

May 2025

Use of Public Conservation Land Report (section 19)

For the referral application:
Southland Wind Farm (FTAA-2504-1041)



Department of
Conservation
Te Papa Atawhai

**Te Kāwanatanga
o Aotearoa**
New Zealand Government

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Cover Photo: Te Apiti wind farm, August 2012 (Credit: Jondaar_1(flickr))

1. Introduction

This report has been prepared by the Director-General of Conservation in accordance with section 19 of the Fast-track Approvals Act 2024 (the Act). It provides information in relation to the use of public conservation land as part of the consideration of the referral application for the Southland Wind Farm by Contact Energy Limited.

2. The referral application and the affected public conservation land

The project proposes to construct and operate up to 55 wind turbines and ancillary infrastructure including to connect to and supply electricity to the national grid.

The project intends to make some use of public conservation land, via right of way for a culvert and two airspace easements.

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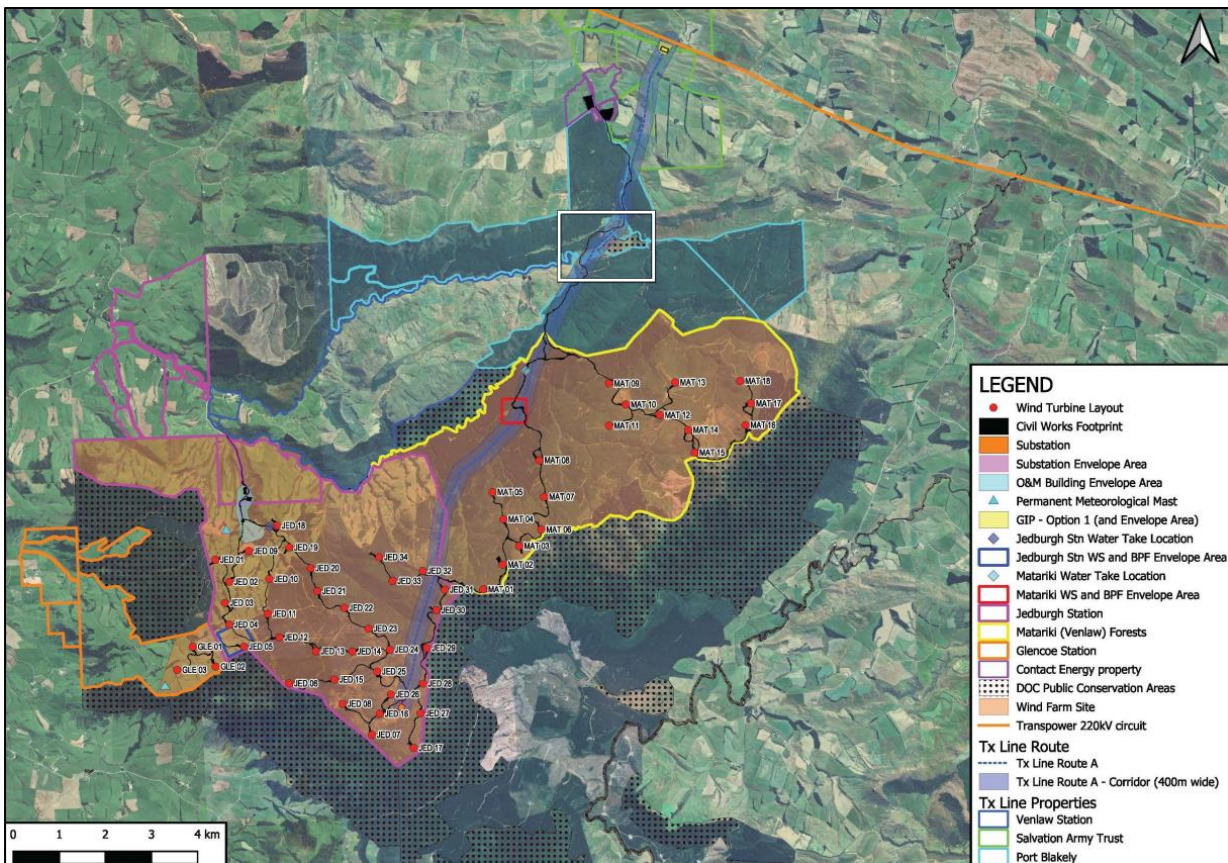


Figure 1: Southland Wind Farm project area (reproduced from Attachment 2 to the referral application, with the white rectangle added to indicate the area enlarged in **Error! Reference source not found.**).

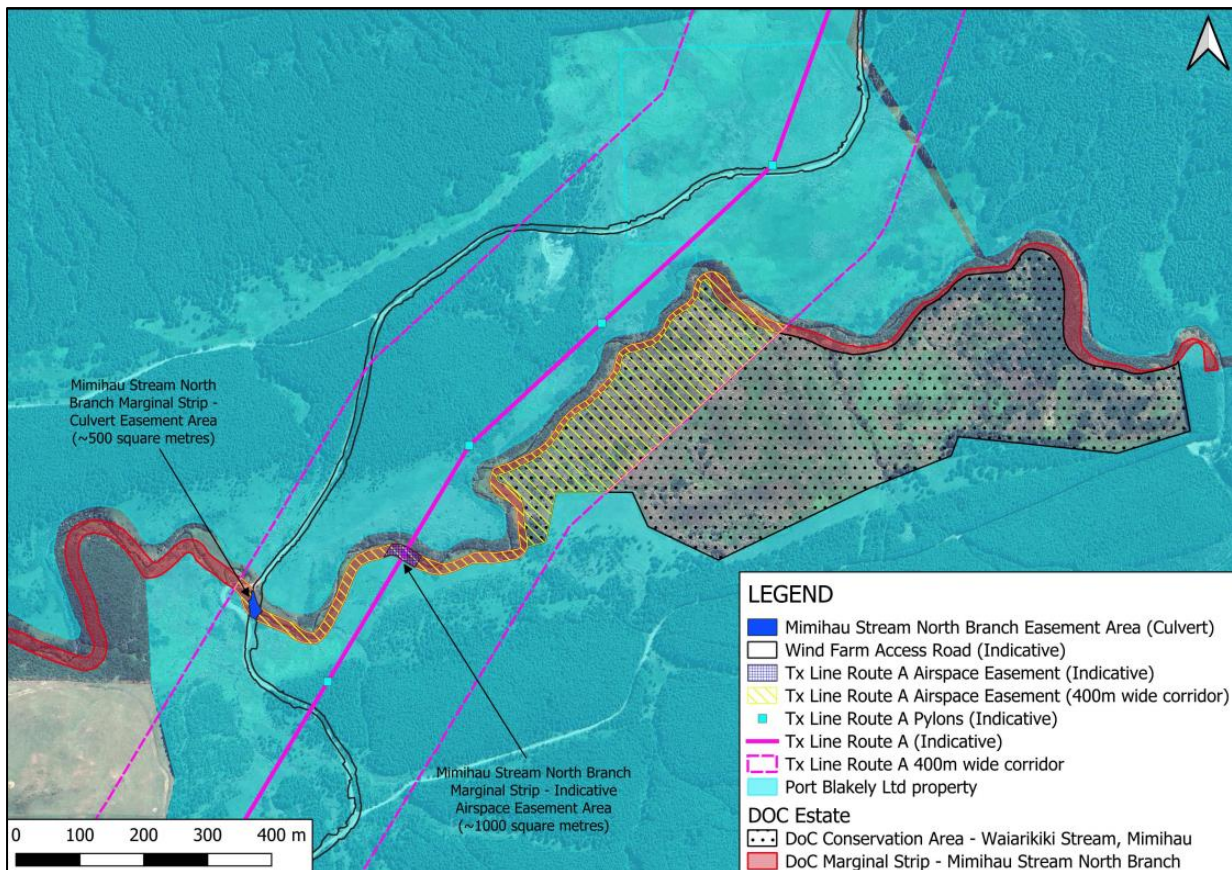


Figure 1. Location where the project intends to make use of public conservation land (reproduced from Attachment 4 to the referral application).

The “DoC Conservation Area – Waiarikiki Stream, Mimihau” is a Stewardship Area managed under section 25 of the Conservation Act. Stewardship Areas are managed to protect the natural and historic values. The Applicant is seeking approval under the Conservation Act 1987 for a concession for an airspace easement for the proposed transmission line to cross over this area. The National Property and Land Information System (NaPALIS) indicates the land is not subject to Treaty Claim, is owned by the Crown (and not vested), and is administered by the Department of Conservation.

The “DoC Marginal Strip – Mimihau Stream North Branch” is a Fixed Marginal Strip managed under section 24(3) of the Conservation Act. Marginal strips are held for conservation purposes and particularly for reasons such as maintenance of the adjacent water, to enable public access and recreational use of the strip and adjacent water, and/or for protection of the natural values of the strip. The applicant has indicated that they will apply for an easement for a right of way to construct the culvert over the Mimihau Stream. This will replace an existing ford. The transmission line will also pass over this marginal strip in a different but nearby location to the culvert. As such, the applicant is also seeking an approval for an airspace easement. The NaPALIS indicates the land is not subject to Treaty Claim, is owned by the Crown (and not vested), and is administered by the Department of Conservation.

3. Section 19(2) reporting

This section reports on matters as set out in section 19(2) of the Act.

3.1 Section 19(2)(a): Existing arrangements for the public conservation land

The Waiarikiki Stream Conservation Area is subject to six active arrangements for use. These are listed in the Table below:

<i>Holder</i>	<i>ID</i>	<i>Status</i>	<i>Description</i>
Botany Department, University of Otago	48655-FLO	Active	Collect small quantities of Lichen - Nationwide Permit - term sought ten years
Landcare Research New Zealand Limited (National Holder)	CA-31615-OTH	Rolling On	Nationwide research and collection
Individual	71046-FAU	Active	Capture, hold, transfer, release and take samples of all types of lizard species pursuant to Section 53 of the Wildlife Act 1953.
Individual	93529-FAU	Active	Wildlife Authority application to catch and handle lizards while undertaking site management work in all private land in the South Island and all PCL in the South Island (except nature reserves and scientific reserves)
New Zealand Professional Fishing Guides Association	94716-GUI	Active	Nationwide permit for guided fishing
Ospri New Zealand Limited	64146-FAU	Active	National authorisation for trapping (leghold, kill and live capture) ferrets and possums on all land managed by the Department or the purpose of Bovine TB Eradication

The Mimiha Stream North Branch marginal strip area is subject to two active arrangements for use. These are also listed in the Table below:

<i>Holder</i>	<i>ID</i>	<i>Status</i>	<i>Description</i>
Landcare Research New Zealand Limited (National Holder)	CA-31615-OTH	Rolling On	Nationwide research and collection
Ospri New Zealand Limited	64146-FAU	Active	National authorisation for trapping (leghold, kill and live capture) ferrets and possums on all land

			managed by the Department or the purpose of Bovine TB Eradication
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3.2 Section 19(2)(b): Risks and potential liabilities to the Crown

Risk of non-completion, failure, inability to remediate land

Partial non-completion or failure of activities on public conservation land resulting in land disturbance, contamination and sedimentation, hazards, stranded assets and infrastructure can create significant financial, legal, health and safety and reputational risk for the Crown. It can also create significant demand on Department of Conservation resources in terms of staff time and operating budget. For example, if a project fails the Crown will have to manage the land and impacted adjacent lands in accordance with the statutory purpose for which those lands are held, and this may require remediation of the land.

There may be reputational risk to the Crown, and for the fast-track process as a whole, if a granted proposal is not technically feasible or there is an inability to progress the proposal or any part of it; particularly if those parts constitute offsetting or compensation for effects. There may also be a reputational risk for the fast-track process if the process is abused, for example if there was no intention to progress the development but approval is used to, for example, inflate land value.

Issues to consider in this application include:

- **Construction of a culvert**

The applicant notes that culverts have been designed in accordance with the New Zealand Fish Passage Guidelines and the National Environmental Standards for Freshwater. In addition, we advise that concession for the culvert will have conditions designed to manage any further adverse ecological effects. Risks and potential liabilities to the Crown associated with culverts on public conservation land are regularly managed by DOC.

- **A transmission line and airspace easement**

The interaction of the transmission line and airspace easement with public conservation land is relatively minor. Therefore, the risks and potential liabilities to the Crown are also considered to be minor.

Frustration of pre-existing activities

If a fast-tracked activity frustrates pre-existing actors operating with lawful authority from carrying out activities on the land, the Crown is exposed to legal, financial and reputational risk. If a legal challenge succeeds against the Crown, the remedies a court may order will vary in accordance with the degree of frustration, the type of lawful authority the pre-existing actor was operating under and other contextual factors.

Frustration of concessions in the form of a lease, licence to occupy or easement may lead to an order for specific performance of the lease, licence to occupy or easement and/or monetary damages and costs. It may also lead to pre-existing lessees suing the operators of the fast-tracked activity for nuisance or trespass. FTAA Schedule 6 cl 7(3)(b) states that approval must be declined if “giving effect

to the approval would result in the conferral of an interest in land that is incompatible with an existing interest in land.”

Frustration of the activities of those operating under contracts with the Director-General (entered pursuant to s 53(2)(i) Conservation Act 1987) in respect of the land may lead to an order for injunctive relief, specific performance, damages and costs.

Frustration of concessions in the form of permits and other statutory authorisations that do not create an interest in land may lead to equitable estoppel and specific performance, compensation and costs.

The concessions relating to the public conservation land affected in this project are nationwide activities that are not specific to the project area. Therefore, there is a low risk that these activities will be impacted.

3.3 Section 19(2)(c): Paragraph (r) of section 13(4) information is not required

Applicants may seek a ministerial determination under section 24(4) if the referral application relates to construction and operation of new electricity lines and the activity would occur on certain land listed in Schedule 4 land or in a national reserve. Applicants seeking a determination under section 24(4) are required to provide information outlined in section 13(4)(r).

The Southland Wind Farm applicant does not seek a ministerial determination under section 24(4) and therefore the referral application is not required to provide information under section 13(4)(r).¹

4. Note on section 19(3) consultation requirements

Section 19(3) requires the reporting on matters required by sections 19(2)(a) and 19(2)(b) is prepared in consultation with every owner, administrator, or manager of the affected public conservation land who is not the Crown.

DOC has not identified any owner, administrator, or manager of the affected public conservation land who is not the Crown.

¹ Note for completeness against section 19(2)(c) referring to information under paragraph (q) of section 13(4): Applicants may seek a determination under section 24(2) if the referral application relates to existing electricity infrastructure and the activity would occur on certain Schedule 4 land or in national reserve. Applicants seeking a determination under 24(2) are required to provide information outlined in section 13(4)(q). The Southland Wind Farm applicant does not seek a determination under section 24(2) and therefore the referral application is not required to provide information under 13(4)(q).