

Under the **FAST-TRACK APPROVALS ACT 2024**
In the matter of an application for resource consents, concessions, wildlife approvals, an archaeological authority, and approvals relating to complex freshwater fisheries activities in relation to the Southland Wind Farm project

By **CONTACT ENERGY LIMITED**
Applicant

**MEMORANDUM OF COUNSEL FOR CONTACT ENERGY LIMITED IN
ADVANCE OF CONVENER'S CONFERENCE**

10 October 2025

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MAY IT PLEASE THE PANEL CONVENER

1. This memorandum of counsel is filed on behalf of Contact Energy Limited (**Contact**) in advance of the Panel Convener's conference on the Southland Wind Farm project (**Project**), scheduled for 3.30pm on 15 October 2025.
2. It addresses the specific matters covered in Schedules 1 and 2 of the Panel Convener's Minute 2, and in doing so addresses the key overall matters flagged for consideration in Minute 2, namely the appointment of panel members and the timing of the decision.

Approvals sought

3. Contact has applied, under the Fast-track Approvals Act 2024 (**FTAA**), for all necessary approvals to construct, operate and maintain the Southland Wind Farm. The required approvals include:
 - (a) resource consents that would otherwise be applied for under the Resource Management Act 1991 (**RMA**);¹
 - (b) concessions that would otherwise be applied for under the Conservation Act 1987 (**Conservation Act**);²
 - (c) wildlife approvals that would otherwise be applied for under the Wildlife Act 1953 (**Wildlife Act**);³
 - (d) an archaeological authority that would otherwise be applied for under the Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPT Act**);⁴ and
 - (e) approvals that would otherwise be applied for under the Freshwater Fisheries Regulations 1983 (**Fisheries Regulations**).⁵
4. Parts B to F of the overall application include the specific application document for each category of approval sought.

¹ Refer to Part B of the substantive application and to the index of resource consents included at the start of the draft resource consent conditions (Part I of the substantive application).

² For the construction of a culvert to cross the Mimiha Stream North Branch (and Marginal Strip) and for an associated airspace easement for a transmission line to cross that stream (and Marginal Strip); and for an airspace easement for the transmission line to cross the Waikariki Stream, Mimiha Conservation Area. Refer to Part C of the substantive application.

³ For the intentional disturbance of wildlife (lizards and Helms' stag beetles), including for the purposes of catching, holding and releasing. Refer to Part D of the substantive application.

⁴ For a site-wide general Archaeological Authority. Refer to Part E of the substantive application.

⁵ For approval for three culverts to be designed to prevent the passage of exotic fish (for ecological purposes). That is technically a 'complex freshwater fisheries activity' under the FTAA. Refer to Part F of the substantive application.

Complexity and Issues

5. The application is to enable the development of a regionally and nationally significant renewable electricity project. As would be expected, a large volume of high-quality documentation, including numerous reports from independent experts, has been prepared to support the application. However, despite its breadth, counsel submit that the application is not particularly complex in legal, factual, or evidential terms.
6. As addressed in the application itself, Contact previously sought RMA approvals for the Project through an application under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**Covid Fast-track Act**).
7. While the panel to be appointed for this FTAA application will of course determine the application for RMA approvals afresh, as well as the application for 'non-RMA' approvals, the Covid Fast-track Act process is relevant to the Panel Convener's consideration of the complexity of the FTAA application and the issues that may be raised for the panel to determine in the FTAA process. In this regard:
 - (a) prior to, during, and since the Covid Fast-track Act process there has been significant, regular engagement between Contact and the other entities participating in this Convener's conference;
 - (b) a wide range of matters were effectively settled during the previous process, including between Contact and the participants in the Convener's conference;
 - (c) Contact has 'carried over' the effects management measures as previously proposed and/or agreed during the Covid Fast-track Act process to the FTAA application, including virtually all of the proposed RMA conditions which have been the subject of detailed consideration, discussion, refinement and in many cases full agreement between the entities participating in the Convener's conference; and
 - (d) in preparing its FTAA application, Contact has sought in particular to address the matters of concern identified in the Covid Fast-track Act decision, and has specifically discussed how it has done so with all the participants in the Convener's conference.
8. Of particular note, in respect of both complexity and issues:

- (a) There is no dispute between the participants in the Convener's conference as to **the benefits of the Project and the pressing need for the development of additional renewable electricity generation capacity**.⁶ The Project will deliver a nationally significant amount of renewable electricity, helping to decarbonise the economy by lowering wholesale power prices and enabling the displacement of fossil fuel-derived energy uses, which cause negative environmental effects. The Project will also have significant employment and other economic benefits for local communities and New Zealand more broadly.
 - (b) Ngāi Tahu / Kā Papatipu Rūnaka have confirmed that the Project's adverse effects on **cultural values** have been appropriately addressed, and the relevant conditions are settled.⁷ That was acknowledged in the Covid Fast-track Act decision.
 - (c) **Construction effects** – including in terms of erosion and sediment control, dust, construction traffic and construction noise – were resolved between Contact and the participants in the Convener's conference during the Covid Fast-track Act process, with conditions effectively settled.⁸ Again, that was acknowledged in the Covid Fast-track decision.
 - (d) Notably for a proposed wind farm, **operational noise effects** were assessed as acceptable and conditions settled between Contact and the District Councils (and the Covid Fast-track Act panel agreed).
9. The Covid Fast-track Act decision identifies that the key disputed matters – which ultimately led to that panel declining to grant the RMA approvals sought by Contact – were landscape / visual effects and certain ecological effects. The application of the statutory planning framework in respect of those matters was also a focus of the Covid Fast-track Act decision.
10. To a large degree, the dispute in respect of those issues, at least in respect of the experts, was between Contact's experts and two of the seven expert reviewers appointed by the decision-making panel.

⁶ These matters are reflected in the comments provided by Environment Southland and Southland District Council on Contact's referral application, provided pursuant to section 17 of the FTAA (as well as in the comments in that process by the Minister for Economic Growth, Minister for Regional Development, Minister of Climate Change and Energy); https://www.fasttrack.govt.nz/_data/assets/pdf_file/0017/10574/09.-Combined-Comments_Redacted.pdf.

⁷ [Attachment 5 - Letter from Te Rūnanga o Ngāi Tahu](#)

⁸ Though Contact acknowledges that the construction effects on the ecological values of the Jedburgh Plateau remain a potentially live issue, as discussed below.

11. By way of summary, in terms of landscape:

- (a) No part of the Project site is within an Outstanding Natural Feature (**ONF**) or Outstanding Natural Landscape (**ONL**), as identified in any planning instrument. A 2019 draft and primarily desktop-based region-wide landscape study prepared by Boffa Miskell identifies part of the Project site as falling within an area that the authors mapped as potentially meeting the criteria to be considered an ONF. There is currently no proposal to change the Southland District Plan to identify any ONF (or ONL) relevant to the Project.
- (b) Contact's consultant landscape expert⁹ carried out a detailed and site-specific landscape assessment. He did not consider the Project site merited identification as an ONF. He also considered that even if it was (an ONF), the landscape and visual effects of the Project would be acceptable.
- (c) The panel-appointed peer reviewer considered that part of the Project area should be treated as an ONF and that the Project's landscape and visual effects would not be acceptable.
- (d) In their comments on the Covid Fast-track Act application, Southland District Council (**SDC**) identified landscape / visual values and effects as a matter that needed to be addressed through the process. SDC did not participate in expert conferencing on landscape or planning matters.¹⁰
- (e) Contact is unsure of the position SDC intends to take in respect of landscape / visual values and effects (and the application of the planning instruments in respect of those matters) in the FTAA process. Contact does not understand that any other participant in the Convener's conference will raise landscape / visual effects as a concern.

12. By way of summary, in terms of ecological effects:

- (a) During the previous process, the Department of Conservation (**DOC**) and Contact reached agreement on conditions to address all ecology matters. DOC specifically confirmed¹¹ that "*All technical experts are*

⁹ Brad Coombs of Isthmus.

¹⁰ Gore District Council (**GDC**) did not address landscape / visual amenity matters in their comments.

¹¹ At the bottom of page 1: https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Southland-Wind-Farm/Comments-on-draft-conditions/Department-of-Conservation_Comments-on-Draft-Conditions.pdf

now satisfied that their concerns have been addressed in the latest set of conditions". That agreement followed detailed engagement, including multiple rounds of expert conferencing on various specific topics.

- (b) SDC provided comments on ecology matters in the Covid Fast-track Act process, informed by a consultant ecologist. Those comments concluded that *"the ongoing collection of ecological data and adaptive management approach set out in the suite of management plans will enable effects to be monitored and managed appropriately"*.¹² The matters of detail raised by SDC were addressed by Contact during the Covid Fast-track Act process.¹³
- (c) Environment Southland (**ES**) was satisfied with the assessment of effects on freshwater (stream) ecology effects, and Contact's proposed effects management measures.¹⁴
- (d) Agreement was reached between all experts on measures to address effects on avifauna, and on bats. The Covid Fast-track panel was comfortable that effects on bats would be appropriately addressed, but – despite the support of all avifauna experts and the expert planners – the panel determined the conditions to address potential operational effects on avifauna were not appropriate.
- (e) Overall, the Covid Fast-track Act decision identified that effects other than those on the 'Jedburgh Plateau'¹⁵ had been adequately identified and addressed.
- (f) There was a fundamental dispute between one of the ecologists appointed by the panel and other experts (including those advising Contact) as to whether effects on the Jedburgh Plateau were sufficiently defined, and acceptable, and whether the effects could properly be offset or compensated for. The key issues related to the identification of wetland and terrestrial habitats at the Plateau, effects on those habitats, potential fragmentation effects, and the

¹² Paragraph 35: https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Southland-Wind-Farm/Comments/25Jul24_Southland-District-Council_FTC126_Comments-Received.pdf

¹³ GDC did not address ecology matters in its comments on the Covid Fast-track Act process.

¹⁴ The approach to fish passage recommended by ES was adopted by Contact, and has been carried through to the proposed FTAA conditions.

¹⁵ An approximately 530 ha area at the southwest of the overall Project site.

appropriateness and availability of Contact's proposed mitigation, offset and compensation measures.

- (g) In its comments on the Covid Fast-track application, ES had also raised concerns about effects on wetlands (most of the affected wetlands occur on the Jedburgh Plateau) and the offset and compensation measures proposed to address effects on wetlands. Contact is not certain whether ES will raise those concerns in the FTAA process.
 - (h) By the end of the Covid Fast-track process, the specialist who was engaged by the panel to assess the appropriateness of the offsetting and compensation package was satisfied that the offset and compensation measures proposed by Contact were appropriate and would result in 'net gain' (noting also that Contact had also volunteered to impose a 'hard limit' on wetland loss (and other notable habitats) in its conditions, ensuring the total loss remained capped and quantifiable).
 - (i) Despite this, the Covid Fast-track Act panel determined that effects on the Jedburgh Plateau had not been properly defined, would not be acceptable, and could not properly be offset or compensated for.
13. Contact acknowledges that a number of nearby landowners opposed the Project through the previous Covid Fast-track Act process. Much of that opposition was framed in terms of landscape / visual and ecology matters, as well as 'rural character' and related localised issues. Beyond the specific landscape and ecology matters addressed above, Contact does not understand there to be any outstanding dispute between Contact and the participants in the Convener's conference in respect of those localised issues.
14. As noted above, Contact has effectively 'carried over' virtually all of the final proposed and/or agreed effects management measures and proposed conditions from the Covid Fast-track Act process, including the measures relied on by participants in the Convener's conference to resolve issues they had raised.
15. Contact has reflected carefully on the Covid Fast-track Act decision. It strongly disagrees with the panel's conclusions, for numerous reasons. However, Contact has carried out further work to address the key

landscape and ecology matters identified in the Covid Fast-track Act decision.

16. The additional work carried out is summarised in Part A of the FTAA application. In brief that work has included:
- (a) Significant additional 'ground-truthing' and refinement of habitat and wetland mapping work, focussing on the Jedburgh Plateau.
 - (b) A hydrological design report assessing flow conditions in areas adjacent to wetlands, and recommending engineering measures to minimise indirect impacts on wetlands from the Project works. A conceptual design has been prepared, including culverts and bunds to maintain hydrological connectivity.
 - (c) A further, independent expert review of terrestrial and wetland ecology values, effects and effects management measures, focussing on the Jedburgh Plateau.¹⁶
 - (d) A more detailed exercise to identify suitable fill disposal sites. Indicative fill disposal sites are identified in the application, with the maximum fill disposal envelope and locations for the Jedburgh Plateau now confirmed.
 - (e) Additional surveys focussing on birds, lizards and invertebrates, following on from discussions amongst the experts during the previous process.
 - (f) An avifauna collision risk model has been developed.
 - (g) A second expert has undertaken his own primary assessment of the Project's landscape, visual and natural character effects.¹⁷
17. That additional work has been discussed with all the participants in the Convener's conference. Refinements have been made to the proposed RMA conditions to reflect that additional work, and again those have been discussed with the Convener's conference participants. This process should narrow and simplify the substantive issues to be worked through in the FTAA process.

¹⁶ Prepared by Roger MacGibbon of Tonkin and Taylor.

¹⁷ Shannon Bray of Wayfinder.

18. In summary, the technical analysis, supporting material, and effects management measures for the Project are well advanced and understood by the key participants. This will enable the FTAA panel to determine the application in an efficient and timely manner.
19. The anticipated issues between the Convener's conference participants are relatively narrow.
20. Counsel comment specifically on the 'complexity' and 'issues' considerations identified in the Schedule to Minute 2 below.

Legal complexity

21. There are no particularly novel or difficult legal issues in respect of the application, beyond the FTAA itself being relatively new. Counsel note that the Covid Fast-track Act panel determined that the application failed to pass the section 104D RMA 'gateway', contrary to the advice of the planner it appointed to advise on the application (and all other planners that participated in expert conferencing). Regardless, we note that the section 104D test is not relevant under the FTAA.
22. Multiple approvals across several statutory schemes are sought (as is anticipated by the FTAA). However, the 'non-RMA' approvals are relatively confined and / or straightforward.
23. There are no relevant constitutional or public law matters.

Evidentiary and factual complexity

24. The application is supported by a large volume of analysis, including expert reports. However, the volume of material is not unusually large for an infrastructure project of this scale.
25. The expert analysis is not 'highly specialised'. Contact acknowledges the wealth of detailed material addressing ecology and landscape issues, but notes that experienced RMA decision-makers are well used to dealing with material of that nature.
26. Counsel have not identified any meaningful conflicts or inconsistencies in any of the material submitted with the application.
27. Contact acknowledges the disputes between experts on landscape and ecology matters during the Covid Fast-track Act process. However, a

number of those disputes were resolved, and by the end of that process the disputes were primarily between Contact's experts and two of those appointed by the panel. Furthermore, as noted previously, Contact has commissioned additional studies and further field work since the previous decision, which provides greater data and information to support the FTAA application. Contact does not anticipate that the other participants in the Convener's conference will file detailed material that conflicts with the application material.

Issues

28. Taking each of the other participants in the Convener's conference in turn:

- (a) **Ngāi Tahu / Kā Papatipu Rūnaka:** Following a sustained period of constructive engagement between Contact and Ka Papatipu Rūnaka and Te Ao Mārama, agreement on the appropriate management of cultural and other effects of the Project has been reached, including in terms of conditions. There are no issues to be resolved.
- (b) **Ministry for the Environment (MfE):** No substantive issues have been raised by MfE prior to or following lodgement of the substantive application under the FTAA.
- (c) **Heritage New Zealand Pouhere Taonga (HNZPT):** No issues have been identified. Contact understands HNPZT to be broadly supportive of the 'site-wide' archaeological authority approach taken by Contact.
- (d) **DOC:** As discussed above, by the end of the Covid Fast-track Act process, DOC and its experts were satisfied that all concerns they had raised with the Project were suitably addressed (including in terms of conditions). Contact has continued to engage closely with DOC prior to lodging the FTAA application, including in respect of conditions, and does not understand DOC to have any substantive issues in respect of the RMA approvals,¹⁸ but awaits any comment in that respect from DOC.

Contact appreciates that DOC will need to carefully consider the 'non-RMA' authorisations sought by Contact, noting it is the administering agency in respect of all of those authorisations. However, counsel do

¹⁸ DOC's section 17 FTAA comments on the referral application should be considered in light of those later discussions.

not anticipate any particularly complex issues in respect of those authorisations.

- (e) **Gore District Council:** No issues have been raised by GDC prior to or following lodgement of the FTAA application.
- (f) **Southland District Council:** No substantive issues have been raised by SDC prior to or following lodgement of the FTAA application. As noted above, Contact is not certain whether SDC will raise landscape issues.
- (g) **Environment Southland:** Contact understands ES to be generally supportive of the Project, and acknowledges that ES will be particularly interested in ensuring that effects on wetlands at the Jedburgh Plateau, and the offset and compensation measures proposed to address effects, are appropriate.

Panel membership

- 29. There are no factors that warrant the appointment of more than four panel members.
- 30. To ensure an efficient process consistent with the procedural principles in section 10 of the FTAA, counsel submit that it is necessary to appoint senior RMA practitioners who are familiar with the consenting and implementation of large infrastructure projects. Specific wind farm experience would be particularly helpful.
- 31. While other statutory approvals are sought, Contact considers the non-RMA approvals to be more confined and / or straightforward than the resource consents (the large majority of the application material applies solely or primarily to the resource consents).¹⁹
- 32. To that end, it would be appropriate to appoint a senior RMA lawyer or planner, with strong experience with large infrastructure projects and the application of the full suite of statutory planning instruments to such projects, as chair of the panel.
- 33. As noted above, landscape / visual amenity and ecology effects, and the application of the planning framework, were the primary issues in contention during the Covid Fast-track process. The Panel Convener may

¹⁹ Acknowledging again that DOC will be carefully considering those non-RMA approvals; Contact intends to continue its approach of engaging openly and constructively with DOC.

consider it would be most efficient to appoint either an ecology or landscape expert to the panel. That said, detailed expert commentary on ecology and landscape matters has been provided with the FTAA application, including assessments carried out by additional landscape and ecology experts. Experienced decision-makers will be well placed to understand and determine those issues, whether or not they have specific subject-matter expertise.

34. It would be appropriate for a panel member with expertise in Te Ao Māori and Mātauranga Māori to be appointed. The collaborative approach between Ngāi Tahu ki Murihiku and Contact has been central to the development of the Project and the FTAA application, and it is important that the panel is well-placed to appropriately assess and reflect Māori cultural values in this process.
35. Finally, Contact considers it is also important that the panel has the benefit of specialist knowledge, skills and expertise in respect of the design and construction of large infrastructure projects, and ideally wind farms specifically. That will enable the panel to analyse more effectively the design and constructability of the Project, as well as the methods related to managing potential environmental effects during this period, recognising that a large proportion of the 'on the ground' effects associated with the Project occur during the construction period.

Procedural requirements

36. Contact is willing to engage directly with the panel as necessary to advance progress of the application efficiently. In particular, Contact considers that it would be appropriate for a project overview conference to be scheduled for as soon as practicable after the panel commences, as has occurred for other projects under the FTAA process.
37. Contact also considers that a site visit by the panel would be beneficial, and would be happy to arrange that at the earliest convenient time for the panel.
38. The proposed conditions / terms of all approvals have been drafted, subject to consultation and comments, and lodged with the application. The RMA conditions are particularly well advanced, including benefitting from further refinement and consultation following the previous Covid Fast-track Act process. Contact is ready to engage with the panel in respect of conditions when the panel considers that to be appropriate.

39. Contact is, of course, prepared to engage constructively in other processes and anticipates discussion with the panel about that at the panel overview conference. If expert conferencing proves to be appropriate, Contact will engage in that. At this stage, Contact considers that a hearing is not required for this application, but is, of course, happy to liaise with the panel about that through the process.

Estimated timeframe

40. Contact's estimated / suggested timeframe for the determination of the application is set out in **Appendix One** to this memorandum. It generally follows the format of Schedule 1 to Minute 2.
41. Section 79 of the FTAA provides for the Panel Convener to set the timeframe within which the panel must issue its decision documents. The 'default' timeframe, where none is set, is within 30 working days after the date specified by the panel for receiving written comments on the substantive application under section 53 of the FTAA. Assuming a panel uses the maximum 10-working-day timeframe for issuing the invitation for comments, and applying the 20-working-day timeframe for written comments to be provided, that translates to a 'default' timeframe of 60 working days from panel commencement.
42. Counsel submit that the 30-working-day 'default' timeframe should be the starting point for the Panel Convener when considering the appropriate time frame for any individual panel to make its decision. However, Contact acknowledges that the Panel Conveners have, to date, been providing for longer timeframes.
43. The individual circumstances of each application must, of course, be the basis for the timeframe set. That said, based on a review of other projects, counsel understand that the 'average' timeframe for decisions is in the order of 50 working days from the close of comments, or 80 working days from panel commencement.
44. In light of the matters addressed in this memorandum, counsel submit the application can fairly be conceptualised as 'average', in terms of degree of complexity and time that should be required to determine the application. The narrowing of issues and development of effects management measures (including conditions and management plans) during the Covid

Fast-track Act process and in advance of lodgement of the FTAA application provide an additional and important 'head start'.

45. On that basis, Contact suggests it would be appropriate for the Panel Convener to set a time frame of between 70 and 80 working days from the date the panel commences to the date the panel must issue its decision in terms of section 79 of the FTAA.²⁰
46. Again, counsel have prepared a table setting out Contact's estimated / proposed timeframes, in **Appendix One**, which generally follows the form of the table in the Schedule to Minute 2.
47. The table assumes that the general invitation for comments on conditions (section 70) and the more specific invitation for comments on conditions and the draft decision from the Minister for Māori Crown Relations and Minister for Māori Development (section 72) will be issued at the same time. That would be appropriate, and efficient, in light of the position reached between Contact and Ngāi Tahu / Kā Papatipu Rūnaka.

Attendance

48. Attendees at the Convener's conference on behalf of Contact will be:
 - (a) Dave Randal and Thad Ryan (Buddle Findlay);
 - (b) Claire Hunter (Mitchell Daysh); and
 - (c) Matthew Cleland, Chris Drayton and Steve Harding (Contact).

Dated this 10th day of October 2025



Dave Randal / Thad Ryan
Counsel for Contact Energy
Limited

²⁰ The timeframes in Appendix One are based on a 70 working day allowance from panel commencement to decision.

APPENDIX ONE: CONTACT'S SUGGESTED TIMEFRAMES

Step	Working days	Date
1. Panel commencement	N/A	3 November 2025
2. Invite comments from relevant parties (s 53)	10 working days after Step 1	17 November 2025
3. Comments close (s 54)	20 working days after Step 2	15 December 2025
4. Contact may respond to any comments received (s 55)	5 working days after Step 3	12 January 2026
Assuming draft decision is to approve:		
5. Draft conditions issued for comment to relevant parties (s 70(1)) And: Draft decision and conditions issued for comment to Minister for Māori Crown Relations: Te Arawhiti and Minister for Māori Development (s72(1))	10 working days after Step 4	26 January 2026
6. Last day for comments on conditions from relevant parties (s 70(2)(a)) And for comments on the draft decision and conditions by the Ministers (s 72(2))	10 working days after Step 5	10 February 2026
7. Last day for comments by Contact on conditions, and in response to any comments from the Ministers (s 70(4))	5 working days after Step 6	17 February March 2026
8. Decision release (s 79)	40 working days after Step 3	24 February 2026