

3 December 2025

Fast-track Approvals Act: Covering Report

Section 51 Covering Report for – FTAA-2508-1095 Southland Wind Farm



Department of
Conservation
Te Papa Atawhai

**Te Kāwanatanga
o Aotearoa**
New Zealand Government

Introduction

1. On 29 August 2025 Contact Energy lodged a substantive application with the Environmental Protection Authority (EPA) for a wind farm known as the 'Southland Wind Farm' (the Project). On 18 September 2025 EPA determined that the application was complete and complied with section 46(2) of the Fast-track Approvals Act 2024 (FTAA/the Act).
2. The application seeks three conservation approvals under section 42(4) of the FTAA:
 - a. an approval described in section 42(4)(e) (concession)
 - b. an approval described in section 42(4)(h) (wildlife approval)
 - c. an approval described in section 42(4)(j) (complex freshwater fisheries activity)
3. The Panel Convener issued Minute 1 on 3 October 2025 requesting reports pursuant to section 51 from the Director-General of Conservation (D-G) in relation to each of these approvals (due 3 December 2025). These reports (the conservation approval reports) are set out in Appendices C to E.
4. Statutory delegations are in place for the Department of Conservation (DOC / the Department) to provide these reports on behalf of the D-G
5. The Panel Convener also requested the reports address how the weighting of specific matters should be approached in relation to each approval sought. This question is addressed in a single report (the weighting report) provided in Appendix A, rather than in each separate approval.
6. This preliminary section (the covering report) addresses matters that are relevant to all three of the conservation approval reports and should be read as forming part of each of the reports.

Technical expert credentials

7. DOC has sought input from a range of technical experts to inform the preparation of the conservation approval reports. These experts and their credentials are listed in Appendix B, together with an indication of the topics to which they have contributed.

Engagement with the applicant

8. Contact Energy previously sought consents for the Project under the COVID-19 Recovery (Fast-track Consenting) Act. The consultation between Contact Energy and DOC throughout that process addressed matters/approvals that would otherwise be applied for under the Resource Management Act 1991 (RMA). The consultation contributed to development of the assessment and management of effects and development of the proposed conditions for the Project.
9. Contact Energy re-engaged with DOC prior to the lodgement of their substantive application under the FTAA. This engagement focussed primarily on resource consent conditions. A proposed conditions set was provided to DOC on 13 June 2025. DOC met with Contact on 25 June 2025 to

provide feedback. Changes were made in response to this feedback, and a revised conditions set was provided to DOC on 15 July 2025. DOC subsequently provided follow-up feedback (listed below) to the revised conditions set.

10. Since lodgement of the substantive application, DOC has continued to engage with Contact Energy on an ongoing basis.
11. The engagement has been constructive, and many issues have been resolved and/or appropriately addressed to DOC's satisfaction. The conservation approval reports identify where outstanding issues remain.

Engagement with iwi

12. DOC's work in preparing this report has been carried out in a manner that, as far as possible, gives effect to the principles of the Treaty of Waitangi (arising from the obligation on DOC from section 4 of the Conservation Act 1987. The principles most applicable to DOC's role are:
 - **Partnership** – mutual good faith and reasonableness.
 - **Informed decision-making** - Both the Crown and Māori need to be well informed of the other's interests and views. Consultation is a means to achieve informed decision-making.
 - **Active protection** - requires informed decision-making and judgement as to what is reasonable in the circumstances.
 - **Redress** – requires recognition of existing rights and interests.
13. DOC has advised Kaitiaki Rōpū ki Murihiku (Kā Rūnaka representatives of Waihōpai, Arowhenua, Hokonui and Ōraka-Aparima) and Te Rūnanga o Ngāi Tahu of the application, sharing relevant publicly available information.

LIST OF ATTACHMENTS

APPENDIX A: Weighting of relevant matters to be taken into account

APPENDIX B: Technical expert credentials

APPENDIX C: Concession Report

APPENDIX D: Wildlife Approval Report

APPENDIX E: Complex Freshwater Fisheries Report

APPENDIX A: Weighting of relevant matters to be taken into account

Introduction

1. This report responds to the Panel Convener's Minute dated 3 October 2025, directing the Director-General to "file a report advising how weighting of matters ... should be approached, having regard to relevant senior court decisions."
2. The Minute respectively refer to the matters set out in Schedule 7, Clause 3 of the FTAA (wildlife approval); Schedule 6, Clause 4 of the FTAA (concession) and Schedule 9, Clause 4 of the FTAA (freshwater fisheries regulations approval). The matters listed in the schedules are those which the FTAA directs must be addressed by the Director-General's s 51(2) reports.¹

Weighting generally

3. Generally, the weighting to be accorded to relevant considerations by a statutory decision maker is for that decision maker to determine,² however where a statute directs the weight to be given to a matter, that direction must be given effect to.³
4. The senior courts have recognised that apparently disproportionate, inadequate or undue weight attached to a relevant factor can lead to judicial consideration of whether the weighting applied was within the limits of reason, and hence, whether the ultimate decision was unreasonable in an administrative law sense. A court may set aside an administrative decision which has failed to give adequate weight to a relevant factor of great importance, or which has given excessive weight to a relevant factor of no great importance.⁴
5. Accordingly, mandatory relevant considerations must be given genuine consideration and weighting by statutory decision makers.

¹ The schedule clauses referenced in the Minutes exclude consideration of the purpose of the FTAA from the ambit of the request. However, in order to respond to the Panel Convener's request in relation to consideration of weighting, it is necessary to refer to the purpose of the FTAA given the statutory directive that this consideration be given "the greatest weight" relative to other mandatory considerations (i.e. relative to the matters that must be addressed by the Director General's s 51 reports). This advice has therefore been prepared on that basis.

² See, for example *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR (HC) 188 at 223: The weight to be given to the evidence in the balancing exercise ... is a matter for the primary tribunal and the Planning Tribunal on appeal.

³ *Quarantine Waste (New Zealand) Ltd v Waste Resources Ltd* [1994] NZRMA 529 (HC) at 540: "Unless the statute otherwise directs, the weight to be given to particular relevant matters is one for the consent authority, not the Court, to determine."

⁴ See, for example *Thames Valley Electric Power Board v NZFP Pulp and Paper Ltd* [1994] LGHNZ 17 (CA).

Weighting under the Fast-track Approvals Act 2024

6. The Schedules to the FTAA list mandatory considerations that decision-making Panels must take into account, when determining applications for the various approvals that can be granted under the Act.⁵
7. The only directive regarding weighting contained in the FTAA, is that the “greatest weight” is to be given to the purpose of the FTAA.⁶
8. While described in the FTAA as “criteria”,⁷ the mandatory matters to be taken into account can be described as “factors”, in the sense that they are matters to be assessed on the basis of their qualities, rather than quantities. They establish the foundation for assessment rather than the outcome of it.⁸ Accordingly, the criteria, or factors, are not tick-boxes to be crossed off a list but are matters that must be qualitatively assessed.
9. The FTAA does not direct how much relative weight should be given to, or between, relevant matters other than the purpose of the FTAA. Nor does the FTAA specify how much greater weight should be accorded to its purpose relative to other mandatory considerations. It may be the case that some of the factors listed in the relevant clauses may be found to have no relevance. Consequently, that factor will have no weight accorded to it in the balancing exercise.
10. While the purpose of the FTAA is to be given the greatest weight, the purpose of the FTAA does not automatically outweigh all other considerations. By listing other considerations besides the purpose of the FTAA, it is implicit that weight be attached to them, and that they should receive genuine consideration where relevant.⁹
11. Accordingly, while the greatest weight is to be accorded to the purpose of the FTAA, it does not follow that when qualitatively assessed, the regional or national benefits of a project must necessarily outweigh other considerations, in combination or in isolation, such as the adverse environmental effects of a project. The extent of regional or national benefits will vary between projects. Also, adverse effects will vary between projects in nature and severity. Each factor must be qualitatively assessed and those assessments weighed. Where they pull in different directions, they must be weighed against each other.

⁵ See Schedule 7, Clause 5 (wildlife approval); Schedule 6, Clause 7 FTAA (concession); Schedule 9, clause 5 (complex freshwater fisheries activities approval); and Schedule 11, Clause 7 (access arrangement).

⁶ This directive occurs multiple times in the FTAA, including at Schedule 6, Clause 7 (concessions); Schedule 7, Clause 5 (wildlife approval); Schedule 9, Clause 5 (complex freshwater fisheries activities approval); and Schedule 11, Clause 7 (access arrangement).

⁷ This is the terminology used in the titles for each of the relevant clauses listed in fn 5.

⁸ *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 147, at [117]-[118].

⁹ See also s 85(3)(b) of the FTAA which provides for the decline of a FTAA application if the adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits that the panel has considered.

12. The issue of legislatively directed weighting was considered by the Court of Appeal in *Enterprise Miramar Peninsula Inc v Wellington City Council*,¹⁰ when considering the application of s 34 the Housing Accords and Special Housing Areas Act 2013 (HASHAA). Section 34 provides:

34 Consideration of applications

- (1) An authorised agency, when considering an application for a resource consent under this Act and any submissions received on that application, must have regard to the following matters, giving weight to them (greater to lesser) in the order listed:
- (a) the purpose of this Act:
 - (b) the matters in Part 2 of the Resource Management Act 1991:
 - (c) any relevant proposed plan:
 - (d) the other matters that would arise for consideration under—
 - (i) sections 104 to 104F of the Resource Management Act 1991, were the application being assessed under that Act:
 - (ii) any other relevant enactment (such as the Waitakere Ranges Heritage Area Act 2008):
 - (e) the key urban design qualities expressed in the Ministry for the Environment’s *New Zealand Urban Design Protocol (2005)* and any subsequent editions of that document.

13. The Court held that all the listed matters must first be individually assessed prior to the exercise of weighing them in accordance with the prescribed hierarchy. The listed matters in subsection (1)(b)–(e) cannot properly be weighed alongside the purpose of HASHAA under subs (1)(a) if that purpose has first been used to effectively neutralise the matters listed in subs (1)(b)–(e).¹¹
14. Applying that approach to the FTAA, the relevant matters should first be individually assessed, uninfluenced by the purpose of the FTAA, “before standing back and conducting an overall balancing” where the purpose of the FTAA is to be given greatest weight.¹² It would be an error of law to use the purpose of the FTAA to eliminate or reduce individual assessment of the other specified mandatory relevant considerations.¹³

¹⁰ *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541.

¹¹ *Enterprise Miramar Peninsula Inc*, at [53].

¹² *Enterprise Miramar Peninsula Inc*, at [52]. Note that the FTAA does not take the same cascading hierarchy of “greater to lesser” weight, but only that the “greatest weight” be given to the purpose.

¹³ *Enterprise Miramar Peninsula Inc*, at [55]–[59].

APPENDIX B: Technical expert credentials

DOC has relied on the advice of the following technical experts:

- a. Daniel Jack (freshwater ecology)
- b. Dr Rhys Burns (lizards and invertebrates)

Their credentials are set out below.

Daniel Jack

My full name is Daniel Chisholm Jack.

I am employed by the Department of Conservation Te Papa Atawhai (the Department) as a Technical Advisor Freshwater/Kaitiaki, Kanorau Koiora based in Dunedin/Ōtepoti and have been in this role since March 2020. A component of my role is to provide technical input into the development of Species Management Units (SMU) for Threatened and At Risk galaxias species as part of the Natural Heritage Management System.

My previous employment for the Department has been as a Freshwater Biodiversity Ranger in the Coastal Otago District operations team from 2005 – 2020 delivering conservation projects for Threatened and At Risk non-migratory galaxiid fishes. This work involved conducting freshwater fish distribution surveys in rivers and wetlands throughout Otago, Canterbury and Southland, researching critical habitats, life histories, and population monitoring of galaxias species endemic to these regions.

Prior to these roles, I was a Biodiversity Ranger with the Department throughout the Nelson-Marlborough region from 1998 – 2003. My primary tasks during that period included freshwater fish surveys; monitor and survey a variety of threatened cryptic terrestrial species; and involvement in habitat restoration and protective works of freshwater and terrestrial ecosystems.

I hold a Post-Graduate Diploma in Wildlife Management from the University of Otago. During my studies, I assisted with research using mitochondrial DNA analysis of endemic fish taxa to investigate relationships between biological evolution and geomorphological processes (Craw et al. 2007, Burridge et al. 2007, Burridge et al. 2008a). I am a contributing author to the scientific paper that was produced from this research (Burridge et al. 2008b).

I am a contributing member of the New Zealand Threat Classification panel for New Zealand freshwater fishes (Dunn et al. 2017) providing expert opinion on the status and distribution of New Zealand freshwater fishes. To support this process, I am a significant contributor of contemporary and historic freshwater fisheries spatial data to New Zealand Freshwater Fish Database (NZFFD), a publicly accessible national database, managed by the National Institute of Atmospheric Research (NIWA).

Dr Rhys James Burns

I am employed as a Technical Advisor (Terrestrial Ecology/Fauna) with the Department of Conservation Te Papa Atawhai (DOC) in the Terrestrial Biodiversity Unit and am based at the Rotorua office. I have held this position, or equivalent positions, since 2004.

My role at DOC is to provide ecological advice to conservation practitioners both within DOC and external to DOC (such as iwi and community groups). I also provide advice to DOC decision-makers in relation to DOC's permissions system. This includes assessments for both Resource Management Act 1991 (RMA) and Wildlife Act 1953 applications. For Wildlife Act applications, I am tasked with providing ecological advice as to whether a permission should be granted and, if so, what conditions should be attached to the permission.

I have a BSc (Hons) and PhD in Biochemistry from the University of Otago. I completed my PhD in 1997. Since working for DOC continuously since 1997, I have accumulated and applied knowledge on the management of New Zealand ecosystems and species.

Between 1997 and 1999 I was based at Pureora Forest Park where I monitored a range of avifauna species (for example, robins, kōkako, fernbird, tomtit and ruru) to assess the impact of pest control on these species, and how their populations responded to management.

Between 1999 and 2004 I monitored a radio-transmitted kiwi population in northern Te Urewera and oversaw the stoat trapping at this site for several years. I was also a contributing or lead author for reports that summarised all the activities occurring in this mainland island ecosystem restoration project.

Between 2004 and 2013, I was a Technical Support Officer (Fauna) for the East Coast Hawke's Bay Conservancy, and then the East Coast Bay of Plenty Conservancy.

I have been in my current role (Technical Advisor - Terrestrial Fauna), or similar roles that includes Ecology and Ecosystems, since 2013. In this role, I have a mandate to deliver advice to DOC staff where needed over the entire country.

I have experience in assessing applications that have the potential to have effects on a variety of Threatened and At Risk (under the New Zealand Threat Classification System) native birds across a range of habitats in New Zealand. This has included the assessment of activities that require resource consents, including the Mt Messenger Bypass, Awakino Tunnel Bypass, Kaiwaikawe windfarm and Dome Valley Waste Management landfill.

I have also gained experience in many projects that have monitored the response of a variety of native birds to various pest control methods as well as assessing many applications under the Wildlife Act, including for translocations and the effects of developmental projects on avifauna.

I am a member of the New Zealand Ecological Society and the Ornithological Society of New Zealand (Birds NZ).

I have been the leader of DOC's Weka Recovery Group for 18 years, the leader of DOC's Kōkako Recovery Group for one year (and member for 9 years) and a member of DOC's Frog Recovery Group for 19 years.