abstraction reach below the gorge. Therefore he considers the scheme would be inconsistent with this policy. The scheme's high effects on trampers' experience also make the scheme inconsistent with this policy.</b></p> <p><b>CMS 3.7.2 – Activities on or in Beds of Rivers of Lakes policy 1 (a) and (e) Policy 1</b> <i>"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:"</i></p> <p><i>"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" ...</i></p> <p><i>"e) The natural character within the setting of the activity should be maintained."</i></p>

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		<p>section 3.7.11 policy 3, and Desired outcome for places 4.2: Dewatering the Morgan Gorge would not provide for retention of the kayaking and natural values of the Morgan Gorge and the river immediately below the Gorge.</p> <p>section 3.8.4 objective 1 and policy 3 a), b), c) and d) Loss of the values in the Morgan Gorge via dewatering and construction of industrial structures will impinge on kayakers and other users of the Waitaha River with respect to wilderness and scenic (wild and scenic) values within the catchment, and would not preserve conservation values, natural values, or the outstanding values on the Morgan Gorge and just below, or for the river as a whole in its current untouched state.</p> <p>Jeremy Carrol also submitted that given the outstanding Natural values of the area. There have been significant changes to the West Coast since the CMS was written and the CMS is currently inadequate to deal with complex activities, this type of activity needs specific direction and should be considered under sections 3.8.6 of the CMS.</p>			<p>scheme is consistent with the objectives and policies of 3.6.1.4 and that “A range of recreational opportunities enabling people to enjoy the natural setting of the Waitaha River would still remain.”</p> <p>In regards to <b>3.6.4.1 Objective 1</b> The Officer Report did not provide a comment on this policy.</p> <p><b>CMS 3.7.2 – Activities on or in Beds of Rivers of Lakes policy 1 (a) and (e)</b> Paragraph 4.596 explains that consistency with <b>CMS policy 3.7.2 1(a)</b> depends on whether the Minister considers the mitigation for effects on recreation opportunities especially kayaking is adequate.</p> <p>In regards to consistency with <b>CMS policy 3.7.2 1(e)</b> Paragraph 4.600 explains that there would be a high magnitude of adverse effects on natural character at the intake site even after the mitigation measures were taken account of. Paragraph 4.601 explains that</p>	<p><u>Hearing Chairman's view:</u> <b>Policy (a) requires “consideration” of adverse effects on recreation and amenity, while policy (b) requires natural character to be maintained. The Hearing Chairman has concluded that the adverse effects on recreation, natural character and visual amenity are such that the scheme should be declined under section 17U(2)(b). Therefore he considers the scheme would also be inconsistent with the above policies.</b></p> <p><b>CMS 3.7.11 - Utilities Policy 3</b> “The development, installation, maintenance and management of utilities on public conservation lands should be consistent with the desired outcome for the relevant place/s.” (see <i>Geodiversity outcome 4.2.6.3 stated below</i>).</p> <p><b>CMS 4.2.6.3 – (Desired Outcomes for Hokitika Place ) Geodiversity, landform and landscapes in 2020.</b> “The overall character of geodiversity, landforms and</p>

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					<p>consistency with this policy depends on whether the minister considers the mitigation reduces the potential adverse effects on Natural Character to a degree where the activity is consistent with this policy.</p> <p>It was also stated in paragraph 8.7 that if the proposal was not considered to be sufficiently mitigated in regard to the above policies then to grant a concession for the proposed hydro scheme would be inconsistent with 17 W(1) of the Conservation Act.</p> <p>In regards to <b>CMS 3.7.11</b>, this is about Utilities being consistent with the Desired Outcome for Place Statements. Desired Outcomes for the West Coast and Hokitika Place are covered in section 4.1 and 4.2 of the CMS and in paragraphs 4.604 – 4.630 of the Officer Report. The Report concludes for Indigenous Biodiversity (CMS section 4.4.6.4) that the proposed hydro scheme would be consistent with this policy as long as Westpower adhered to the proposed and</p>	<p><i>landscapes in Hokitika Place is maintained in its 2010 condition ...”</i></p> <p><b>Hearing Chairman's view: Given the Hearing Chairman's view on the scheme's effect on landscape, he also considers the scheme would be inconsistent with this outcome.</b></p> <p>The Hearing Chairman recommends that you accept submissions that the proposed activity would be inconsistent with the above CMS provisions.</p> <p><b>In conclusion</b></p> <p>The Hearing Chairman therefore recommends that the proposed hydro scheme be declined pursuant to 17W(1).</p> <p>The Hearing Chairman did not find persuasive submissions in relation to the following provisions :</p> <p><b>3.3.3.5 Threatened Species Management objectives 1 and 2 and policy 3</b></p>

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					<p>recommended conditions but concludes that in regards to Geodiversity, landforms and landscapes (CMS section 4.2.6.3) at paragraph 4.623-4.624 that: <i>“the effects on natural character, landscape and visual amenity to be high. At a broad landscape scale, the effects on landscape character (catchment based) are considered by the Department to be ‘moderate’.</i>” And that the Minister needed to <i>“consider whether the methods proposed to reduce effects from this proposal would be sufficient to ensure this would be the case if the proposed hydro scheme was granted, if not the proposal would not be consistent with this outcome and therefore inconsistent with section 17W(1).”</i></p> <p>And in regards to peoples benefit and enjoyment (CMS section 4.2.6.7) in the Hokitika Back-Country and Remote Zone the Department agreed in terms of recreation with Westpower's application that <i>“the outcomes of the CMS for the Hokitika place</i></p>	<p><b>3.8.4 -Public Access objective 1 and policy 3 a), b), c) and d)</b></p> <p><b>3.5 - Authorised Uses of Public Conservation Lands policy 1</b></p> <p><b>3.6.1.1 Provision and Management of Recreational Opportunities, objective 1</b></p> <p><b>3.6.1.4 Back Country Remote objective 1 - 3.6.4.1 Recreation and Tourism Activities, objective 1</b></p> <p><b>CMS 3.8.4 -Public Access objective 1 and policy 3 a), b), c) and d)</b></p> <p><b>CMS 3.8.6 – To Prepare, review or amend conservation management plans as required.</b></p> <p>In respect of the above provisions, the Hearing Chairman considers the application is either consistent with them or they are not relevant. Therefore</p>



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					<p><i>will still be achieved with the scheme in place.</i> It was acknowledged that there would be a degree of loss of solitude and a sense of isolation. It was also acknowledged at paragraph 4.614 that there would be a decrease in the appreciation and enjoyment of the area for a small number of recreationists including kayakers.</p> <p><b>In Full</b>  <b>4.614</b> The proposed activity would not prevent the continued appreciation and enjoyment of the Waitaha Catchment, an improved access track as proposed would help facilitate better access into Kiwi Flat. There would potentially be a decrease in the appreciation and enjoyment of the area for a small number of recreationists including kayakers from the adverse effects of on Natural Character and kayaking values.</p> <p><b>Conclusions are provided:</b></p> <p><b>4.628</b> Westpower notes the Recreation Report states that</p>	<p>he recommends that you not accept submissions that the activity is inconsistent with these provisions.</p>

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					<p>'A hydro development', as such, is not compatible with the back-country remote management category (this is because the backcountry-remote zone is a recreation management mechanism and is not intended to relate to other types of activities) but it concludes that "the outcomes of the CMS for the Hokitika place will still be achieved with the scheme in place." The Department agrees.</p> <p>4.629 The Department considers that the proposed hydro scheme is consistent with the back-country remote zone objectives and policies 3.6.1.4 above. The desired outcomes for the Hokitika Place would still be maintained although the Department considers there would be a degree of loss of solitude and sense of isolation for those recreating in the location of Kiwi Flat and the powerhouse. However it is considered that huts and tracks would still provide the opportunity for solitude for those who seek a greater sense of isolation as required by policy 3.6.1.4 2 (c).</p>	

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					<p>4.630 A range of recreational opportunities enabling people to enjoy the natural setting of the Waitaha River would still remain, proposed mitigation methods that help the structures blend in with the landscape and alternative track access would help to avoid or otherwise reduce effects on the natural setting.</p> <p>In regards to <b>CMS 3.8.4 - Public Access objective 1 and policy 3 a), b), c) and d)</b> was not considered in the Officer's Report. It was not considered to be relevant.</p> <p>In regards to <b>CMS 3.8.6 – To Prepare, review or amend conservation management plans as required.</b> This section was not considered in the Decision in Principle Officers Report. It was not considered to be relevant.</p>	
7.00	Not consistent with the Conservation General Policies	<p><b>Inconsistent with CGP</b> Several submitters submitted that the scheme was inconsistent with the Conservation General Policies.</p> <p>Jeremy Carroll submitted there was a conflict with General Policies 4.5 (b).</p>	Keith Morfett WWNZ Jo Parsons Jeremy Carroll	<p><b>Consistent with CGP</b></p> <p>Westpower's response in their Analysis of Submissions paper stated: ... " The Scheme, subject to the suggested conditions, is consistent with the CGP.</p>	<p><b>Consistency with CGP</b> In the officer's report at paragraph 4.520 CGP Policy 4.5 (b) is stated: "Activities which reduce the intrinsic values of landscape,</p>	The submissions on the CGP are relevant and the Hearing Chairman recommends they be allowed.

Issue Number	Statutory Test	Submitter Topic/Issue	Submitters (Examples only, not complete list of those who raised issue)	Westpower's Response	Departments position in Original Report (Ref)	Recommendations as to the extent to which they should be allowed or accepted pursuant to section 49(2) (d)
		<p>WWNZ and Jo Parsons submitted that the scheme was inconsistent with General policy 9.1 – Planning and management for people's benefit and enjoyment.</p> <p>Keith Morfett submitted at the hearing that the scheme was inconsistent with Conservation General Policies 11.3 (a) and (d) and 17 U(4).</p>		<p>The scheme complies with the following policies:</p> <ul style="list-style-type: none"> <li>• 4.5 Geological features, landforms and landscapes</li> <li>• 4.6 Ecosystem services</li> <li>• 8 Natural Hazards</li> <li>• 9.1 Planning and management for peoples benefit and enjoyment.</li> <li>• 9.5 The use of vehicles and other forms of transport</li> <li>• 11 Activities requiring specific authorisation</li> <li>• 11.3 utilities</li> </ul> <p>(please refer to Section 10 pf the AEE for a full analysis of how the Scheme meets these CGP policies)"</p> <p>and</p> <p><b>“The Department has concluded that the Minister will need to consider whether or not the mitigations proposed would be such that the scale, design and colour relates to, and is integrated adequately with the landscape in order to be consistent with this policy 11.3(b) (4.542). The scale, design and colour of the Scheme have been the subject of specific landscape assessment to assist integration into the landscape. These matters have been taken into account in terms of location, design and suggested conditions relating to the Scheme and concession in order to avoid or mitigate effects. It is the conclusion of the Landscape Report that whilst there are some residual 'high' levels of effect from</b></p>	<p><i>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.”</i></p> <p>And  ‘Intrinsic value’ is defined in the CGP as: <i>“A concept which regards the subject under consideration as having value or worth in its own right independent of any value placed on it by humans.”</i></p> <p>The Officer's report at paragraph 4.522 indicates that after the proposed mitigation is considered there would still be some adverse effects remaining and in regards to GCP 4.5 (b) the Minister needed to determine whether the proposed mitigation of significant adverse effects relating to natural landscape at the local scale is adequate. If not, the requirements of policy 4.5(b) would not be satisfied.</p> <p>In regards to CGP 9.1 the Officer's Report refers the reader to the analysis of CMS</p>	<p>The Hearing Chairman refers you to his recommendations in section 3.3, 3-51 and 3-52 of this table to accept the submissions on the effects on natural character, visual amenity, landscape, tramping and kayaking and the Hearing Chairman's comments that the effects on these values cannot be adequately avoided, remedied, or mitigated. The Hearing Chairman recommends that you accept submissions that there is a conflict with CGP 4.5(b) as the effects on the activity on the intrinsic values of landscape, landform and geological features cannot be avoided or otherwise minimised.</p> <p>The Hearing Chairman also recommends that you accept the submission that the hydro scheme would be inconsistent with CGP 9.1 (a) which requires consistency with the values of and outcomes planned for places.</p> <p>The Hearing Chairman does not accept the submissions in regards to inconsistency with CGP 11.3 (a) and (d) for the</p>

Issue Number	Statutory Test	Submitter Topic/Issue	Submitters (Examples only, not complete list of those who raised issue)	Westpower's Response	Departments position in Original Report (Ref)	Recommendations as to the extent to which they should be allowed or accepted pursuant to section 49(2) (d)
				<p>the establishment of the structures and Scheme, the Scheme is not inappropriate to the location with respect to natural character, landscape and visual amenity. For these reasons Westpower considers that the Scheme and concession, including design, location and suggested conditions, is consistent with the CGP.”</p> <p><b>References:</b>  AEE  Vol 1 159-168  DOC Officer's Report p95 -98</p>	<p>section 4.1.1 later in the report as CGP 9.1 requires that recreational opportunities provided should be consistent with the values of and outcomes planned for the places and this is discussed in the Decision in Principle Officers Report under section 4.1.1.6 and 4.2.6.7 of the CMS in paragraphs 4.614 and – 4.628-4.630 of the Officer's Report.</p> <p>The Report concludes in regards to peoples benefit and enjoyment for the Hokitika Place (CMS section 4.2.6.7) that the Department agreed in terms of recreation with Westpower's application that “<i>the outcomes of the CMS for the Hokitika place will still be achieved with the scheme in place.</i>” It was acknowledged that there would be a degree of loss of solitude and a sense of isolation. It was also acknowledged at paragraph 4.614 that there would be a decrease in the appreciation and enjoyment of the area for a small number of recreationists including kayakers.</p>	<p>reasons given in this table at item 5.00 and that the Hearing Chairman considers that the assessment of alternatives provided by Westpower were adequately addressed.</p>

Issue Number	Statutory Test	Submitter Topic/Issue	Submitters (Examples only, not complete list of those who raised issue)	Westpower's Response	Departments position in Original Report (Ref)	Recommendations as to the extent to which they should be allowed or accepted pursuant to section 49(2) (d)
					<p>In regards to CGP 11.3 (a) and (d) the Decision in Principle Officers Report at Paragraph 4.534 indicates the Department considered the proposed hydro scheme is consistent with 11.3 (a) and that the Department was satisfied the proposed hydro scheme could not be reasonably located outside public conservation lands.</p>	
8.o	<p><b>Other Matters</b> Not consistent with the Regional and District Plans</p>	<p>A number of submitters submitted that the hydro scheme proposal was inconsistent with objectives and policies in the Regional and District Plans</p>	<p>WWNZ template Phillip Tingle Lacey Beadle Katarina Te Maiharoa on behalf of the Waitaha Taiwhenua o Waitaki Wendy Davis Addie Bertoni Niamh Matthews</p>	<p>Westpower responded <b>in their Analysis of Submissions paper that</b> "Consideration of planning documents such as the Westland District Plan and Regional Plan and Regional Policy Statement are not relevant considerations under the concession regime which the hearing panel is concerned with. However, Westpower notes that the Scheme would comply with various objectives and policies in such plans. For example, under the Westland District Plan, it is considered that the Scheme is consistent with the protection of the necessary values of the Upper Waitaha Catchment under Policy (C) of Policy 4.8."</p>		<p>The Hearing Chairman recommends that the submissions on Regional and District Council objectives and policies not be allowed as they are not considered to be relevant matters under 17 U of the Conservation Act.</p>

Issue Number	Statutory Test	Submitter Topic/Issue	Submitters (Examples only, not complete list of those who raised issue)	Westpower's Response	Departments position in Original Report (Ref)	Recommendations as to the extent to which they should be allowed or accepted pursuant to section 49(2) (d)
			Scott Kearney Douglas and Rosemary Rankin Matt Parkes Waitaha Executive Grandmothers Council of the Waitaha Nation Jan Nisbet			
9	<b>Other Matters</b> Inconsistencies with other Concessions	One neutral submission was received from Pioneer Energy who commented on inconsistent Department decision making.  Background: 2007 Energy Strategy set a target that 90% of electricity by 2025 would be generated from Renewable Energy Generation. This was used as the basis for the National Policy Statement for Renewable Energy Generation which was made operative in 2011. This is aimed at all level of government but is rarely considered for activities requiring authority on the conservation estate. Main issues: 1 Inconsistent annual activity fees, 2 inconsistent approach to deciding on terms of concessions 3 Unduly impeding nature of the process as relates to Renewable Energy Generation.	Pioneer Energy			The Hearing Chairman recommends that the submission on inconsistent Department decision making is not allowed, as this matter is not considered relevant to this application under 17 U of the Conservation Act – ‘Matters to be considered by Minister’. The merits of this application are considered independently from other previous applications.
10	<b>Other Matters</b> Precedents	A number of submissions were made around concerns that the granting of this concession would set a dangerous precedent setting the bar low and opening up stewardship land to industrial and extractive forms of profit driven development and that no wild and untouched river would be safe.	Gary Huish Philip Patterson Bruce Stuart – Menteth Dean Arthur	<b>Precedent If Application Granted</b> Westpower responds in their <b>Analysis of Submissions paper</b> that “Each concession application is to be assessed on its own merits, in its unique context. Debate aside about whether the bar is being "set low" it can therefore not be said that the granting		The Hearing Chairman recommends that the submissions in regards to precedents should not be allowed, as these matters are not considered relevant to this application under 17U of

Issue Number	Statutory Test	Submitter Topic/Issue	Submitters (Examples only, not complete list of those who raised issue)	Westpower's Response	Departments position in Original Report (Ref)	Recommendations as to the extent to which they should be allowed or accepted pursuant to section 49(2) (d)
		<p>A number of submitters were concerned that the Amethyst Concession was being used as a precedent to compare the existing application with.</p> <p>A number of submitters used the Monorail Concession application case as reason to decline this application</p>	<p>Victoria University Canoe Club New Zealand Recreation Association Pail Ewell Sutton Keith Riley Ruth Bullen Doug and Rose Rankin Grammer Family Zak Shaw WWNZ</p>	<p>of this concession will set a precedent for the granting of similar concessions in the future as there are bound to be significant and material differences between the applications.”</p> <p><b>Using Amethyst Hydro as a Precedent</b> Westpower states in its <i>Analysis of Submissions paper</i> that it “is not purporting to rely on the granting of the concession for the Amethyst Hydro Scheme as justification for the granting of this scheme. In other words, Amethyst does not provide a precedent for the consideration of this application.”</p> <p>And: “the Amethyst Hydro Scheme does however demonstrate Westpower's ability to undertake projects of this nature and operate a concession on public conservation land in a responsible manner.”</p> <p>And</p> <p><b>Monorail Precedent</b> “The outcome of the Monorail concession application does not set a precedent for the consideration of this application. Each concession application is to be assessed on its own merits, in its unique context. There are significant and material differences between the Monorail application and this application.”</p>		<p>the conservation Act – ‘Matters to be considered by Minister’. The merits of this application are considered independently from other previous applications or concessions.</p>



Issue Number	Statutory Test	Submitter Topic/Issue	Submitters (Examples only, not complete list of those who raised issue)	Westpower's Response	Departments position in Original Report (Ref)	Recommendations as to the extent to which they should be allowed or accepted pursuant to section 49(2) (d)
11	<b>Other Matters Carbon Emissions</b>	Tony Baldwin submitted in regards to the proposed scheme leading to a drop in carbon emissions, stating that it is not clear that this would be the case and independent advice should be sought before DOC comes to a view on this.			Carbon emissions were not discussed in the Officer report.	The submission that challenges the claims of a positive effect from carbon emissions is relevant and allowed. The Hearing Chairman notes that no weight has been given to the alleged positive effect from carbon emissions and the submission challenging this should also be given no weight.

## **Applicant comments**

1. The Department sent Westpower the draft ‘summary of objections and comments and recommendations’ (Hearing Chairman’s Report (HCR) on 2 June 2017. Westpower provided comments on 6 July 2017.
2. Westpower’s response to the draft hearing report consists of the following documents:
  - a) Letter from Mr Paul Radich QC to Paul Beverley [DOC-3098131](#)
  - b) Westpower’s Response Tables - Cover Note and Appendix A (list of documents Westpower provided to the DOC during the Waitaha scheme application process [DOC-3098133](#)
  - c) Westpower’s Response Tables on the following issues
    - i. Landscape - Key Issues to Address [DOC-3098134](#)
    - ii. Kayaking Key Issues to Address [DOC-3111192](#)
    - iii. Tramping Key Issues to address [DOC-3098135](#)
3. The issues raised in the attached documents have been summarised below along with the Chairman’s response. In some cases the Chairman has also amended the report.

## **Issues raised in the Letter from Mr Radich to Paul Beverley**

### **Issue 1 Westpower Comment: Error of Law 1 relating to “effects”**

Mr Radich considers that the report fails to take into account significant positive effects of the proposed scheme. These include:

- increased reliability of supply for West Coast
- cheaper power for West Coast
- economic benefits, such as increased jobs
- alignment with the Government’s renewable energy target
- alignment with obligations under the Climate Change Response Act 2002

Mr Radich comments that a central tenet in Westpower’s case was that the net position when looking at effects is that the positive effects of the proposal - the benefits that it brings – outweigh any other effects.

### **Issue 1 Hearing Chairman’s Response**

The Chairman took into account the positive effects of the scheme that he considered relevant, for example:

- Provision of “real time” flow information to kayakers
- The improved track access from Macgregor Creek to Kiwi Flat

He does not consider economic and social effects (such as increased reliability of electricity supply) to be relevant effects when considering concession applications under the Conservation Act. To be relevant under the Act positive effects must relate to conservation land or waters – not to the broader social or economic environment.

The Hearing Chairman accepts that the government’s renewable energy strategy is relevant. But the contribution of this scheme to achieving the strategy is small, whereas the negative effects of the scheme on the area are high. In those circumstances, given the statutory criteria for the Minister’s decision, the Hearing Chairman recommends the Minister give little weight to any contribution the scheme might make to the energy strategy.

## **Issue 2 Westpower Comment: Error of Law 2: relating to link between “effects” and other tests**

Mr Radich points out that the Hearing Chairman concluded in the draft HCR report that because the adverse effects could not be mitigated adequately this would “*lead inevitably to his recommending also that the decision maker accept submissions that the activity would be contrary to the Act’s purpose ...*” and to ...“*certain provisions of the Conservation Management Strategy*” (p79-84 of draft HCR) and that the report does not identify provisions of the Act that the scheme is said to be contrary to, or purposes for which the land is held. Mr Radich comments that an analysis of these parts of the Act was provided to the Hearing Chairman and he comments further on their views on how the Act and concession provisions should be interpreted in particular how the “*concession provisions in particular, are focused on striking an appropriate balance; on the fact that positive effects can be considered and that avoidance of effects is not absolute*”; Mr Radich refers to the phrases from the relevant provisions of the Act “*so far as is practicable*” and “*reasonably and practicably*” (Page 4 Mr Radich’s letter)

Mr Radich states that “*to say simply that, because adverse effects were identified, the proposal must be contrary to the provisions of the Act, contrary to the purposes for which the land is held and/or contrary to the Conservation Management Strategy, is at odds with the statutory scheme; a scheme that was not considered or addressed in the Report.*” (Page 4 Mr Radich’s letter)

## **Issue 2 Hearing Chairman’s Response**

The Hearing Chairman has amended the report to explain more fully why he considers the application would be contrary to the provisions of the Act, and contrary to the purposes for which the land under application is held, and inconsistent with the Conservation Management Strategy.

The Hearing Chairman considers it appropriate for there to be a close linkage between his findings on “effects” and his findings on these other statutory tests.

While each test has a different immediate focus, each reflects the Act's conservation purpose. Because the Hearing Chairman considers there to be certain adverse effects on conservation values that cannot be adequately mitigated, it is not surprising that in turn he considers the other tests not to be satisfied. For example, taking the "purpose for which the land is held" test (17U(3)), the Hearing Chairman has concluded that there are high adverse effects on landscape, at the local level, even after the proposed mitigation. That being so, he concludes that the 'purpose' test is not met- as this requires "protection" of "natural resources" which include landscape. Similarly, he concludes that these effects make the proposal inconsistent with the CMS provision which requires the protection and preservation of landscapes. (3.3.4.3 Objective 1 and Policy 1)

In regards to the comments that "*concession provisions are focused on striking an appropriate balance*" and that "*positive effects can be considered*" this is already largely addressed in the responses to issue 1 above. The Hearing Chairperson agrees that the Act requires a balance to be struck, but the balance must be between positive and negative effects on conservation values, rather than on the broader environment or community.

### **Issue 3 Westpower Comment: Failure to record the case for Westpower- Items 15- 19**

Mr Radich comments that the draft HCR does not explain Westpower's case on material points and that 'Westpower's Response column in the table provided in the draft HCR is variable. Mr Radich goes on to say that the omissions are so stark as to cause grave concerns about the Hearing Chairman's process in preparing his report and the conclusions reached. The main issues identified are:

- Information presented in an incomplete and fragmented way
- The report does not explain for the decision maker Westpower's case on material points
- The document says 'Westpower says' without referencing the source of the information
- The document does not give the credentials of the Westpower reports' authors

The West Power tables on Landscape, Kayaking and Tramping raise similar issues. For example Westpower comments ('Westpower's Response Tables – Cover Note' item 4) that "*in the absence of such references there is a real risk the Hearing Chairman failed to consider and assess this important information in making his recommendations.*"

### **Issue 3 Hearing Chairman Response**

The Hearing Chairman advises that he, and the panel, were aware of the detail of Westpower's case. Prior to the hearing, the Hearing Chairman and the Hearing Panel were provided with:

- The Decision in Principle Officer's Report
- access to Westpower's full application including all Westpower's supporting expert reports and further information provided;
- Access to all the full submissions as well as a summary of the key issues raised in the submissions.

At the Hearing the Panel listened to:

- All the Oral submissions and Westpower's oral right of reply presented at the close of the hearing.

After the hearing and prior to completing the draft HCR and recommendations, the Hearing Chairman and the Hearing Panel were provided with:

- The full replies from Westpower that were presented at the close of the hearing.

Therefore the Hearing Chairman and the Panel were able to (and did) consider and assess Westpower's case when considering how to respond to submissions.

The Hearing Chairman has made the following changes in response to Westpower's specific concerns:

- Where information presented by Westpower in the 'Right of Reply' had been omitted, where appropriate this has been added for completeness.
- The Hearing Chairman does not consider it necessary to refer, in his report, to the numerous documents that make up Westpower's application. Nor is it necessary for the HCR to summarise and record all aspects of Westpower's application. This was the purpose of the Decision in Principle Officer's Report.
- Where references to Westpower's specific responses to submissions were omitted and have been provided in Westpower's 'Right of Reply' these have been added to the HCR.
- The full list of Westpower's experts and their qualifications is attached as appendix A to the HCR, Credentials of Westpower's experts have also been added to the HCR.

#### **Issue 4 Westpower Comment: Insufficient Reasons - Items 20 – 23**

Mr Radich comments that it is not enough to express a conclusion in the words of a statutory conclusion. The report needs to give reasons dealing with a point in contention.

An applicant must be able to understand the basis for the decision — the decision-maker must explain ‘why’ a conclusion was reached.

#### **Issue 4 Hearing Chairman Response:**

The Hearing Chairman has added more detail as to his reasons in the following sections;

3.51 Submissions relating to effects on Tramping Values,

3.52 Submissions relating to effects on Kayaking Values,

3.3 Submissions relating to effects on Natural Character, landscape and visual amenity,

4.2 Submissions relating to being Contrary with the Purpose for which land is held,

4.3 Submissions relating to being Contrary to the Conservation Act, and

6.00 Submissions relating to inconsistency with Westcoast CMS.

In a related concern, Westpower considers that the Hearing Chairman has not explained why he prefers submitters’ views over Westpower’s experts’ views. Westpower suggests this shows that the Hearing Chairman did not properly consider Westpower’s case.

As noted above, the Hearing Chairman rejects the suggestion that he did not properly consider Westpower’s case.

With regard to the matter of preferring submitters’ views over experts, the Hearing Chairman considers he is entitled to do this. However he notes with respect to adverse effects on natural character, landscape, visual amenity and recreation that there is considerable common ground between Westpower’s experts, the Department’s experts and submitters opposing the scheme.

For example, both Westpower’s and the Department’s experts conclude that the effects on kayaking remain high even after mitigation: a conclusion submitters also reach (though they express this in different ways).

#### **Issue 5 Westpower Comment: Not Enough to ‘backfill’ the report.**

Mr Radich claims (item 26) that it will not be enough to ‘backfill’ the report based on his comments in his letter to Paul Beverley. He states that *“the errors in understanding the legal framework, and understanding Westpower’s case and in being able to draw reasoned conclusions are manifest. To simply include new material now while arriving at the same conclusions would be likely to raise issues of predetermination.”*

Mr Radich then goes on to suggest that the only tenable approach: *“would be for the decision maker to give genuine independent consideration to the submissions, evidence and statutory criteria, having given Westpower an opportunity to explain its position where the Hearing Panel has failed to do so.”*

Mr Radich also notes at item 27 that it will always be tenable for a decision-maker to differ from the conclusions in a report that has been commissioned if there is a reasonable basis for doing so.

## **Issue 5      Hearing Chairman’s Response**

The Hearing Chairman considers that he and the Hearing Panel understand Westpower’s case and the legal framework. He has included further information about his reasons, in response to Mr Radich’s comments. He has also made a number of other changes in response to Mr Radich’s comments and Westpower’s comments.

The Hearing Chairman agrees with Mr Radich that the decision maker must form his own decision, and has added a paragraph to that effect (paragraph 25)

## **Hearing Chairman’s Response to Westpower’s Response Tables and Cover Note**

Westpower raised a number of common issues in its Cover Note and response tables on landscape, kayaking and tramping. The Hearing Chairman has responded to some of these in its responses to Issues 1 -6 above, namely:

- Not referencing numerous documents
- Some references omitted
- Not enough reasons given to understand the basis for the decision (in particular, why the Hearing Chairman did not consider the proposed mitigation adequate)

In the following paragraphs the Hearing Chairman addresses Westpower’s other comments.

### **Landscape Table**

- 1      Westpower notes that no conclusion was made by the Hearing Chairman at section 2.4 in regards to whether the information available was sufficient to enable an assessment of effects on whitewater as a component of natural character.

The Hearing Chairman has amended section 2.4 to clarify that he considers the information available is adequate to enable an assessment of effects on the natural character values of white water.

## **Kayaking Table**

### **1 Information already adequate and sufficient**

In regard to information on kayaking effects (items 1-8) being sufficient and adequate to assess the effects prior to the hearing, the Hearing Chairman has addressed this issue at paragraphs 47 and 48 above.

### **2 Concerns in regard to WWNZ submission Errors and missing Information**

In regards to item 9 Westpower's concern about the submission from WWNZ "alleged errors and missing information" in respect of the Recreation Report, including the Waitaha's flow ranges". These submissions were allowed as they are considered relevant under 17U(f) of the Conservation Act and must be considered. WWNZ's many comments have been 'noted' rather than 'accepted'.

The Hearing Chairman acknowledged in section 2.3 of the draft HCR that Westpower and WWNZ disagree on data and whether there would be any days other than the two 'no take' days proposed that the river could be kayaked. He has considered this matter further at section 3.52.

### **3 Westpower comments in regard to Section 3.52 - Assessment of effects and mitigation**

In regards to items 9 and 13:

*"Westpower made it clear in these comments that it remained willing to discuss the appropriate number of cease to abstract days with the kayaking community and that the range of conditions, including the development of a Protocol outlining the specific details...would be finalised in consultation with Whitewater New Zealand..."*

*"that the kayaking conditions are still a work in progress and that Westpower still remains open to discussions with WWNZ and that if the application was to be approved a protocol outlining the specific details of the 'no-take' regime would be finalised in consultation with WWNZ."*

The Hearing Chairman acknowledges that Westpower is open to improving mitigations on kayaking effects. However he has reached his recommendations in this Report on the basis of the proposed minimum conditions attached to the Decision in Principle Officer's Report. The Report specifically recommended a no-take protocol as a bottom line as opposed to a potential protocol resulting from further consultation with WWNZ, this is defined in appendix 1 condition



17.4 page 120. The Hearing Chairman does not consider it appropriate to make recommendations based on further potential improvements.

### **Tramping Table**

Again the issues raised in the tramping table are in regards to referencing and lack of reasons to understand the basis for the decisions these have already been responded to above.



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David Newey  
Hearing Chairman

Date: 1/11/2017

## **Appendix A**

List of documents provided to the Department of Conservation ('DOC') during the application process that are relevant to landscape, natural character and visual amenity, kayaking and tramping.

AEE documents

### **Landscape**

1. James Bentley (reviewed by Yvonne Pfluger), Boffa Miskell Limited, 'Waitaha Hydro Scheme – Natural Character, Landscape and Visual Amenity Effects', 24 March 2014. Accompanied by Graphic supplement of figures. 2. Photographic simulations (Appendix 9 in AEE).
2. Gavin Lister, Isthmus Consulting, 'External peer review of the Boffa Miskell's Natural Character, Landscape and Visual Amenity Effects report', 26 February 2014 (Appendix 9 in AEE).

### **Recreation**

3. Rob Greenaway, Rob Greenaway & Associates, 'Westpower Waitaha Hydro Scheme Investigations – Recreation and Tourism Assessment of Effects', February 2014 (Appendix 19 in AEE).
4. Dave Bamford, TRC Tourism, 'External peer review of Rob Greenaway's Recreation and Tourism Assessment of Effects report', 11 February 2014 (Appendix 19 in AEE).

### **Hydrology**

5. Martin Doyle, 'The Hydrology of the Waitaha Catchment', 2 September 2013 (Reviewed by Dr Alistair McKerchar, NIWA 23 September 2013) (Appendix 6 in AEE).

### **Noise**

6. Marshall Day Acoustics (prepared by Aaron Staples, reviewed by Stuart Camp), 'Waitaha Hydro Scheme Assessment of Noise Effects', June 2014 (Appendix 20 in AEE).

### **Responses to requests for information**

7. 16 January 2015 Westpower's response to DOC's request for further information regarding recreation matters, particularly track alignments dated 21 October 2014.
8. 26 January 2015 Westpower's response to DOC's request for further information regarding hydrology, sediment and benthic ecology matters dated 3 October 2014.

9. 5 March 2015 Westpower's response to DOC's request for further information regarding landscape matters outlined by Jeremy Head in his memorandum of 23 October 2014. This included the:

(a) March 2015 Addendum Concession Application and AEE – amended Headworks proposal including:

(i) A description of the refined infrastructure proposal

(ii) Memorandum from James Bentley - review of landscape effects following amendments to headworks structures, 4 March 2015 (Appendix 3).

(iii) A memorandum from J Derks (TACCRA Ltd) – This provides a response to the particular vegetation concerns raised in the request from Mr Head;

(iv) Review by the other relevant technical experts involved in the preparation of the assessment of effects for the application including:

(1) Letter from Marshall Day Acoustics – review of noise effects following amendments to headworks structures, 25 February 2015 (Appendix 4); and

(2) Letter from Rob Greenaway and Associates – review of recreation effects following amendments to headworks structures, 27 February 2015 (Appendix 4); and

(3) the ecological experts.

10. 30 April 2015 Westpower's response to DOC's request dated 25 March 2015 for further information regarding kayaking specifically in relation to weir safety and "no-take" days (also submitted at the hearing).

#### **Further information provided by Westpower**

11. 15 April 2016 letter from Westpower to DOC regarding revised landscape proposal including:

(a) Letter dated 13 April 2016 from Di Lucas;

(b) Memo dated 14 April 2016 from James Bentley; and

(c) Revised photographic simulations (April 2016).

#### **Comments provided to DOC under 17S(5)**

12. 30 April 2015 Westpower's comments in response to WWNZ's report by Rankin and Orchard dated January 2015.

13. 12 November 2015 Westpower's comments to DOC on WWNZ's report dated 1 May 2015 and Ian Wightwick's updated recreational assessment.

#### **Additional comments provided to DOC:**

14. 14 April 2016 comments on revised draft conditions that were provided to Westpower on 24 February 2016.

15. 21 July 2016 comments on Draft Officer's Report which included:

(a) A covering letter from Rob Caldwell and which is addressed to Mike Slater;

(b) A legal opinion from Paul Radich QC;

(c) A Table of Comments (pdf and word);

(d) A copy of the Officer's report with tracked changes noting corrections and indicating where additional comments have been included in the above Table of Comments (pdf and word); and

(e) Sections of Table 12 (including the Summary of the Assessment of Potential Effects – for both Recreation and Tourism and Natural Character, Landscape, and Visual Amenity).

**Documents provided at the hearing**

16. 22 March 2014 letter from WWNZ to Rob Caldwell, Westpower, regarding kayaking.

17. 30 April 2015 Westpower's response to DOC's request dated 25 March 2015 for further information regarding kayaking.

18. 4 December 2015 letter from the Conservation Board to DOC setting out that the board has no objections to the Westpower scheme.

19. 8 December 2016 Submissions in Reply for Westpower – Introduction.

20. 8 December 2016 Table – Analysis of Submissions.

21. 8 December 2016 Rob Caldwell's Response on submissions made.

22. 8 December 2016 Westpower's initial responses on the statutory framework.

23. Side papers accompanying Westpower's reply submissions prepared by the following experts:

(a) Rob Greenaway 8 December 2016 (Recreation);

(b) James Bentley 8 December 2016 (Landscape); and

(c) Martin Doyle 7 December 2016 (Hydrology).