



27 AUG 2019

Rob Caldwell  
Chief Executive  
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GREYMOUTH

Dear Mr Caldwell

## Waitaha Hydro Scheme — Decision on application for concessions

### INTRODUCTION

1. Westpower Ltd proposes to construct, operate and maintain a run-of-river hydro scheme on the Waitaha River in the West Coast (the Scheme). The Scheme would be located on stewardship land (the area) managed by the Department of Conservation (the Department) under the Conservation Act 1987 (the Act). Accordingly, concessions from the Minister of Conservation are required, which Westpower has applied for in the form of leases, licences and easements. In respect of this application, the Minister of Conservation's decision-making power has been transferred to me as Minister for the Environment.

### SUMMARY OF DECISION

2. I have determined to decline Westpower's application for concessions. I am compelled to make this decision under:
  - 2.1 s 17U(3), which precludes me from granting a concession if the proposed activity is contrary to the provisions of the Act or the purposes for which the land is held; and
  - 2.2 s 17W(1) which precludes me from granting a concession if it is not consistent with a conservation management strategy.
3. I also rely on s 17U(2)(b), which enables me to decline the application if I consider that there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects of the activity.
4. As I set out in more detail below, the evidence satisfies me that the effects on birds, bats, lizards, invertebrates, vegetation, native fish and other aquatic communities, sediment and river morphology will be minor. I have

also found that the effects on intrinsic values below Morgan Gorge (relating to the powerhouse and discharge infrastructure) are minor.

5. The proposed location of the weir and intake structure above Morgan Gorge is in a near to pristine, wild yet accessible, area with high conservation values. The adverse effects of the activity would significantly impact its natural character.<sup>1</sup> As a result, the intrinsic value of the area as well as the enjoyment and appreciation of the area by members of the public will decline. I am particularly concerned about the impact of the area changing from a near-natural state on the experience of recreational users who use the area. Their experience and perception of the area will be degraded, noting that recreation is a feature of the Act's conservation purpose.
6. As a result, I have found that the effects on intrinsic values, which are experienced by those using the area above Morgan Gorge for recreation are, in my view, significant. The wilderness values currently experienced are undermined by the proposed weir and intake structure. This is so, even though the physical area impacted by the weir and intake is a small part of the catchment above Morgan Gorge.
7. Based on the application material and submissions, I accept Morgan Gorge is an outstanding feature that separates the back country from the front country, and which I believe should be preserved in its natural state. Even if it were possible to move the location of the weir and intake structure to below the entrance to Morgan Gorge, I do not believe modifying the river flow within the Gorge is appropriate.
8. Accordingly, I am of the view that, after considering the values of the area concerned and the nature of the scheme, there are no adequate or reasonable methods for remedying, avoiding or mitigating these adverse effects on natural character — both for intrinsic and recreation purposes — and that the effects are contrary to the conservation purpose of the land and the Act. As a result, the application must be declined under s 17U(3). For these reasons, I also consider it appropriate to decline the application under s 17U(2)(b). These effects also render the proposed concessions inconsistent with the relevant conservation management strategy so must be declined in accordance with s 17W(1). Considering all of the circumstances of the application, I am of the view it is inappropriate to grant the concessions.

## **DECISION-MAKING PROCESS AND FRAMEWORK**

9. I was presented with eight folders containing the background documentation for my decision.
10. In accordance with s 17U(1), I had regard to:
  - 10.1 the nature of the activity and the type of the proposed structures and facilities;

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<sup>1</sup> While the Conservation Act does not use the terms "natural character" or "visual amenity" specifically, they are relevant under the definition of "conservation" in s 2 of the Conservation Act 1987.




- 10.2 the effects of the activity, structures and facilities;
  - 10.3 the measures that can reasonably and practicably be undertaken to avoid, remedy or mitigate the adverse effects of the activity;
  - 10.4 the further information received in 2015 and 2016;
  - 10.5 the environmental impact assessment accompanying Westpower's application;
  - 10.6 the relevant oral and written submissions as summarised by the Director-General; and
  - 10.7 any relevant information that may be withheld from any person in accordance with the Official Information Act 1982 or the Privacy Act 1993.
11. As part of this, I had particular reference to Westpower's application and appendices (including the mitigation proposed subsequent to the hearing in December 2016) and all relevant reports and material from the Department. I also had particular reference to Westpower's comments on these reports, including material provided by Westpower direct to me. And in response to specific concerns raised by Westpower's barrister, Paul Radich QC, I have ensured I read the original application and submission materials including detailed assessments of environmental effects.

## **DECISION**

12. In making my decision I was guided by the Act's purpose as represented in the long title of the Act: to promote the conservation of New Zealand's natural and historic resources.

### **Section 17U(2)(a)**

13. Section 17U(2)(a) permits me to decline the application if I consider the information available is insufficient or inadequate to assess the effects of the activity.
14. Westpower's application and the accompanying assessment of environmental effects are comprehensive. As best as possible, the documents identify and quantify the effects of the activity and where appropriate set out proposed steps for avoiding, remedying or mitigating the adverse effects. The further information sought by the Department and the submissions received through the public process have added to this already extensive bundle of application material.
15. Some submitters have asserted that there is insufficient information on the effects, essentially as a result of the management plan approach that Westpower has proposed. I reject that. There is more than enough information to make a decision on every aspect of the application. I am satisfied that any residual detail required could be provided through the management plans and associated conditions.
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16. Ultimately I am confident the documents before me, including as summarised in the three Department reports, provide ample information to assess the adverse effects of the activity and the extent to which these can be avoided, remedied and mitigated.

### **Section 17U(3) and (2)(b)**

17. I am required by s 17U(3) to decline the application for concessions if the proposed activity is contrary to the provisions of the Act or the purposes for which the land concerned is held. I am also able to decline the application under s 17U(2)(b) if I consider that there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects of the activity.
18. Conservation areas are held under the Act for conservation purposes. Conservation purposes links back to the purpose of the Act, and "conservation" is defined in s 2 of the Act as the preservation and protection of natural and historic resources for the purposes of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations. Stewardship areas are also required by s 25 to be managed so that their natural and historic resources are protected.

### ***Effects on flora and fauna***

19. There are three broad areas where the flora and fauna of the region will be affected:
- 19.1 the site of the headworks at the entrance of Morgan Gorge and associated works;
  - 19.2 Morgan Gorge itself, and the abstraction reach below the Gorge, as a result of reduced flow; and
  - 19.3 the site of the powerhouse at the bottom of Morgan Gorge and associated works including the access road.
20. The disturbances at each of the sites mentioned in paragraphs [20.1] and [20.3] give rise to similar effects. Flora is cleared and fauna habitats are removed. There is nothing especially unique or special about the flora and most of the fauna at these sites compared to the rest of the stewardship area, and the sites represent a very small fraction of the stewardship area. As the Officer's report recorded, the species are well-represented on public conservation land.<sup>2</sup>
21. However, the sites do contain significant habitats of threatened bird, lizard and bat species, which were of concern to submitters. Ultimately, though, I am satisfied that the adverse effects on these species (and other flora and fauna) could be adequately avoided or mitigated through conditions. I refer in particular to the efforts to minimise effects of construction activities and

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<sup>2</sup> At 33 for vegetation.



to avoid removing any significant flora, both in their own right and as a habitat and food source for fauna.

22. I come to a similar conclusion regarding the effects on aquatic flora and fauna within and around Morgan Gorge and in the abstraction reach below the Gorge. The River's flora and fauna will continue to be dominated by the low nutrient water and the turbulent flows, particularly during regular flood events. Some uncertainty remains around the effects of the reduced flow on fish species and their ability/inability to swim through Morgan Gorge. But I am satisfied the adverse effects could be adequately managed by conditions to ensure the effects are less than minor.
23. In sum then, I am satisfied by the evidence that the effects on all flora and fauna will be minor.

### ***Effects on recreation***

#### *Tramping and hunting*

24. Notwithstanding the importance of the Waitaha Valley as a backcountry tramping destination, the concessions will have no direct adverse effects on tramping, hunting and other land-based recreational activities in the area as access to these activities will still be able to occur. In fact, the improved access to the area as a result of the concessions from an access road being available for use by the public may have a positive effect on recreational tramping and hunting in the area.
25. Many submitters were concerned about the adverse effects on tramping as a result of the addition of human structures being visible from the current tramping route. To some extent, these adverse effects could be mitigated through conditions requiring the route to be changed to seek to avoid these areas.
26. Even if this were possible, however, submitters were concerned about the environment changing from a near-natural and wild state and the impact this has on the experience and attraction of tramping in the area, which might lead to reduced recreation and a different recreational experience. I prefer to consider this effect below regarding the effects on natural character.

#### *Kayaking*

27. Morgan Gorge was described in the following way by EOS Ecology in its report *Proposed Waitaha Hydro Scheme Assessment of Environmental Effects: Fish of the Waitaha Catchment*.<sup>3</sup>

The river within the Morgan Gorge section is narrow and confined by steep bluffs (Figure 7). Aerial views from the helicopter revealed that numerous drops and cascades were frequent throughout this section (Figure 7). The flow within the gorge is fast and turbulent, with the substrate consisting predominantly of bedrock and large boulders. Any tributary waterways that join the river through the gorge enter via waterfalls or cascades.

<sup>3</sup> EOS Ecology, Proposed Waitaha Hydro Scheme Assessment of Environmental Effects: Fish of the Waitaha Catchment, June 2014 at 16.



Morgan Gorge itself was excluded from the sampling programme as it was simply not possible to safely access and sample the fast, deep, and turbulent flow of the gorge. The dangerous nature of the Morgan Gorge is evident by the few kayakers that attempt this section of the river (Greenaway, 2014).

28. Notwithstanding these dangers, extreme kayakers now kayak Morgan Gorge in small numbers. Both the Morgan Gorge and the extreme kayaking are described in evidence by Douglas Rankin and Shane Orchard along with photographs. This is an example of improved kayak technology and kayaking skills enabling recreation on rivers previously thought impossible to kayak. History shows we should be careful to protect amenities such as this for the future. I understand other parts of the abstraction reach below Morgan Gorge are kayaked more frequently.
29. The concessions will have an adverse effect on the ability to kayak the Waitaha River. In light of the submissions, it appears incontrovertible that the River is the apex of white water kayaking in New Zealand. This recreational pinnacle is to be changed from its free-flowing state by reducing its flow throughout the abstraction reach by a maximum of 23 cumecs. This will substantially reduce the days when the flows in Morgan Gorge are within the range required to kayak the Gorge. As a result, the opportunities to kayak the Gorge and abstraction reach would decrease and the length of the required portage would otherwise increase. This adverse effect would occur whether the intake structure is above or within Morgan Gorge, an approach I discuss at paragraph [33] below. I accept that there are no equivalent rivers on the West Coast that offer a similar experience for kayakers.
30. Some submitters commented on the significant value of various New Zealand rivers to kayakers and Whitewater NZ's apparent zero acceptance approach to hydro schemes competing for the same resource.<sup>4</sup> A zero acceptance approach would mean that hydro is never able to occur, which cannot be correct. For example, there is Westpower's Amethyst Hydro Scheme, which submitters in this case — both those who are for the Scheme and those who are against the Scheme — support as an appropriate use of conservation land. However, I also note the Amethyst Hydro Scheme is on a river that is not, and cannot be, used for kayaking, which is different from the current proposal.
31. I agree with Westpower that the Act does not preclude change (that is, all changes) to New Zealand's natural and historical resources. While I accept submitters' concerns with the current proposed mitigation (the no-take regime), the infrequency that Morgan Gorge is kayaked makes it possible to devise conditions for no-take days, even when it is considered that this frequency will likely increase as time goes on.
32. As with tramping, the adverse effect that remains is the change of the River and its setting from a wild and unencumbered state and the resulting impact

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<sup>4</sup> Submission of D G Inch: New Zealand Energy Limited at [14]–[18].





on the recreational experience, attraction and use of the River. This too is considered in more detail below regarding the effects on natural character.

***Effects on natural character***

33. I generally agree with Boffa Miskell's assessment of the naturalness of the proposed area. In its report prepared for Westpower — *Waitaha Hydro Scheme: Natural Character, Landscape and Visual Amenity Effects* — Boffa Miskell records that the entire upper catchment contains very high, near-pristine levels of natural character and has a general lack of human modification. That is so notwithstanding the site is not a completely natural environment given the introduced pests and recreational activities. This part of the catchment would likely amount to an outstanding natural landscape, and Morgan Gorge is considered an outstanding natural feature.<sup>5</sup>
34. The peer reviewer agreed with Boffa Miskell's assessment that the entrance to Morgan Gorge is a sensitive landscape feature and that built changes to the area "maintain a high magnitude of adverse natural character effects" based on the fact the intake structure is an artificial element in a highly natural setting.<sup>6</sup> Many submitters agreed with this categorisation.
35. I do not necessarily agree with Boffa Miskell's assessment that the area below Morgan Gorge where the powerhouse is proposed is outstanding. Its proximity to farmland detracts from its naturalness and remoteness. At the very least then, I am of the view that the part of the river below Morgan Gorge does not possess the same wild and natural qualities as the rest of the areas that are affected by the proposal. Accordingly, I would not turn down the application on the basis of the adverse effects of the powerhouse and associated infrastructure below Morgan Gorge, which I consider to be minor.
36. Nonetheless, and focusing on the area above and including Morgan Gorge, the introduction of the manmade industrial structure will have a significant negative impact on the natural character and the landscape of the area.
37. Westpower accepts that there will be the following effects from the introduction of the structures as part of the Scheme:<sup>7</sup>
- 37.1 natural character effects on river flow throughout the abstraction reach, and particularly within Morgan Gorge, from reduced flow;
- 37.2 broad scale landscape effects on the upper Waitaha catchment as a likely outstanding natural landscape and on Morgan Gorge as an outstanding natural feature;

<sup>5</sup> See Boffa Miskell, *Waitaha Hydro Scheme: Natural Character, Landscape and Visual Amenity Effects*, 24 March 2014; and Memorandum from Paul Radich QC and Paul Beverley to David Parker (Minister for the Environment regarding Westpower's application for concessions on the Waitaha River (26 November 2018).

<sup>6</sup> Jeremy Head Landscape Architect Ltd, *Peer Review of Applicant's Assessment of natural character, landscape and visual amenity effects*, April 2016 at 9–10.

<sup>7</sup> *Waitaha Hydro Scheme, Application for Concessions and Assessment of Effects*, July 2014, at 73; and Memorandum from Paul Radich QC and Paul Beverley to David Parker (Minister for the Environment regarding Westpower's application for concessions on the Waitaha River (26 November 2018) at [40]–[42] in particular.



- 37.3 local scale landscape effects on the areas where the structures are proposed within the outstanding natural landscape; and
- 37.4 visual amenity effects in the areas where the structures are proposed.
38. I am not necessarily convinced the physical effects on the environment per se are so numerous, extensive or severe to justify declining the application. These effects are generally modest and I am satisfied the effects on sediment and river morphology will be minor. In particular, any flow diverted from Morgan Gorge will not materially affect the large flood events that shape it. Nevertheless the inevitable result of the unavoidable effects is to alter the near-pristine state of the environment and undermine its remote setting and feeling. The upper Waitaha catchment would change from an accessible yet wild area that is only impacted by recreational activities and structures, to one where the industrial influence of humans could be readily observed and experienced. As Westpower's recreation expert — Rob Greenaway and Associates — recognised, this is the case notwithstanding Westpower's best endeavours to minimise the visual impact of the activity and the otherwise limited scale of the physical effects. Nothing can sufficiently moderate the introduction of the development into a previously uncontrolled backcountry-remote setting.<sup>8</sup> Two concerns arise as a result.
39. First, the intrinsic values of the area above and including Morgan Gorge are diminished. The Act recognises that the fact the area is wild and relatively untouched is worthy of conservation itself. The Waitaha River's intrinsic values are particularly worthy of protection given it is an untouched but accessible amenity.
40. Second, and more important in my view, is the impact the altered landscape and its diminished intrinsic values would have on recreation in the area. As foreshadowed above when discussing the effects on recreation, submitters value the area's remoteness, solitude, outstanding natural beauty and wilderness qualities for recreation. This is one of its key recreational attractions.<sup>9</sup> With the loss of these qualities because of the proposed weir and intake structure, there was a concomitant concern from submitters about the impact of the activity on the experience of recreational users of the area, which will be significantly altered.
41. I agree with these submissions that the experience for those using the area will be significantly lessened through the loss of the environment's near-pristine, unmodified, wild and remote qualities. This in turn will significantly undermine the area's status as one of the West Coast's top destinations for kayaking and backcountry tramping. The area's value for recreation may as a result decrease, which is contrary to the purposes of the Act and the land concerned. This is so even though the physical area impacted by the

<sup>8</sup> Rob Greenaway and Associates, Westpower Waitaha Hydro Investigations, February 2014, Recreation and Tourism Assessment of Effects at 66; and Memorandum from Paul Radich QC and Paul Beverley to David Parker (Minister for the Environment regarding Westpower's application for concessions on the Waitaha River (26 November 2018) at [50].

<sup>9</sup> Rob Greenaway and Associates, Westpower Waitaha Hydro Investigations, February 2014, Recreation and Tourism Assessment of Effects at 70: "Its primary recreational value is its high-quality whitewater and backcountry-remote characteristics."



proposed weir and intake structure is a small part of the recreational area above Morgan Gorge.

42. Based on the relevant application material, I am also of the view that Morgan Gorge is an outstanding feature,<sup>10</sup> which I believe should be preserved in its natural state. I do not believe modifying the flow is appropriate, even if it were possible to move the location of the intake structure to below the entrance of Morgan Gorge.
43. On my assessment, there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects of the activity on the natural character of the environment or the associated adverse effects on the intrinsic value of the area and on the appreciation and recreational enjoyment of the area by the public.
44. I did consider whether the intake structure could be placed below the entrance to Morgan Gorge together with a condition of, say, 10 no-take days to address the effects on kayaking. I do not know if such an intake and weir structure could be built in practice, but in the end (even assuming it was practical to relocate the intake structure to within the Gorge) I do not think the flow in Morgan Gorge should be modified. I visited the area at Westpower's request.<sup>11</sup> At that time I only saw the entrance to Morgan Gorge, but from a review of the evidence I am convinced the Gorge's grandeur is awe-inspiring. For context, I have included a series of photos showing the Gorge being kayaked in an appendix to this letter, which illustrates the values of that area.
45. I have carefully considered the various forms of mitigation and positive effects that were proposed by Westpower, including those offered after the hearing. Ultimately, in my view these matters do not sufficiently address the adverse effects that I am concerned about. In addition to some recreational benefits, this also includes a consideration of the positive effects on New Zealand's natural and historic resources that follow from a move towards renewable energy in light of the threat that climate change poses to these resources. While the generation of renewable energy may be an appropriate activity on conservation land in some circumstances (such as with the Amethyst Hydro Scheme),<sup>12</sup> the associated benefits of that activity in this case do not justify the extensive adverse effect on the area's natural character given its intrinsic values and high recreational values.
46. In these circumstances I am of the view that it is appropriate to decline the application under s 17U(2)(b). I am also of the view that the severity of these adverse effects is such that granting the concessions would be contrary to the provisions of the Act, and the purposes for which the land is held (being the protection of the area's natural and historic resources — for

<sup>10</sup> See Boffa Miskell, Waitaha Hydro Scheme: Natural Character, Landscape and Visual Amenity Effects, 24 March 2014; and Douglas Rankin and Shane Orchard, Impacts of the Proposed Waitaha River Westpower Hydro Scheme on White Water and Kayaking Values, January 2015.

<sup>11</sup> I was taken on a helicopter trip of the Waitaha River catchment, and visited on foot Kiwiflat Hutt, the entrance to Morgan Gorge, and the power house site.

<sup>12</sup> In that sense it would also be consistent with the *NZ Energy Efficiency and Conservation Strategy 2017–2022*.



conservation purposes). That being the case I must decline, and would in any event choose to decline, the application for concessions in accordance with s 17U(3).

### **Section 17W(1)**

47. I am required by s 17W(1) to decline the application for concessions if the application is not consistent with the West Coast Conservation Management Strategy (the Strategy) where the Strategy provides for the issue of a concession.
48. My conclusions above regarding the adverse effects of the Scheme on the area's natural character, intrinsic values and recreation inform my views on the Strategy and lead me to conclude that the concessions are not consistent with the Strategy and accordingly the application must be declined. This is so notwithstanding that the Scheme is not inconsistent with all parts of the Strategy.
49. I draw on the Scheme's inconsistency with the following parts of the Strategy in particular.

#### **3.3.4.3: Management of geodiversity and landscapes**

50. Section 3.3.4.3 of the Strategy sets out an objective and policies for the protection and management of geodiversity and landscapes, both within and outside conservation lands on the West Coast. Its sole objective is: "To protect geodiversity and landscapes from adverse effects of human use." This objective is supported by a number of policies, the most relevant being 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 aspects of conservation management."

#### **3.5: Authorised uses of public conservation lands**

51. This chapter sets out objectives and policies applying to all applications to carry out activities within conservation lands in the West Coast. It recognises that conservation land is able to be used in a manner that is compatible with the protection of conservation values and enjoyment by other people. Objective 3 elaborates on this: "To protect recreational opportunities from adverse effects of authorised uses of public conservation lands."

#### **3.6.1.4: Backcountry-remote zone**

52. The Scheme is to be situated in a back-country remote zone, which is described by the Strategy as an area that provides opportunities to access extensive natural settings where recreational facilities are provided but a significant element of isolation remains. Objective 1 essentially mirrors this: "To provide access to a range of recreational opportunities via facilities that enable people to enjoy challenging natural settings in the backcountry."

#### **3.7.2: Activities on or in beds of rivers or lakes**

53. This section sets out objectives and policies for activities that are to occur on or in beds of rivers or lakes within conservation lands in the West Coast.



The adverse effects need to be managed in order to protect the natural character and recreational values (amongst other things). Policies 1a) and e) are particularly relevant, and provide:

When assessing applications for any activity on or in the bed of a river or lake, consideration should be given to (but not limited to) the following guidelines:

a) Adverse effects on freshwater and terrestrial species, habitats and ecosystems, historical and cultural heritage values, public access, recreation opportunities and amenity values should be avoided or otherwise minimised;

...

e) The natural character within the setting of the activity should be maintained.

54. Through these chapters and their objectives and policies, the Strategy highlights recreation and natural character as areas of focus for the integrated management of resources in the region. The Scheme's adverse effects on natural character and recreation are such that I have decided it would not be consistent with these parts of the Strategy to grant the application for concessions. I decline the application under s 17W(1) accordingly.
55. There are also further sections of the Strategy that I have not referred to because I do not think the Scheme is necessarily inconsistent with those sections. However, the thrust of other sections supports my conclusion. These sections either emphasise the importance of natural character, or the importance of providing recreational opportunities, including recreational opportunities in an isolated, remote and natural setting, but where there are some facilities. The proposed area of the Scheme fits that bill.

#### **Section 17A(a)**

56. The Department is required by s 17A(a) to administer and manage the conservation area in accordance with statements of general policy. Policies from the Conservation General Policy (the General Policy), are therefore relevant to my decision to decline the application under s 17U(3).
57. As with the Strategy, I accept and acknowledge that the proposal is not inconsistent with all relevant policies of the General Policy. For example, policy 11.3(a) provides that utilities may be provided on public conservation lands where they cannot be reasonably located outside of such lands. Other policies are, however, more balanced. In particular:
- 57.1 policy 4.5(b), which provides that activities that reduce intrinsic values of landscape, landform and geological features on public conservation lands and waters should be located and managed so their adverse effects are avoided or otherwise minimised;




- 57.2 policy 11.1(b), which provides that activities that require a concession should avoid, remedy or mitigate any adverse effects and maximise any positive effects on natural resources and historical and cultural heritage, and on the benefit and enjoyment of the public including public access; and
- 57.3 policy 11.3(b), which provides that new utilities should be of a scale, design and colour that relates to, and is integrated with, the landscape.
58. As noted above, I consider there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects on natural character — both for intrinsic values and recreation purposes. The scheme is not well aligned with the above policies given the nature of these effects in this case, and the values the above policies are seeking to protect. To that extent, the above policies from the General Policy support, but are not determinative of, my decision to decline in this case. Given that, it is not necessary for me to go further and find whether or not the scheme is consistent overall with the General Policy.

## CONCLUSION

59. I am grateful for Westpower's careful and comprehensive application for concessions to establish a run-of-river hydro scheme on the Waitaha River and recognise the substantial time, energy and money that went into preparing the application.
60. I also recognise the process leading to my decision has been a long one. I have no doubt that this lengthy process has ensured that I have all relevant information before me to make a decision.
61. I have come to the conclusion that the application for concessions should be declined in accordance with s 17U(3) and is appropriately declined under s 17U(2)(b) of the Act. The immitigable adverse effects of the activity on the natural character of the environment, and the resulting adverse effects on recreation and intrinsic values, are contrary to the conservation purposes of the stewardship land where the activity is proposed to take place and, considered overall, the purpose of the Act. The effects also render the activity inconsistent with the Strategy and I must decline the application in accordance with s 17W(1).
62. To conclude, considering all of the circumstances of the application, I am of the view it is inappropriate to grant the concessions. I also draw to your attention Westpower's entitlement in s 17ZJ of the Act to seek a reconsideration of this decision.

## ADDITIONAL MATTERS

63. My decision stands for the reasons expressed above, after a careful consideration of all of the relevant material. In addition to, and separate from, that decision, I make a few remarks on the use of helicopters for
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accessing such remote areas as the Waitaha catchment in the West Coast, the Amethyst Hydro Scheme and economic benefits.


### **Helicopter access**

64. I appreciate that the Department has policies in place for the landing of aircraft, depending on the nature of the area, with associated requirements for concessions (outlined in the Strategy at 3.6.1 and following, noting in particular 3.6.4.2). As the Strategy recognises, aircraft use and landing has the potential to detract from the remote wilderness setting of many of New Zealand's protected areas.
65. While I appreciate in appropriate locations, and with restrictions, this use can be compatible with the relevant area, I recommend the Department consider whether to utilise the funds created from concessions permitting aircraft landings in the area to improve foot access (including the upgrade of the current tracks and footbridge) and kayak portage into the upper Waitaha catchment. This could reduce helicopter use, which, while is for recreational purposes allowed under the Act, does diminish wilderness values.

### **Amethyst Hydro Scheme**

66. As mentioned, some submitters made comparisons between the Scheme and Westpower's Amethyst Hydro Scheme, which is located on nearby stewardship land. I do not consider it appropriate to conduct a comparison of the two schemes and I have not conducted such a comparison. Each concession application must be considered on its own facts and circumstances. However, from my understanding of the Amethyst Hydro Scheme I do not believe the decision to allow concessions for that scheme (which, for the avoidance of doubt, I do not criticise) is inconsistent with my decision on the Scheme in this case.
67. Even if one were to assume the physical effects of the two schemes are broadly similar, there are still substantial differences between the effects of the two schemes on relevant conservation values under the Act. For example, I understand the location of the Amethyst Hydro Scheme is such that very few people experience the wilderness values of that location. The Amethyst Scheme is on a river which is not and cannot be used, for kayaking, neither is it routinely used for tramping. As a result, a key difference with the proposed Waitaha Scheme is that the adverse effects on the area would be experienced by the many people who use and value the wilderness experience the area provides. For that reason alone, and I am sure there are others, I believe the decisions on the two schemes are not inconsistent. However, and in any event, I emphasise that I have not taken into account any comparison between the two schemes as part of my decision on the Scheme.

### **Economic considerations**

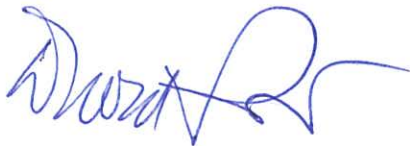
68. Westpower and some submitters say the positive effects of the Scheme on improved economics and security of supply of electricity on the West Coast
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mean the scheme should be approved. For example, Westpower raises benefits including:

- 68.1 improvement to the reliability and security of electricity supply within the West Coast and more specifically within the Westpower distribution area; and
  - 68.2 investment that will provide returns for Westpower consumers that will last into the future.
69. I am advised these considerations and benefits are outside of, and run counter to, the Act's purpose when considering this concession application under part 3B of the Act. I am therefore advised I am not permitted to consider these factors (citing also *Buller Electricity Ltd v Attorney-General* [1995] 3 NZLR 344 (HC)) as part of this decision.
70. For completeness, were it otherwise, my decision would not be different. I accept the points made by Westpower on this matter regarding economic benefits, including that the Scheme would make an improvement to security of supply, which would service the Westland Dairy factory and Hokitika more broadly if supply from the north is disrupted. I also accept that the supply to the West Coast is robust, albeit reliant on a linear supply via transmission lines from distant generation sources.
71. Many other parts of New Zealand (including until recently Auckland) are substantially reliant on transmission from one direction (rather than a ring arrangement that can feed power from another direction), and without sufficient local generation to meet local demand in the event of a transmission failure. This is not an unusual or extreme risk.
72. Regardless, the fact remains that the area has near-pristine levels of natural character and has a general lack of human modification, and as I said earlier, I believe the presence of the weir and intake structure above or within Morgan Gorge would significantly change the recreational experience of those who use the area and diminish the intrinsic value of the area.
73. Thus even if I were able to take the above benefits into account, my decision would be the same.

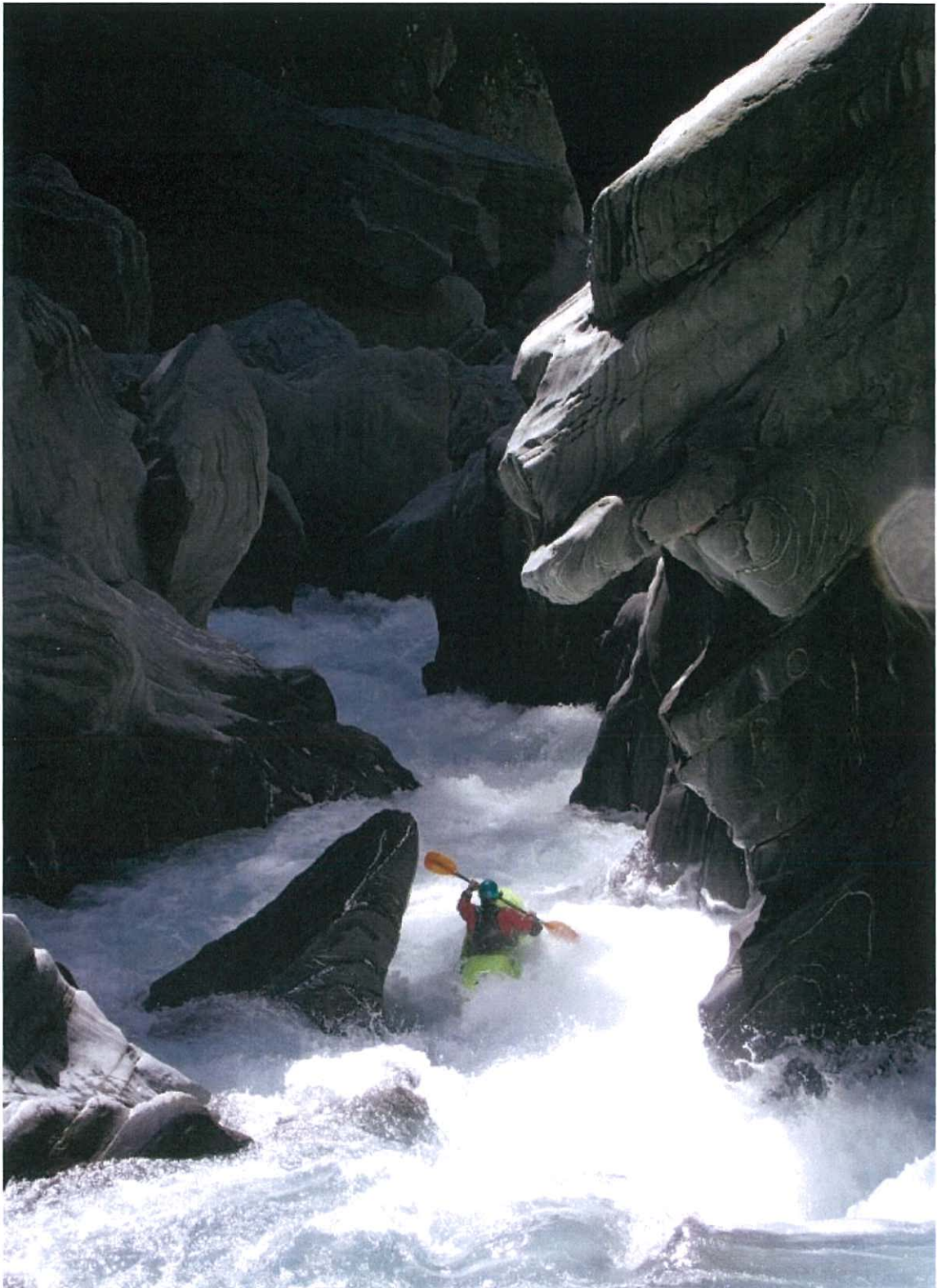
Yours faithfully



Hon David Parker  
Minister for the Environment

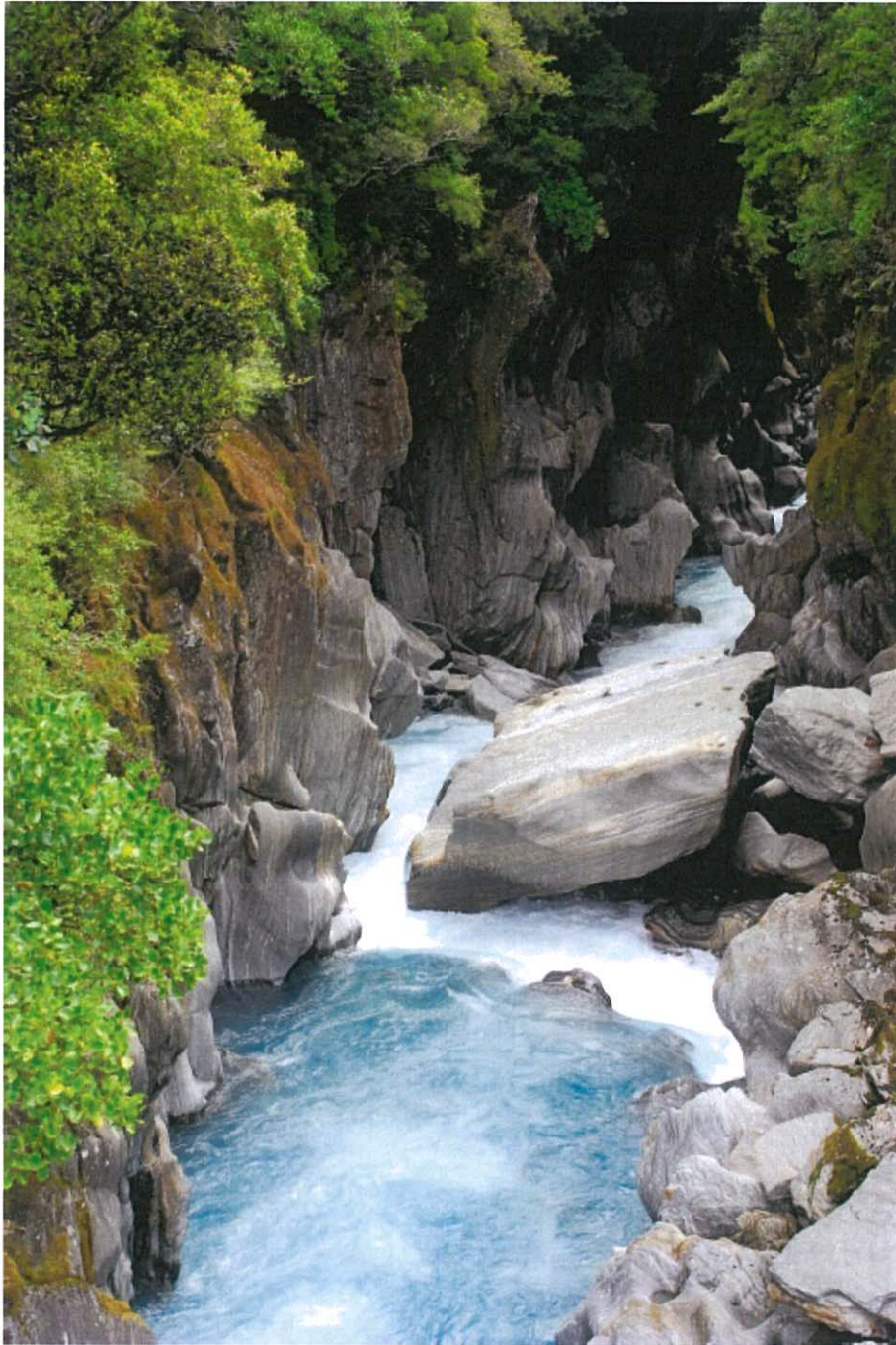


## APPENDIX



Source: Douglas Rankin and Shane Orchard, Impacts of the Proposed Waitaha River Westpower Hydro Scheme on White Water and Kayaking Values, January 2015 at cover page.





Source: Douglas Rankin and Shane Orchard, Impacts of the Proposed Waitaha River Westpower Hydro Scheme on White Water and Kayaking Values, January 2015 at 5.

*Handwritten signature*





Source: Douglas Rankin and Shane Orchard, Impacts of the Proposed Waitaha River Westpower Hydro Scheme on White Water and Kayaking Values, January 2015 at 18.



Source: Douglas Rankin and Shane Orchard, Impacts of the Proposed Waitaha River Westpower Hydro Scheme on White Water and Kayaking Values, January 2015 at 10.

A blue handwritten signature or mark.





Source: Douglas Rankin and Shane Orchard, Impacts of the Proposed Waitaha River Westpower Hydro Scheme on White Water and Kayaking Values, January 2015 at 12.



Source: Douglas Rankin and Shane Orchard, Impacts of the Proposed Waitaha River Westpower Hydro Scheme on White Water and Kayaking Values, January 2015 at 16.

*SP*