

BEFORE THE PANEL

IN THE MATTER of the Fast-track Approvals Act 2024

AND

IN THE MATTER of an application for resource consent approvals
under the FTAA for the Southland Wind Farm

COMMENTS OF THE ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED

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Environmental Defence Society Inc
PO Box 91736
Victoria Street West
Auckland 1142
Solicitor acting: Mr J Commissaris
Email: [REDACTED]

Counsel Acting:
Mr R Enright
Magdalene Chambers
Telephone (03) 276 5787
Email: [REDACTED]

INTRODUCTION

1. These are the Environmental Defence Society's (EDS) comments on Contact Energy's substantive application under the Fast-track Approvals Act 2024 (FTAA) for the Southland Wind Farm (SWF). EDS's interest in the application relates to approvals required under the Resource Management Act 1991 (RMA), including matters of national importance relevant to indigenous biodiversity and intrinsic values.
2. EDS supports renewable electricity generation, in the right location. The Jedburgh Plateau is not the right location. It comprises a contiguous area of significant indigenous vegetation interspersed with extensive wetlands of Very High ecological value. The project will result in direct losses to those wetlands and fragmentation effects on the ecosystem.
3. The FTAA framework provides a discretion to decline consent, or to require a reduction of development footprint. EDS seeks that wind turbines and associated infrastructure be removed from the Plateau. This will enable the remainder of the project to proceed, on the basis that it otherwise meets the proportionality and other statutory requirements to demonstrate national or regional net benefits.

DECISION-MAKING FRAMEWORK FOR RESOURCE CONSENT APPROVALS

4. Under the FTAA, a panel must decide whether to grant (with or without conditions) or decline each approval sought in a substantive application.¹ Section 81(2) of the FTAA steps through that decision-making process. These comments focus on the statutory requirements of s 81(2)(b), (d) and (f) of the FTAA, read in light of the wider statutory purpose, namely:
 - a. When making a decision, a panel must apply the applicable clauses set out in s 81(3) of the FTAA. Of relevance here is cl 17 and cl 18 of Sch 5 of the FTAA (relating to approvals for a resource consent that would otherwise be applied for under the RMA);²
 - b. When imposing conditions of consent, they cannot be more onerous than necessary to address the reason for which they are set in accordance with the provision of the FTAA that confers the discretion;³ and
 - c. An approval may be declined under s 85 of the FTAA.⁴

Clause 17 of Schedule 5 of the FTAA

5. Under cl 17 of Sch 5, when considering a resource consent approval, a panel must "take into account", relevantly:

¹ FTAA, s 81(1)

² FTAA, ss 81(2)(b) and 81(3)(a)

³ FTAA, ss 81(2)(d) and 83

⁴ FTAA, ss 81(2)(f) and 85

- a. The purpose of the FTAA to “facilitate the delivery of infrastructure and development projects with significant regional or national benefits” (s 3 of the FTAA);⁵
 - b. The following decision-making provisions of the RMA:⁶
 - i. Sections 5, 6, and 7 (the purpose and principles of the RMA);⁷
 - ii. Part 3 relating to duties and restrictions on land, including the s 17 RMA duty to avoid, remedy or mitigate adverse effects; and
 - iii. Part 6 (resource consents), including s 104 (but not s 104D) of the RMA which requires the panel to have regard to:
 - Any actual and potential effects on the environment
 - Conditions that offset or compensation for any adverse effects on the environment
 - Relevant provisions of national environmental standards, national policy statements, regional policy statements and plans.
6. The direction to “take into account” means that each matter must be given genuine consideration.⁸ When taking the above matters into account, a panel must give the “greatest weight” to the purpose of the FTAA.⁹
7. Other FTAA panels¹⁰ have taken guidance on what this means from the Court of Appeal decision of *Enterprise Miramar Peninsula Inc v Wellington City Council*,¹¹ which considered similar directive weighting in s 34 of the Housing Accords and Special Housing Areas Act 2013:¹²
- a. While the greatest weight is to be placed on the purpose of the FTAA, panels must be careful not to rely solely on that purpose at the expense of due consideration of the other matters listed in cl 17 of Sch 5;

⁵ FTAA, Sch 5, cl 17(1)(a)

⁶ FTAA, Sch 5, cl 17(1)(b)

⁷ FTAA, Sch 5, cl 17(2)(a) excludes s 8 of the RMA from consideration

⁸ See Waihi North FTAA decision at Part G para [3] and Kings Quarry Expansion – Stages 2 and 3 FTAA decision at [112] with reference to *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC. EDS reserves its position on the correctness of aspects of the Waihi North FTAA decision, including as noted below.

⁹ FTAA, Sch 5, cl 17(1)

¹⁰ See Bledisloe North Wharf and Fergusson North Berth Extension FTAA decision [121], Dury Quarry Expansion – Sutton Block FTAA decision at [114], Mildale – Stages 4C and 10 to 13 FTAA decision at [60]

¹¹ *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541

¹² The difference between the Housing Accords and Special Housing Areas Act 2013 (**HASHAA**) formulation and that of the FTAA is that the HASHAA created a hierarchy of criteria, with the greatest weight to be given to criterion (a) and the least weight to be given to criterion (e), whereas in the FTAA the requirement is simply for the decision maker to give the greatest weight to criterion (a) (the purpose of the FTAA)

- b. Clause 17 requires a panel to consider the matters listed in cl 17(1) on an individual basis, prior to standing back and conducting an overall weighting in accordance with the specified direction; and
 - c. The purpose of the FTAA is not logically relevant to the assessments otherwise required under the RMA, including an assessment of environmental effects. None of those matters become irrelevant, insignificant, or less than minor simply because of the purpose of the FTAA. What changes is the weight to be placed on them - they may be outweighed by the purpose of the FTAA, or they may not.¹³
8. The purpose in s 3 FTAA is to ‘facilitate’ projects of national and regional significance. This does not mean ‘grant’ projects. Facilitation is procedurally focused on an efficient one-stop process for all relevant approvals applied for; it does not mean ‘grant’ or ‘approve’ projects. There is no presumption in favour of the approval of projects under the FTAA.
 9. Other matters, individually or collectively, can take precedence over the purpose of the FTAA in the weighting exercise. Alternatively, the purpose of the FTAA is consistent with such an approach. There is no inherent conflict, particularly given the requirement to assess net regional or national benefit.
 10. Clauses 17(3) and (4), read in conjunction with s 85(4) of the FTAA, are instructive when navigating the intersection between the purpose of the FTAA and directive avoidance policies in planning instruments:

“Clause 17(3): Subclause (4) applies to any provision of the Resource Management Act 1991 (including, for example, section 87A(6)) or any other Act referred to in subclause (1)(c) that would require a decision maker to decline an application for a resource consent.”

“Clause 17(4): For the purposes of subclause (1), the Panel must take into account that the provision referred to in subclause (3) would normally require an application to be declined, but must not treat the provision as requiring the Panel to decline the application the Panel is considering.”

“Section 85(4): To avoid doubt, a panel may not form the view that an adverse impact meets the threshold in subsection (3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2).”

11. Together, these provisions mean that directive avoidance policies are to be taken into account by:¹⁴

¹³ Maitahi Village FTAA decision at [70], Tekapo Power Scheme – Application for Replacement Resource Consents FTAA decision at [48] and Kings Quarry Expansion – Stages 2 and 3 FTAA decision at [111]

¹⁴ Waihi North FTAA decision at Part G, para [5]

- a. Recognising that they would usually require applications for consent to be declined based on the bottom line approach in *King Salmon*,¹⁵
 - b. Do not require the panel to decline an application; and
 - c. May be a sufficient basis to decline, when relied on in combination with relevant evidence of adverse impacts.
12. Accordingly, the Panel retains a discretion to decline an application if it breaches a directive avoidance policy, but only if the breach is accompanied by another adverse impact, such as adverse effects on the environment.
13. In that regard, EDS disagrees with the Waihi North FTAA decision that “there are no “bottom lines” of the kind applied in *King Salmon*”.¹⁶ Policies must still be given their normal interpretation (having regard to purpose, context and text), and a proposal may well breach a policy bottom line (such as, for example, the avoidance directive in Policy 11 of the New Zealand Coastal Policy Statement). However, their effect is now discretionary not mandatory.
14. Finally, when giving the greatest weight to the purpose of the FTAA, a panel must consider the “extent” of the project’s regional or national benefits.¹⁷ That requires a “forensic exercise”, whereby a project’s benefits are identified and then assessed for significance.¹⁸ It requires an assessment of the net benefits (by cost-benefit analysis) which are then assessed against the relevant adverse impacts (where those impacts cannot be the subject of cost-benefit analysis, such as intrinsic values).
15. In weighing up whether adverse impacts are sufficiently significant to be out of proportion to a project’s benefits, it is particularly important that the benefits analysis is robust and independently verified. The panel should assure itself that all costs (including the potential irreplaceability of any ecological values) are accounted for and appropriately evaluated.

Section 85 of the FTAA

16. Panels have a discretionary ability to decline an approval under s 85(3) of the FTAA:

A panel may decline an approval if, in complying with section 81(2), the panel forms the view that—

- (a) there are 1 or more adverse impacts in relation to the approval sought; and*
- (b) those adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits that the panel has considered under section 81(4), even after taking into account—*

¹⁵ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC 38

¹⁶ Waihi North FTAA decision at Part M, para [12(c)]

¹⁷ FTAA, s 81(4)

¹⁸ Maitahi FTAA decision at [84]

- (i) *any conditions that the panel may set in relation to those adverse impacts; and*
- (ii) *any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.*

17. A panel's discretion to decline is not a standalone consideration of adverse impacts proportionate to benefits. Rather, import of the words "in complying with section 81(2)" means that the discretion must be exercised in the context of a panel's s 81(2) FTAA assessment.

18. This is confirmed by:

- a. Section 85(5) of the FTAA, which states that "adverse impact" means any matter considered by a panel in complying with s 81(2) that weighs against granting the approval. Thus, adverse impacts include the matters listed in cl 17 of Sch 5 (via s 81(2)(b) of the FTAA); and
- b. Section 85(4) of the FTAA, which as stated above, means that a panel may not form the view that an adverse impact meets the threshold in s 85(3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with s 81(2).

Overall decision-making

19. In practice, this means that when making a decision a panel must:¹⁹

- a. Take into account all the matters listed in cl 17 and cl 18 of Sch 5 of the FTAA;
- b. Give the greatest weight to the purpose of the FTAA when taking the matters into account;
- c. When taking into account the purpose of the FTAA, consider the extent of the project's benefits;
- d. Step back and consider all the adverse impacts raised by the matters listed in s 81(2), which relevantly includes the matters listed in cl 17 and cl 18 of Sch 5 listed above;
- e. Form a view on whether those global adverse impacts are sufficiently significant to be out of proportion to the extent of the project's benefits (after taking into account any conditions). Noting that inconsistency with a provision of a specified Act or other document is not enough on its own to qualify; but may be a sufficient

¹⁹ This list only includes the matters relevant to these submissions i.e. s 81(2)(b), (d) and (f) of the FTAA. Other parts of s 81 are also relevant to a panel's decision i.e. effect of Treaty settlements and other obligations as per s 81(2)(c) and s 82 of the FTAA

basis to decline, when taken in combination with evidence of other adverse impacts.

ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

20. The fast-track legal framework means there is scope for a greater than usual focus on the actual and potential scale of effects that are in issue.²⁰
21. Adverse impact on the Jedburgh Plateau ecosystem is a primary issue in contention for the panel,²¹ as it was for the expert consenting panel hearing the previous SWF application under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**C19 FT Act**).
22. The C19 FT Act consenting panel declined consent to the SWF largely because of ecological effects. It is acknowledged that this decision was made under a different legislative framework, and is not binding on the Panel. However, to the extent that the Panel made relevant factual findings on the same or similar issues (such as the biodiversity values of the receiving environment), the Panel may treat the decision as persuasive.²² The ecological environment has not changed, and the application has had only minor amendments. As the applicant says: “[f]undamentally, however, Contact is still proposing to construct and operate a wind farm of up to 55 turbines in the same receiving environment as previously.”²³
23. The Jedburgh Plateau is approximately 530 ha.²⁴ It is a contiguous area of ecologically significant indigenous vegetation.²⁵
24. It contains 127.3 ha of ecologically significant²⁶ wetlands, which include 99.2ha of fen wetlands and 28.1 ha of bog wetlands²⁷ of Very High value.²⁸ The Plateau is home to several notable invertebrate species,²⁹ and is a local habitat for threatened bird species such as kārearea/eastern falcon, mātātā/South Island fernbird and pīhoihoi/NZ pipit.³⁰
25. The SWF will result in the direct loss of 2.02 ha of wetlands from the Jedburgh Plateau, comprising 1.08 ha of fen wetland and 0.94 ha of bog wetland. This is a direct loss due to earthworks and fill required for project infrastructure, including wind turbine platform

²⁰ Waihi North FTAA decision at Part M, para [12(d)]

²¹ Noting that adverse impact on Outstanding Natural Landscapes and Features is also of concern, as addressed by other parties

²² Relevantly, this is an issue being considered by the Expert Panel on the Trans-Tasman Resources application under the FTAA, and the Panel may be able to obtain guidance from that panel process

²³ A03. Part A – Appendix to Part A – legal analysis of the Fast-track Approvals Act 2024, at [1.33], available [here](#)

²⁴ Wildlands Memorandum, 10 November 2025, p 1, available [here](#)

²⁵ Statement of Evidence of M Harding, dated 17 December 2025, at para 32

²⁶ All wetlands on the SWF site meet the significance criteria of the Southland Regional Policy Statement because of their representativeness. Fen and bog wetlands meet the significance test for additional reasons of rarity/distinctiveness and ecological context. Wildlands Memorandum, 10 November 2025, pp 7 and 8, available [here](#)

²⁷ Wildlands Memorandum, 10 November 2025, p 2, available [here](#)

²⁸ Wildlands Memorandum, 10 November 2025, p 7, available [here](#); H05a. Part H – Technical assessment 5 – Terrestrial and Wetland Ecology, Statement of Evidence of N Goldwater and K Lloyd, dated 18 August 2025 at para 127, available [here](#)

²⁹ H05a. Part H – Technical assessment 5 – Terrestrial and Wetland Ecology, Statement of Evidence of N Goldwater and K Lloyd, dated 18 August 2025 at para 123, available [here](#)

³⁰ Ibid at para 122

areas of up to 195 m by 78 m,³¹ electrical cabling, and roading with carriageways of 8 m wide (with localised widening at corners).³²

26. These figures are indicative only, and up to 2.5 ha of wetlands within the Jedburgh Plateau are allowed to be destroyed under the draft conditions.
27. Despite the applicant's best efforts to claim otherwise,³³ these lost wetlands are irreplaceable. They are acknowledged to be of high conservation value and cannot be replicated. As the Applicant accepts, compensation, not offsetting, is required to mitigate the wetland loss because it is "not possible (or appropriate) to recreate the types of wetlands being impacted".³⁴ Replacement of 'like for like' is not achievable.
28. The fact that fen and bog wetlands exist elsewhere in Southland,³⁵ and that 98% of them are retained onsite,³⁶ does not make them less unique, or their loss less important. Percentage loss does not equate to lost ecosystem value. Wetlands are, inherently, uncommon. It is widely reported that Aotearoa has lost 90% of its wetlands, with only 10% of their original extent remaining.³⁷ Protecting what is left is a matter of national significance under the RMA.³⁸
29. In addition to direct wetland losses, fragmentation of the entire significant natural area of the Jedburgh Plateau is of great concern. 14 wind turbines and extensive roading is proposed throughout this ecosystem mosaic.
30. The actual and potential impact of SWF infrastructure on significant ecology of the Jedburgh Plateau is difficult to determine, but can consist of:³⁹
 - a. Loss of core habitat, including changes to interior conditions such as moisture, humidity, and shade.
 - b. Loss of connectivity between habitats, including the creation of barriers to movement/dispersal of ground-based fauna (invertebrates and lizards).
 - c. Edge effects such as altered microclimate as a result of increase light and wind.
 - d. Increased vulnerability to invasion by pest plant species.

³¹ A02. Part A – Overarching Substantive Application Document, p 29, available [here](#)

³² Ibid at p 39

³³ A03. Part A – Appendix to Part A – legal analysis of the Fast-track Approvals Act 2024, at [3.10], available [here](#); Wildlands Memorandum, 10 November 2025, p 9, available [here](#); B01.Part B – Resource Consent Approvals Application, p 73, available [here](#)

³⁴ Wildlands Memorandum, 10 November 2025, p 9, available [here](#)

³⁵ Wildlands Memorandum, 10 November 2025, pp 9 and 10, available [here](#)

³⁶ Wildlands Memorandum, 10 November 2025, p 8, available [here](#)

³⁷ H05a. Part H – Technical assessment 5 – Terrestrial and Wetland Ecology, Statement of Evidence of N Goldwater and K Lloyd, dated 18 August 2025 at para 142, available [here](#)

³⁸ RMA, s 6(c)

³⁹ H05a. Part H – Technical assessment 5 – Terrestrial and Wetland Ecology, Statement of Evidence of N Goldwater and K Lloyd, dated 18 August 2025 at para 168, available [here](#); Statement of Evidence of M Harding, dated 17 December 2025, at para 38

- e. Higher disturbance rates, i.e. edges are more exposed to grazing, trampling and other disturbances.
- f. Altered hydrology such as through diversion and discharge of stormwater from impermeable surfaces (roads and turbine platforms).

31. When assessing actual and potential fragmentation effects on the ecosystem of the Jedburgh Plateau the fundamental questions for the panel are:

- a. Is the applicant's 'reductionist'⁴⁰ approach to mapping wetlands adequate for assessing fragmentation effects on the contiguous SNA?
 - i. The ecologically appropriate approach is to assess the Jedburgh Plateau as a complex and interconnected mosaic of indigenous vegetation that is ecologically significant as one contiguous area of vegetation/habitat.⁴¹
 - ii. Cutting it up into vegetation types minimises adverse fragmentation effects on the ecosystem as a whole.
- b. Is the Jedburgh Plateau already a fragmented landscape such that new fragmentation is unlikely to materially worsen existing conditions?
 - i. The applicant says that fragmentation effects are expected to be minor⁴² and that new fragmentation is unlikely to significantly worsen existing conditions⁴³ because the Jedburgh Plateau is already a fragmented landscape.⁴⁴
 - ii. EDS disagrees. Ungulate browsing is not comparable to fragmentation effects associated with extensive turbine structures and roading.⁴⁵ As Mr Harding says "[t]o describe those effects as fragmentation is inconsistent with the common use and ecological understanding of the concept."⁴⁶

32. While EDS acknowledges the applicant's additional modelling on the impact of fragmentation on the Plateau's hydrological system, and the applicant's proposed mitigation measures to address fragmentation effects, there remains significant uncertainty about the extent of possible fragmentation effects. As Mr Harding says "[t]he proposed compensation appears generous but uncertainty about the effects of the activity (notably fragmentation of the ecologically significant Jedburgh Plateau ecosystem) means it is difficult to determine whether that compensation is adequate."⁴⁷

⁴⁰ Statement of Evidence of M Harding, dated 17 December 2025, at para 32

⁴¹ Statement of Evidence of M Harding, dated 17 December 2025, at para 34

⁴² H05a. Part H – Technical assessment 5 – Terrestrial and Wetland Ecology, Statement of Evidence of N Goldwater and K Lloyd, dated 18 August 2025 at para 169, available [here](#)

⁴³ Ibid at para 170

⁴⁴ H07. Part H – Technical assessment 7 – Review of Terrestrial and Wetland Ecology Offsetting and Compensation, Statement of Evidence of R MacGibbon, dated 18 August 2025, para 102(a), available [here](#)

⁴⁵ Statement of Evidence of M Harding, dated 17 December 2025, at paras 42 - 43

⁴⁶ Statement of Evidence of M Harding, dated 17 December 2025, at para 42

⁴⁷ Statement of Evidence of M Harding, dated 17 December 2025, at para 55

33. Mr Harding’s recommendation (based on his ecological assessment) is to avoid infrastructure on the Jedburgh Plateau. If the Panel adopts that approach, then EDS submits that it would be open to the Panel to require (as part of the consent conditions framework) that elements of the compensatory package for the Plateau (such as pest management) are still necessary (and appropriate), in light of the wider effects of the project.
34. Future effects, and any potential effect of low probability which has a high potential impact, remain relevant under the FTAA, which adopts the definition of “effects” from the RMA.⁴⁸
35. The ability to undertake adaptive management if fragmentation effects arise after the turbines are built is very limited. EDS submits that the panel must have sufficient certainty that adverse impacts to biodiversity values of national importance will be avoided, or can be adequately compensated, prior to granting approval, and when imposing consent conditions. This is reflected in the national planning framework.

PLANNING FRAMEWORK

36. Policy 6 of the National Policy Statement for Freshwater Management 2020 requires “no further loss of extent of natural inland wetlands” and that their “values are protected, and their restoration is promoted.”⁴⁹ Policy 33A of the proposed Southland Water and Land Plan gives effect to Policy 6. As the application states “... the policies drive the protection of natural inland wetlands, including protecting their values and functions and avoiding the loss of area / extent ...”,⁵⁰ subject to exceptions that are specified in detail.
37. Those exceptions relate to ‘specified infrastructure’, which the SWF is, however it does not meet all of the criteria to qualify. The expert panel considering the SWF under the C19 FT Act details these breaches as, in summary:⁵¹
 - a. The SWF does not meet the high bar set out in the definition of ‘functional need’ that it “can only” locate at the site.
 - b. Compensation is not appropriate for such high value, vulnerable and irreplaceable wetlands, which are shown to be present across the Jedburgh Plateau, regardless of whether the applicant’s mapping represents the “true” extent and form of the wetland complex.
38. The policy direction is clearly to avoid further wetland loss. Allowing for losses is a breach of this environmental ‘bottom line’. As set out above, the SWF application cannot be declined solely for this reason. But the panel must carefully assess this impact (as a directive environmental bottom line), in combination with other impacts, namely

⁴⁸ FTAA, s 4(2) and RMA, s 3

⁴⁹ National Policy Statement for Freshwater Management 2020, Pol 6

⁵⁰ B01.Part B – Resource Consent Approvals Application, p 221, available [here](#)

⁵¹ Expert Consenting Panel decision under C19 FT Act on SWF, at [789] – [808], available [here](#)

adverse effects (including direct loss of wetlands and fragmentation of the Jedburgh Plateau SNA) to determine if they are out of proportion to the project's benefits.

CONDITIONS

39. As set out above, there are collective adverse impacts of the SWF on the Jedburgh Plateau SNA and its wetland networks. These impacts can be largely avoided by removal of wind farm infrastructure from the Plateau.⁵²

40. The FTAA provides opportunity for the applicant to voluntarily offer a reduction in its project's development footprint (or other conditions to militate against a consent decline, whether in whole or part):

- a. Section 69 of the FTAA, which states that if a panel proposes to decline an approval, the Environmental Protection Agency must invite the applicant to "propose conditions on, or modifications to, any of the approvals sought";
- b. Section 68A of the Fast-track Approvals Amendment Act 2025, which provides an applicant with an opportunity to reduce the scope of its application by modifying an approval sought at any time before a decision is made;⁵³ and
- c. Section 85(3)(b)(ii) of the FTAA, which requires the proportionality assessment to be undertaken after taking into account "any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts".

41. A reduction can also be imposed via conditions of consent, provided the conditions:

- a. Are no more onerous than necessary to address the reason for which they are set (which is largely equivalent to the RMA requirement for conditions to be 'appropriate' under the thresholds in ss 108 and 108AA);⁵⁴ and
- b. Apply s 108 (conditions of resource consents), s 108AA (requirements for conditions of resource consents) and s 108A (bonds) of the RMA.

42. It is important to emphasise that the ability to reduce a project's development footprint⁵⁵ is not subject to the proportionality test in s 85 of the FTAA. Rather, the imposition of conditions must be assessed against the matters listed above – being no more onerous than necessary, and in accordance with the well settled legal principles for conditions of consent i.e., that they are appropriate, certain, enforceable, directly connected to specific issues (including adverse effects on the environment) and reasonable.⁵⁶

⁵² Statement of Evidence of M Harding, dated 17 December 2025, at para 66

⁵³ Fast-track Approvals Amendment Act 2025, s 68A

⁵⁴ FTAA, ss 81(2)(d) and 83

⁵⁵ This can be achieved through consent conditions, such as requiring an amended plan that avoids the Jedburgh Plateau

⁵⁶ FTAA, Sch 5, cl 18

43. There is precedence for reducing wind farm development footprints in response to adverse environmental effects. For example:
- a. In *Re Meridian Energy Ltd*⁵⁷ the Environment Court removed two turbines to reduce significant adverse visual amenity effects.
 - b. In *Motorimu Wind Farm Ltd v Palmerston North City Council*⁵⁸ the Environment Court removed several turbines to address effect on neighbours, amenity and landscape values.
44. EDS's overarching concern with the SWF is that the extent to which the project's infrastructure will adversely affect the Jedburgh Plateau's SNA, including its extensive wetland network, and will result in adverse impacts to biodiversity values of national importance, is substantially uncertain. EDS's primary relief is therefore that the 14 wind turbines should be removed from the Plateau.
45. If, contrary to that primary relief, the panel is minded to grant the application, Mr Harding sets out suggested amendments to the conditions of consent. They broadly relate to monitoring, increased weed and pest control, fragmentation effects, and legal protection for the Jedburgh Plateau in perpetuity.⁵⁹ EDS supports his recommendations and requests that they be adopted by the panel if it is inclined to grant consent.
46. Further, if monitoring shows up significant and ongoing degradation of the SNA, the applicant needs to retreat from the Plateau. EDS therefore seeks:
- a. An adaptive management condition (including relevant triggers and associated monitoring) requiring that all wind turbine and roading infrastructure be removed from the Jedburgh Plateau if monitoring necessitates that, and that the area be remediated; and
 - b. A bond to address the remediation costs in the event that the project does not proceed, in whole or part, or there is a requirement to remove infrastructure. This is required to ensure that Environment Southland (or the equivalent consent authority) has the ability to intervene to remediate the site.⁶⁰

CONCLUSION

47. The Jedburgh Plateau is expansive and comprises a contiguous area of significant indigenous vegetation interspersed with extensive wetlands of Very High ecological value. The SWF will result in the direct loss of approximately 2% of that wetland network; with additional uncertain, but potentially significant, fragmentation effects on the wider ecosystem, contrary to directive planning provisions.

⁵⁷ *Re Meridian Energy Ltd* [2013] NZEnvC 59

⁵⁸ *Motorimu Wind Farm Ltd v Palmerston North City Council* [2008] ELHNZ 424

⁵⁹ Statement of Evidence of M Harding, dated 17 December 2025, at para 58 - 63

⁶⁰ In addition, a bond should be adopted to cover decommissioning of the project at its end of life

48. The FTAA decision-making framework is different to the RMA; the non-complying 'gateways' do not apply, and the ultimate test (for decline of approval) is a proportionality one. However, the framework still provides opportunity for the panel to decline projects on a discretionary basis. The panel's discretion extends to the ability to reduce the development footprint of a project in response to adverse impacts. The test for doing so is not the proportionality one in s 85 of the FTAA, but rather the requirements in s 83 of the FTAA and ss 108 and 108AA of the RMA with respect to conditions of consent.
49. EDS submits that the panel should engage its own independent experts to peer review the applicant's benefits assessment, and to review the ecological mapping of the Jedburgh Plateau to better understand actual and potential effects on ecology.
50. The panel must carefully examine those effects. EDS's primary position, supported by evidence, is that wind farm infrastructure should avoid the Jedburgh Plateau. This will enable approval to be granted to the balance of the project (subject to appropriate consent conditions). However, if the panel is inclined to approve the application in its entirety, then EDS has identified recommended changes to consent conditions as set out above.
51. Deployment of renewable electricity generation needs to occur at scale and pace to transition the economy to net zero by 2050. That ambition should not come at the expense of significant indigenous biodiversity.
52. EDS seeks an opportunity for expert caucusing, and for a hearing to allow testing of the evidence and legal issues.