

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
PROVIDING APPLICANT'S REPOSE TO DRAFT CONDITIONS**

23 March 2026

BUDDLE FINDLAY

Barristers and Solicitors
Wellington

Solicitor Acting: **Dave Randal / Thad Ryan**

Email: [REDACTED]

Tel [REDACTED] PO Box 2694 DX SP20201 Wellington 6011

MAY IT PLEASE THE PANEL:

1. This memorandum of counsel on behalf of Contact Energy Limited (**Contact**) is filed in response to the Panel's Minute 9, inviting comments on the draft conditions.
2. Contact thanks the Panel for its draft decision and for the opportunity to comment on the draft conditions. Contact's comments (and proposed condition changes) are provided below, and in the attached proposed updated condition documents.
3. For completeness, Contact has no comments on the Panel's draft archaeological authority or freshwater fisheries approval terms and conditions.
4. Contact will respond as necessary to any comments made by others. As directed by the Panel, that response will be provided by Monday 30 March 2026.

Comments on the draft resource consent conditions

5. Contact has reviewed the draft resource consent conditions and has proposed a small number of amendments. An updated version of the consent conditions, with Contact's proposed edits shown as tracked, is attached as **Appendix 2**. Comment boxes are included explaining the basis for each amendment.
6. Additional reasoning in respect of specific resource consent conditions is provided below.

MP1: Timing requirement for preparation of management plans

7. The Panel has added the following words to MP1:

These management plans must be prepared at least 75 working days prior to the intended commencement of construction activities.
8. In the draft decision, the Panel explains that this addition is based on its understanding of the sequence of management plan certification steps, and the timing associated with each step (as updated in the Panel's draft conditions).
9. Contact accepts the individual sequence and timing requirements in the management plan conditions, but considers the addition of the further 'timing of preparation' requirement is not necessary, noting that:

- (a) The timeframes for each step in the management plan consultation and certification sequence are generally framed as maximums: for example, while the Independent Management Plan Reviewer will have 15 working days to provide their report (MP5B), that process may well take less time than that.
- (b) Ensuring the management plans are prepared sufficiently in advance of the intended construction commencement date is a project management matter for Contact. Contact accepts that it must comply with the requirements of each step in the sequence; and so the 'timing of preparation' requirement is not necessary and would not be consistent with section 83 of the FTAA; and
- (c) MP1 refers to the Construction Environmental Management Plan, Terrestrial and Wetland Ecological Management Plan, Riparian Offsetting Management Plan, Archaeological Management Plan (**ArMP**), and Stakeholder Communication and Engagement Management Plan (**SCEMP**). Not all of the management plans (and their 'sub-plans') are subject to all of the individual steps in the overall sequence, and at least some of the plans are therefore likely to be certified in fewer than 75 working days. In particular, the initial 20-working-day DOC process in MP4B does not apply to the ArMP or SCEMP.

WF15: Limit on Grid Injection Point area

- 10. Contact's proposed version of WF15 provided that the Grid Injection Point "*shall be approximately 1ha in area*". The Panel's draft WF15 has changed that wording, to: "*The Grid Injection Point must not exceed 1ha in area.*"
- 11. Contact understands the Panel's desire for a specific upper limit on the size of the GIP. However, at this stage Contact cannot confirm that the GIP will be no more than 1ha.
- 12. A conceptual layout of the preferred GIP configuration was provided with the Application. This had indicative dimensions of 140m x 70m (or 0.98ha). While this is indeed less than 1ha, alternative layouts have dimensions that have areas of just over 1ha, hence the intentional wording of 'approximately 1ha'.
- 13. If the Panel would prefer a maximum area specified, Contact advises that a 'safe' upper limit on the size of the GIP would be 1.2ha (noting that this

reflects some design improvements made since the previous consent application, lodged under the COVID-19 Recovery (Fast-track Consenting) Act 2020, where the area sought for consent was a maximum 1.5ha). As such Contact has proposed WF15 be amended accordingly.¹

CM7A: Controls and measures re stormwater runoff patterns and water quality

14. Draft Condition CM7A sets freshwater quality standards for the Project earthworks, as follows:

- 1 For watercourses within the Project Site, the Project earthworks must not contribute to a breach of the following water quality standards:
 - a. The fine sediment (<2mm diameter) bed cover, when measured as a percentage at the edge of the reasonable mixing zone downstream of the earthworks area, must not increase by more than 10 percentage points from that measured immediately upstream of the earthworks area; and
 - b. There must be no more than a 20% change in clarity or colour at the edge of the reasonable mixing zone downstream of the earthworks area, relative to the clarity or colour upstream of the earthworks area.
- 2 Conditions CM7A(a) and CM7A(b) apply at all times.

15. That is, in substance, aligned with the version of that condition agreed in expert conferencing on earthworks, except that the Panel's draft CM7A(2) is included in place of the following text agreed in the earthworks joint statement:²

"The standard listed in (b) shall not apply for 48 hours following a 2-year ARI event or greater, as defined by NIWA's High Intensity Rainfall Design System"

16. In the draft decision, the Panel explains why it has not provided for the 48-hour post 2-year ARI event 'carve out' in respect of the change in clarity / colour standard, as follows:³

"The reason being that if rain related discharges from sediment devices result in a reduced water clarity, this will be matched by a corresponding upstream reduction in water clarity and therefore the 20% change at the reasonable mixing zone downstream will still be able to be achieved. If the allowable 20% change in water clarity is exceeded, then this indicates potential issues with the erosion and

¹ [A02. Part A - Overarching Substantive Application Document](#) at page 34. Contact acknowledges the later reference to a maximum area of 1ha ([B01.-Part-B-Resource-Consent-Approvals-Application_Redacted.pdf](#) at page 193), which was in error.

² [Southland-Wind-Far.-Joint-Statement-of-Experts-Earthworks_Redacted.pdf](#)

³ Draft decision at [561].

sediment control measures which in turn should necessitate remedial measures being implemented.”

17. Contact has taken advice from Luke Gordon of Riley Consultants (one of the signatories to the earthworks joint statement). Contact and Mr Gordon accept that water clarity at the edge of the reasonable mixing zone will be measured relative to upstream water clarity. However, as agreed in the earthworks joint statement: ⁴

“...following a high rainfall event, sediment inputs into waterways may become spatially variable. High rainfall events can result in highly unpredictable sediment pulses from earthworks catchments, particularly if preceded by wet weather periods when sediment devices are already at or near capacity. In turn, this may result in higher variability in water clarity upstream and downstream of the discharge point, compared with during more ‘typical’/ frequent rainfall events that can be accommodated by the sediment controls.”

18. Mr Gordon remains of the opinion that, immediately following high intensity rainfall events, the correlation between water clarity at the edge of the mixing zone and upstream is not reliable. Therefore, the 48-hour exclusion agreed by the experts and proposed by Contact is appropriate, and necessary to avoid a situation where Contact is in breach of the conditions where it is not able to avoid that breach. Contact respectfully requests that the Panel reinstate that 48-hour exclusion in the final conditions.

EC37B: Compensation triggers for bird compensation monitoring

19. The table in EC37B sets out the 'compensation triggers' for bird mortality compensation monitoring (if any 'trigger' is met or exceeded, reporting and a compensation response is required).
20. The compensation trigger for fairy prion / tītī wainui proposed by Contact (on Wildlands' advice) was 8. The Panel's draft conditions change that trigger to 5. That change is not explained in the Draft Decision; it may be that the Panel assumed it was correcting a typographical error (as most other species in the table have a trigger of 5).
21. Contact has queried this with Mr Goldwater (Wildlands), who advises:

⁴ [Southland-Wind-Far.-Joint-Statement-of-Experts-Earthworks_Redacted.pdf](#) at [31].

"There is a good reason to keep the trigger for fairy prions at 8. Despite having a threat classification of At Risk - Relict, there may be as many as 4 million pairs of fairy prions in the New Zealand region, with the largest population on Stephens Island (1.83 million pairs estimated). Fairy prions are also the most common bird found dead on New Zealand beaches, at an average rate of 0.56 birds per km.

In contrast, the other At Risk – Relict species listed in EC37B are far less abundant: Black shag are believed to have a population of between 5,000-10,000 mature individuals while the little shag population is estimated to have 5,000-10,000 pairs (up to 20,000 individuals).

As such, it is sensible to maintain the trigger for fairy prions at 8 birds, noting that this species was only included as a precaution because a dead prion was found at Kaiwera Downs."

22. In other words, the trigger of 8 for fairy prion was set deliberately, relying on expert advice. Contact respectfully requests the Panel to reinstate the original trigger number.

Comments on the concession terms and conditions

23. Contact has three comments to make on the terms and conditions to the concessions. The first is in respect of the Area that the Right of Way Access and Airspace easement applies: Contact proposes that the words 'more or less' be added, to account for any possible minor discrepancy in calculating the size of that area (noting the area is shown on the figure in Schedule 4).
24. The other comments are addressed in turn below, and are as follows:
- (a) in relation to the term / duration of the concessions; and
 - (b) providing for the culvert to be constructed in accordance with the relevant resource consent conditions.

Concession term / duration

25. In its application, Contact sought a 60-year term for the concessions on the basis there are exceptional circumstances justifying a term of that length.⁵ The Panel has instead imposed a term of 30 years, recording that:⁶

⁵ [Part C](#) at section 3.3.

⁶ Draft decision at [941].

We agree with DOC that due to the prevalence of wind farms (and proposed wind farms) both across New Zealand and in Southland specifically, the proposed wind farm in this Application is not outside of the normal range of circumstances. Nor does the expected operational life of the proposed wind farm structures and the essential nature of both the proposed right of way and transmission line create an exceptional circumstance. Consequently, we find that the term of the concession should be 30 years.

26. Contact respectfully disagrees with the Panel's application of 'exceptional' and requests that the Panel sets the 60-year concession term requested by Contact.
27. In its response to comments, Contact set out its response to DOC's position on concession term, and the basis for a 60-year term.⁷ In summary:
 - (a) By reference to the case law on "*exceptional circumstances*", the test for the Panel is not whether the circumstances of the application are 'unique, unprecedented, or very rare'; but whether the circumstances that are 'not regularly, or routinely, or normally encountered' or, put another way, are 'out of the ordinary course, or unusual, or special or uncommon'.
 - (b) The easements sought have very limited scope and effects, which can be appropriately managed.
 - (c) There will be no change to existing public access and use rights as Contact is only seeking easements.
 - (d) A 60-year term is consistent with the purpose of the FTAA, with a 30-year term potentially hindering the delivery of the Project's national and regional benefits.
28. Contact appends four figures to this memorandum (**Appendix 1**), as follows:
 - (a) Figure 1 shows the location of the Mimiha Stream North Branch concession land for Culvert NSC1. Figure 1 highlights that the proposed works involve construction of the culvert, and associated works to form a new track to avoid having to drive through the stream via the existing ford (clearly visible in Figure 1).

⁷ [Applicant's response to comments](#) at [13.14]–[13.19].

- (b) Figures 2 and 3 are photos of the Mimihau Stream North Branch in the vicinity of the concession area. The vegetation affected by the works has been mapped by Wildlands as being of negligible value, dominated by exotic grasses and gorse.
- (c) Figure 4 shows the location of the concession land for the overhead high voltage transmission line. Of note, there will be no physical ground-level works or interference within the DOC land for the transmission line. Figure 4 also illustrates that much of the marginal strip subject to the concession does not align with the physical stream location.

29. Contact wishes to emphasise that:

- (a) The Project **is** out of the ordinary in terms of the scale of renewable electricity it will generate. As the Panel recorded in its draft decision:⁸

"This Project is said to have the capacity to be the largest producer of wind generated electricity in New Zealand, an assertion that appears unchallenged. At that scale it seems all but axiomatic that it will have regional or national significance."

- (b) The concessions sought are very limited in scale, but are fundamental to enabling the operation of the Project (and the aforementioned production of wind generated electricity). Contact submits that is an out-of-the-ordinary circumstance.
- (c) The concessions are very well aligned with the Conservation Act 1987, and with DOC's functions. In particular, beyond the careful effects management measures Contact will be implementing, replacing the current ford crossing with a culvert will be a net positive for stream ecology, as well as better and more safely enable any recreational access.
- (d) Certainty of land tenure is an important factor in infrastructure investment decisions. The Project could require an investment of more than \$1 billion, with that investment of course unlocking the significant regional and national benefits that the Panel has found the Project will deliver.

⁸ At [859].

30. A review of other permissions granted highlights that DOC grants easement concession for terms longer than 30-year terms on a regular basis, including in related to power reticulation.⁹
31. Overall, Contact considers that granting the easements for a 60-year term meets the "*exceptional circumstances*" term in the Conservation Act, is directly aligned with the enabling purpose of the FTAA (and the importance of delivering the very significant decarbonisation and other benefits that the Project will bring), and is consistent with the purposes of the Conservation Act.

Resource consent conditions relating to culvert construction

32. As explained in its response to comments from DOC, Contact now intends to provide fish passage at culvert NSC1 (the culvert subject to the concession application). Resource consent conditions CM.14 and CM.15, as updated as part of the response to comments, make this position clear (NSC1 is no longer listed as a culvert where fish passage will not be provided).
33. The concession application recorded that fish passage would be excluded at culvert NSC1; the application document was not updated as part of the response to comments.
34. To avoid any uncertainty, Contact proposes that a new concession condition be included to require that the culvert (NSC1) be constructed in accordance with consent condition CM.15. That proposed new condition (Condition 14 of Schedule 3) is tracked in the proposed updated version of the concession terms and conditions, included as **Appendix 3**.

Comments on draft wildlife approval conditions

35. Contact has two minor comments on the draft wildlife approval conditions.
36. The first is to propose that Schedule 1 be updated to reflect the Panel's decision that the management plans are to be certified at a later date.
37. The second relates to Schedule 4, which lists the species to which the approval applies and their threat status. The threat status of green skink has recently been downgraded, from Threatened – Nationally Critical to Threatened – Nationally Vulnerable.¹⁰ Contact proposes that the reference be updated.

⁹ See for example DOC's list of permissions granted: [Active concessions](#).

¹⁰ [New Zealand Threat Classification Series 50, Conservation status of reptiles in Aotearoa New Zealand, 2025](#).

38. A tracked version of the wildlife approvals conditions is provided as **Appendix 4** to this memorandum.

Minor corrections to the decision

39. In addition to its comments on the draft conditions, Contact also suggests that the Panel make a small number of minor corrections to its draft decision document, as set out below.

Updated reference to section 81(3) of the FTAA

40. Paragraph 45 of the draft decision is as follows:

45 Section 81(3) refers to sch 5 of the FTAA, which provides specific criteria to be considered in relation to the different types of applications that may be dealt with under the Act. This Application engages with:

- (a) for an approval described in section 42(4)(a) (resource consent), clauses 17 to 22 of Schedule 5:
- (b) for an approval described in section 42(4)(b) (change or cancellation of resource consent condition), in relation to a condition of a coastal permit specified under section 186H(3) of the Fisheries Act 1996, clauses 20 to 22 of Schedule 5:
- (c) for any other approval described in section 42(4)(b) (change or cancellation of resource consent condition), clause 23 of Schedule 5:
- ...
- (f) for an approval described in section 42(4)(e) (concession), clauses 7 to 9 of Schedule 6:
- ...
- (i) for an approval described in section 42(4)(h) (wildlife approval), clauses 5 and 6 of Schedule 7:
- (j) for an approval described in section 42(4)(i) (archaeological authority), clauses 4 and 5 of Schedule 8:
- (k) for an approval described in section 42(4)(j) (complex freshwater fisheries activity approval), clauses 5 and 6 of Schedule 9:
- ...

41. The Panel will be aware that the Application does not include any application to change or cancel resource consent conditions. As such, Contact suggests that section 81(3)(b) and (c) be removed from the Panel's quoted FTAA extract in paragraph 45.

Correction to paragraph 792

42. Paragraph 792 of the draft decision is as follows:

E18 Decommissioning

792 In section 7.3 of Part A of the Application Contact advised that the wind turbines will be operational for a period of up to 30 years and it is currently intended that they will be 'repowered' (replacement of the wind turbines with new wind turbines) for a second 30-year period. Consequently, while Contact has sought approval durations of 30 years, it envisaged that the Project will be operational for at least 60 years.

43. There are a range of approval durations sought by Contact (with the land use consents being of unlimited duration, and the non-construction resource consents being of 35 years duration). Contact therefore suggests

that the reference to Contact's seeking approval durations of 30 years be removed from paragraph 792.

Dated this 23rd day of March 2026

A handwritten signature in blue ink, appearing to read 'Thad Ryan', with a long horizontal flourish extending to the right.

Dave Randal / Thad Ryan
Counsel for Contact Energy Limited

Appendix 1: Figures relevant to the concessions for the Project

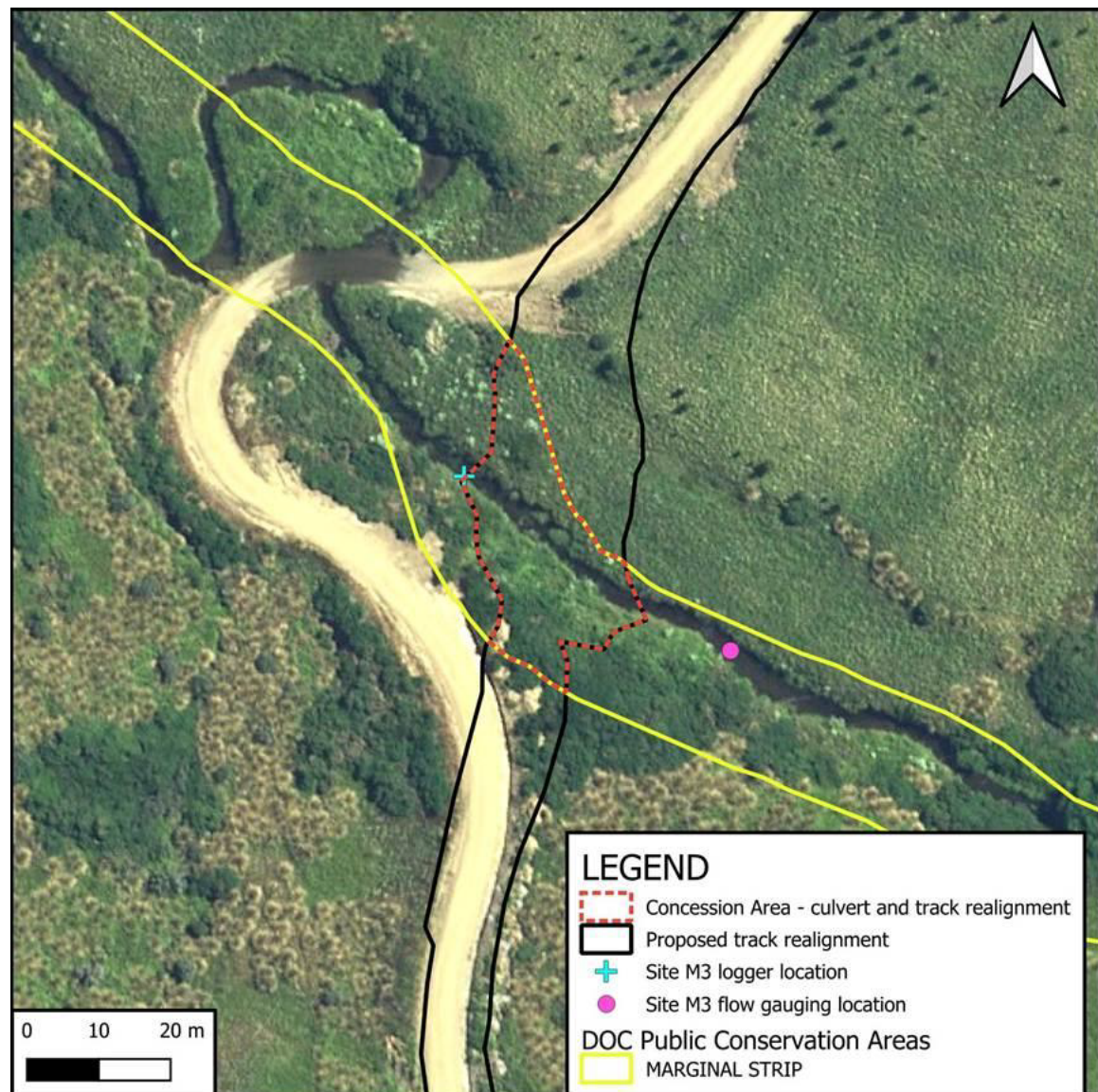


Figure 1 Marginal Strip, track alignment, concession area and stream monitoring logger and gauging locations



Figure 2 Mimihau Stream North Branch from logger location (looking upstream)



Figure 3 Mimihau Stream North Branch from gauging location (looking downstream)

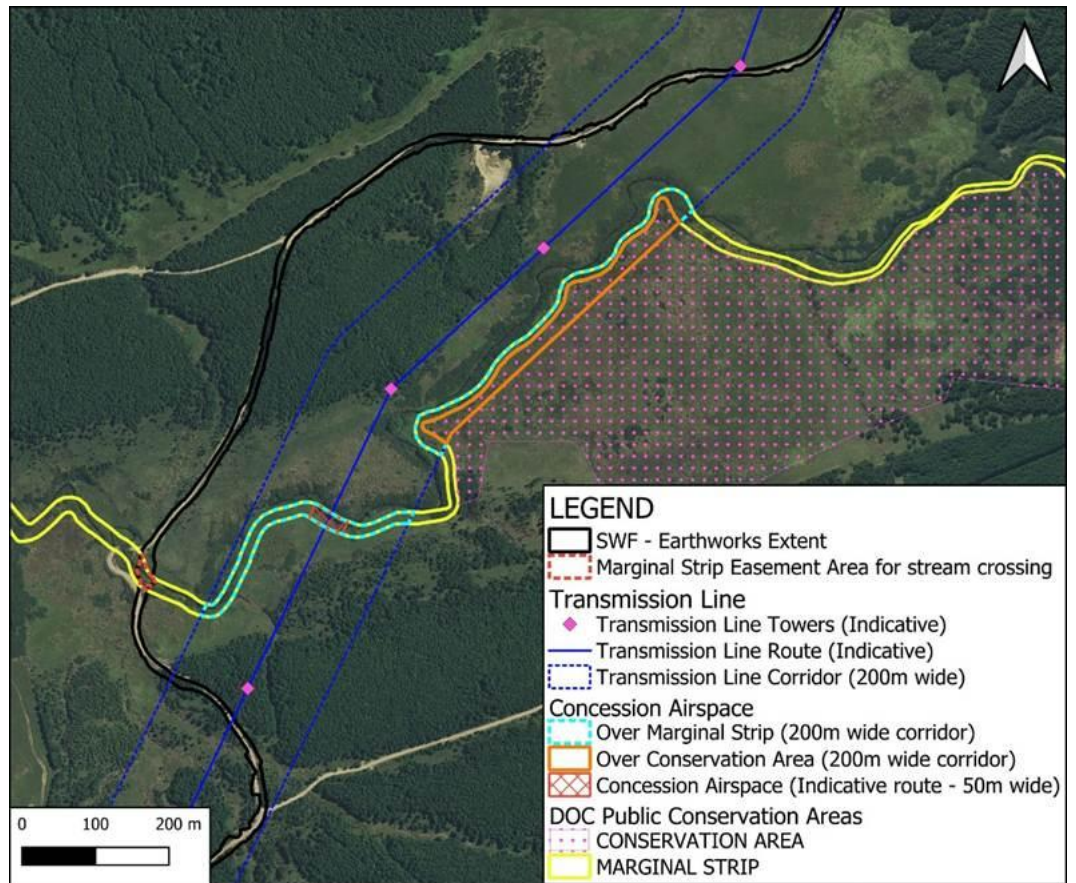


Figure 4 Concession Airspace Easement Areas