

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENVC /09

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of an appeal under section 120 of
the Act

BETWEEN **MAINPOWER NEW ZEALAND
LIMITED**

Appellant

AND **HURUNUI DISTRICT COUNCIL**

Respondent

NOTICE OF APPEAL

To: The Registrar
 Environment Court
 Christchurch

1. MainPower New Zealand Limited ("MainPower") appeals a decision of the Hurunui District Council on resource consent application RC 070250, being an application to establish and operate a windfarm on the ridge at Mt Cass in the Hurunui District.
2. MainPower is the applicant for the consent and received written notice of the decision on 6 April 2009.
3. The decision was made by Commissioners appointed pursuant to section 34A of the Resource Management Act 1991 ("the Act") to hear and determine the applications on behalf of the Hurunui District Council.

Background

4. MainPower has sought consent for three different turbine envelopes, these being:
 - a. R33 Envelope.

This envelope consists of 83 two-bladed turbines with a maximum tower height to the top or rotor arc of 47m.
 - b. R60 Envelope.

This envelope consists of 34 or 42 three-bladed turbines (depending on the turbine supplier used) with a maximum tower height of 60m and a maximum height to the top or rotor arc of 90m.
 - c. R90 Envelope.

This envelope consists of 23 or 26 three-bladed turbines (depending on the turbine supplier used) with a maximum tower height of 80m and a maximum height to the top or rotor arc of 125m.
5. The application site is located along the crest of Mt Cass to the east of Waipara.
6. The Mt Cass Ridge forms part of the hill range between the Hurunui and Waipara River and also acts as a dividing range between the Waipara Valley and the coast. The proposed windfarm will extend approximately 6.5km from Mt Cass (525masl) at the western end through Totara Peak (557masl) to Oldham Peak (496masl) at the eastern end.

Grounds of Appeal

7. MainPower appeals the decision to **decline** the application for land use consent on the grounds that the Commissioners erred, amongst others:
- a. In concluding that the effects on the environment of granting consent would be such that granting consent would not achieve the purpose of the Act;
 - b. In applying a comparative test when considering whether significant indigenous vegetation would be protected under section 6(c) of the Act;
 - c. In concluding that the acknowledged significant benefits of the proposed windfarm in terms of the use of renewable sources of energy, climate change, employment, security of electricity supply and diversity of generation of electricity did not offset or balance the adverse effects which would result from the grant of consent on, inter alia, the section 6(c) values present on the Mt Cass Ridge;
 - d. In concluding that the grant of consent would not support the objectives and policies of the Canterbury Regional Policy Statement and the Hurunui District Plan;
 - e. In concluding that the area of Mt Cass ridge between Mt Cass and Totara Peak was an outstanding natural feature in terms of section 6(b) of the Act, and in forming the view that this part of the ridge had previously been excluded from the Hurunui District Plan on the basis of an omission;
 - f. In concluding that the establishment of a road on Mt Cass Ridge would result in potential fragmentation effects that were more than minor, notwithstanding the mitigation measures proposed by MainPower;

- g. In concluding that there was real uncertainty about MainPower's proposals to mitigate and/or offset losses of vegetation and habitat.
8. Without limiting the generality of the above grounds of appeal, MainPower further contends that the Commissioners:
 - a. Wrongly concluded that it was inappropriate to apply the statutory discretion available to them under section 104(2) of the Act.
 - b. Relied upon evidence by witnesses that was outside their area of expertise, and as a result erroneously concluded that the Mt Cass to Totara Peak part of the Ridge was an outstanding natural feature under section 6(b) of the Act.
 - c. Failed to give any consideration whatsoever to three of the four key components of the proposed biodiversity offset namely; (1) the establishment of a covenanted area; (2) removal of cattle and control of sheep within the covenanted area; and (3) the ongoing programme of pest animal control.
 - d. Erred in assessing that the area of vegetation to be removed from limestone pavement would be 5.1ha, when the correct figure would be approximately 2.5ha;
 - e. Wrongly concluded that clearance of some of the vegetated limestone pavement would cause more than minor adverse effects;
 - f. Overlooked the proposal to revegetate limestone pavement areas on the Mt Cass Ridge;

- g. Overlooked evidence which demonstrated successful regeneration of vegetation on limestone pavement;
- h. Failed to acknowledge that the majority of the areas to be restored and revegetated are located away from the more difficult ridge crest environment;
- i. Stated, without any evidential foundation, that areas where revegetation had any prospect of being feasible will have already occurred;
- j. Erred in holding that a biodiversity offset was not appropriate for Mt Cass;
- k. Came to inconsistent conclusions in respect of the possibility of edge effects resulting from the construction of the ridge road;
- l. Came to inconsistent conclusions in respect of the requirement to consider alternatives;
- m. Failed to consider or apply relevant Environment Court decisions on the assessment of environmental compensation and biodiversity offsets, in particular *JF Investments v Queenstown Lakes District Council* C48/2006; and as a result misdirected themselves in applying a "like-for-like" requirement for the proposed revegetation;
- n. Failed to consider undisputed evidence that agricultural activities were the greatest threat to biodiversity generally, and failed to consider clear factual evidence as to the effects of stock on the biodiversity of Mt Cass;

- o. Set to one side undisputed evidence that the proposed windfarm would be an efficient use of resources under section 7(b) of the Act;
- p. Paid insufficient regard to the benefits to be derived from the use and development of renewable energy (section 7(j)).
- q. Erred in concluding that there were significant habitats of indigenous fauna on the Mt Cass ridge.
- r. Erred in interpreting the meaning of the word "protection" in the context of section 6(c) of the Act; and
- s. Erred in concluding that the proposed windfarm would have significant effects on the ecological integrity, functioning habitat and natural character of the Mt Cass Ridge.

Aspects of the Decision Agreed to by MainPower

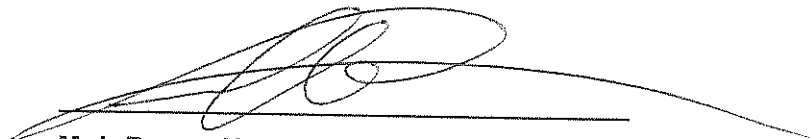
- 9. MainPower does not dispute the Commissioner's conclusions in respect of the following matters:
 - a. That it was unnecessary to invoke section 91 of the Act, so as to require MainPower to seek consents from Environment Canterbury – paras 593 – 607 of the Council's decision;
 - b. That the multiple envelope approach was both open and available to MainPower in terms of the Act – para 620;
 - c. That Mt Cass is not an outstanding natural landscape in terms of section 6(b) of the Act – para 667;

- d. That the Mt Cass ridge contains significant indigenous vegetation to be considered under section 6(c) – para 681;
- e. That section 6(e) is not considered to be of relevance to a determination of the application – para 683;
- f. That the risk to an existing colony of *Wainuia Edwardii* snails has been avoided by amendments to the application – para 728;
- g. That the visual impacts of the proposed turbines are acceptable within the landscape context – para 770;
- h. That all other visual impacts associated with the proposal, including road construction, the excess material disposal sites, the lay down areas and the development of ancillary structures such as overhead transmission lines and substation would not have a significant visual impact – para 771;
- i. That noise effects associated with the operation of the proposed windfarm will not be of significance – paras 772 to 779;
- j. That it is unlikely any adverse traffic effects will be generated – para 782;
- k. That any issues of cultural significance raised in the course of the development can be resolved by way of conditions – para 787;
- l. That any adverse effects on recreation and tourism associated with the windfarm are very unlikely – para 790;
and

- m. That hydrological effects need to be put into perspective and that any effects on the subsurface cave system are likely to occur only very slowly over time – para 793.

Relief Sought

10. MainPower seeks that the decision of the Commissioners be overturned and that consent be granted to establish and operate a windfarm at Mt Cass generally in accordance with the application submitted to the Council, and **attached** as Appendix A to the Notice of Appeal.
11. The Appellant also seeks such further, consequential or other relief as the Court considers necessary to address the issues raised by this appeal.
12. Costs.
13. The following documents are attached to this notice:
- a. A copy of the application (marked "A");
 - b. A copy of the relevant decision (marked "B"); and
 - c. A list of names and addresses to be served with a copy of this Notice (marked "C").



MainPower New Zealand Limited
By their solicitors and duly authorised agents
Anderson Lloyd
per: M R Christensen / Gerard Cleary

Dated April 2009

Address for service of appellant:

MainPower New Zealand Limited

c/- Anderson Lloyd

Level 10 Clarendon Tower

Cnr Oxford Terrace and Worcester St

PO Box 13831

Christchurch

Telephone: (03) 379 0037

Fax: (03) 379 0039

Contact persons: Mark Christensen / Gerard Cleary

Memorandum and Advice to Recipients of copy of notice of appeal

How to become a party to the proceedings

You may be party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's application or the decision appealed. These documents may be obtained, on request, from counsel for the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts, PO Box 2069, Christchurch.