



DECISION OF THE HURUNUI DISTRICT COUNCIL
NOTIFICATION UNDER SECTION 95 & DETERMINATION UNDER SECTION 104
RESOURCE MANAGEMENT ACT 1991

Consent Number:	RC210123
Applicant:	Rural Connectivity Group
Site Address:	45 Cathedral Road, Port Robinson
Legal Description:	Sections 48 & 49 Block XI Cheviot SD (Gazette notice: 82-2784)
Description of Application:	To install, operate and maintain a telecommunications facility
Activity status:	Restricted discretionary activity
Zoning:	Rural Zone

Introduction

Proposal

Consent is sought to install, operate and maintain a telecommunications facility including a monopole structure (pole), antenna and equipment cabinet within the recreation reserve at 45 Cathedral Road in Port Robinson. The pole will be setback approximately 600 metres from Cathedral Road. The pole and antenna will be finished in a recessive matte grey colour.

The proposal provides for:

- A 10 metre high concrete monopole.
- One panel antenna with a maximum width of 0.7 metres.
- One dish antenna mounted below the panel antenna with a maximum diameter of 0.6 metres.
- An equipment cabinet (maximum height of 2 metres and maximum footprint of 5 square metres).
- Underground power cables from the nearest overhead line.
- Minor earthworks (maximum 50 cubic metres in volume to a depth of 1 metre for pole foundations).

The applicant notes future additions may include equipment for other providers such as antenna and equipment no greater than one square metre for Wireless Internet Service Provider ('WISP') equipment.

The application is supported by a landscape and visual assessment prepared by DCM Urban Design Limited ('DCM').

Existing environment

The application site is located within the Port Robinson Coastal Reserves owned by the Hurunui District Council. The application site is within an outstanding natural landscape and coastal environment area identified in the Hurunui District Plan. The landscape and visual assessment provided by the applicant notes the natural characteristic of the environment is considered to be modified with a rural character and a moderate degree of naturalness.

Existing vegetation and trees, generally three to four metres in height, are located to the north of the proposed telecommunications facility, with grazed paddock surrounding the rest of the facility to the south. The grazed area gives way to steep rocky cliffs.

The proposed telecommunications facility will be located approximately 600 metres away from Cathedral Road and approximately 350 metres from Port Robinson Viewpoint Lighthouse. The site is located to the north-east of the small Port Robinson settlement.

There is an existing telecommunications facility approximately 7 metres north of where the proposal would be located. The existing infrastructure consists of a four metre high mast and associated power kiosk. This is currently used by a local broadband provider.



National Environment Standard for Telecommunications Facilities ('NES-TF')

Regulation 50: Outstanding natural features or landscapes

- (1) *This regulation applies to a regulated activity if it is carried out at a place identified in the relevant district plan or proposed district plan as being subject to outstanding natural features or landscape rules.*
- (2) *This regulation is complied with if the regulated activity is carried out in accordance with the outstanding natural features or landscape rules that apply to that place.*
- (3) *In this regulation, **outstanding natural features or landscape rules** means district rules about the protection of outstanding natural features or landscapes (however described)*

The proposal is located within an area identified as an outstanding natural landscape in the district plan maps and does not comply with the relevant landscape rules in the Hurunui District Plan (as assessed below).

Regulation 51: Places adjoining coastal marine area

- (1) *This regulation applies to a regulated activity if it is carried out at a place identified in the relevant district plan or proposed district plan as being subject to coastal protection rules.*
- (2) *This regulation is complied with if the regulated activity is carried out in accordance with the coastal protection rules that apply to that place.*
- (3) *In this regulation, **coastal protection rules** means district rules that regulate the carrying out of activities in places adjoining the coastal marine area for the purpose of protecting the coastal marine area.*

The proposal is located within the coastal environment area identified in the district plan maps and does not comply with the coastal environment rules in the Hurunui District Plan (as assessed below).

Regulation 11: Activity complying with standard is permitted activity

A regulated activity is a permitted activity if it is carried out in accordance with the standard.

Regulation 12: Status if not permitted activity

If a regulated activity is not a permitted activity under regulation 11,

- (a) *if the facility is an RFG facility, the status of the activity is to be determined under regulation 13; or*
- (b) *otherwise, the status of the activity is to be determined under regulations 14 to 18.*

Regulation 13: RFG facilities: status in respect of the generation of radiofrequency fields

- (1) *This regulation applies to a regulated activity if—*
 - (a) *the facility is an RFG facility; and*
 - (b) *the activity is not a permitted activity under regulation 11.*
- (2) *If regulation 55 is complied with,—*
 - (a) *in respect of the generation of radiofrequency fields, the activity is a permitted activity; and*
 - (b) *in all other respects, the status of the activity is to be determined in accordance with regulations 14 to 18.*
- (3) *If regulation 55 is not complied with—*
 - (a) *in respect of the generation of radiofrequency fields, the activity is a non-complying activity; and*
 - (b) *in all other respects,—*
 - (i) *if all other regulations compliance with which are part of the standard are complied with, the activity is a permitted activity; or*
 - (ii) *otherwise, the status of the activity is to be determined in accordance with regulations 14 to 18.*

Regulation 15: Restricted discretionary activities

- (1) *A regulated activity is a restricted discretionary activity if—*
 - (a) *it is carried out not in accordance with the standard; and*
 - (b) *under the relevant district plan or proposed district plan, it is a restricted discretionary activity.*

- (2) *For the purposes of section 87A(3)(a) of the Act, discretion is restricted over the subject matter of each regulation (or component of a regulation)—*
- (a) *compliance with which is part of the standard; and*
 - (b) *that is not complied with.*

The proposal complies with regulation 55, however regulation 56 allows for district and regional rules to be more stringent in the case of outstanding natural landscapes and coastal environments. Therefore, the proposal has been assessed against the relevant provisions of the Hurunui District Plan. As assessed below the proposal would be a restricted discretionary activity when assessed under the Hurunui District Plan

Hurunui District Plan

The site is zoned Rural in the Hurunui District Plan. The following rules are relevant to determining the status of the proposal:

Chapter 9 – Utilities

Rule 9.4.2 Application of other rules

The rules contained in this section take precedence over any other zone rules that may apply to utilities in the District Plan, except where there is a specific reference to those rules in these Utilities rules. The rules in Chapter 15 – Natural Hazards do not apply to utilities. These Utilities rules do not override the rules contained in:

- *[...]*
- *Chapter 11 – Landscapes*
- *Chapter 12 – Coastal Environment*

Chapter 11 – Landscapes

Rule 11.4.2 Permitted activities

The following activities are permitted activities within areas identified on the Planning Maps as an Outstanding Natural Feature or Landscape, provided they comply with the standards for permitted activities below:

- [...]*
8. *Utility buildings and structures (not otherwise provided for as a permitted activity, that comply with Rule 11.4.3.2 below).*

The proposal will not comply with the standards for permitted activities under Rule 11.4.3.2 as the height of the monopole is 10 metres which exceeds the maximum height specified in Rule 11.4.3.2(a).

11.4.6 Restricted discretionary activities

The following activities are restricted discretionary activities within areas identified on the Planning Maps as an Outstanding Natural Feature or Landscape:

- [...]*
4. *Utility buildings and structures which do not meet the standards for a permitted activity.*

The Council will restrict its discretion to the following matters:

- (a) *The height, size, scale, external colour/finish, reflectivity and design of the utility building, structure or above ground utility line and support structure;*
- (b) *The location of the utility building, structure or above ground utility line and support structure and earthworks, specifically in relation to their impact on any natural landform features;*
- (c) *Effects on natural character or landscape values;*
- (d) *The extent to which indigenous vegetation is required to be removed;*
- (e) *The nature and extent of any landscaping, including how this achieves integration of buildings into the surrounding landscape;*
- (f) *Visibility from publicly accessible view points;*
- (g) *Effects on Ngai Tahu values;*
- (h) *Effects on geopreservation sites listed in Appendix 11.1;*
- (i) *Any technical and operational constraints and route, site and method selection process; and*

- (j) *The benefits that the activity provides to the local community and beyond.*

Chapter 12 – Coastal environment

12.4.2 Permitted activities

The following activities are permitted activities within the coastal environment identified on the Planning Maps, provided they comply with the standards for permitted activities:

[...]

8. *Utility buildings and structures within the coastal environment not otherwise provided for as a permitted activity, that comply with Rule 12.4.3.2 below (excluding any area of outstanding natural character or outstanding natural feature or landscape in the coastal environment).*

The proposal is located within an area identified on the planning maps as being within an area of outstanding natural landscape.

12.4.6 Restricted discretionary activities

The following activities are restricted discretionary activities:

[...]

7. *Utility buildings and structures within an area of outstanding natural character or outstanding natural feature or landscape in the coastal environment;*

The Council will restrict its discretion to the following matters:

- (a) The height, size, scale, external colour/finish, reflectivity and design of the utility building, structure or above ground utility line and support structure;*
- (b) The location of utility building, structure or above ground utility line and support structure and earthworks, specifically in relation to their impact on any natural landform features, including ridgelines, or the coastal environment;*
- (c) The extent and nature of landscaping, including how this achieves the integration of the utility building, structure or above ground utility line and support structure into the surrounding landscape;*
- (d) Visibility from publicly accessible view points; and*
- (e) Effects on natural character or landscape values;*
- (f) Effects on Ngāi Tahu values.*

The proposal is a restricted discretionary activity as the proposed telecommunications facility is to be positioned more than 100 metres from the mean high water springs and is outside the coastal hazard line.

Overall the proposal is a **restricted discretionary activity** in terms of Rules 11.4.6.4 and 12.4.6.7 of the District Plan.

Relevant objectives and policies

I note that regard must be had to the objectives and policies in the District Plan to get a full understanding of the context for assessing effects of the environment and effects on persons. I consider that the following objectives and policies are relevant to the proposal:

Chapter 9 - Utilities

Objective 9

Utilities are provided that meet the needs of today's communities and the reasonable foreseeable needs of future generations, while appropriately managing adverse effects on the environment resulting from the utilities location, operation, upgrading and maintenance.

Policy 9.1

To provide for the development, maintenance, operation and upgrading of utilities while managing their adverse environmental effects.

Policy 9.2

To recognise the local and regional benefits of regionally and nationally significant utilities and ensure that these are designed and sited in a way which appropriately avoids, remedies or mitigates adverse environmental effects, taking into account their locational, technical and operational constraints.

Policy 9.3

To recognise that utilities can affect Outstanding Natural Features and Landscapes, natural character, and significant natural areas, including in the Coastal Environment, while recognising that at times there may not be alternate locations for the utility or that location in these areas may provide a better environmental outcome.

Objective 11

Outstanding Natural Features and Landscapes of the district are protected from inappropriate subdivision, use and development.

Chapter 11 - Landscape

Policy 11.2

Ensure that the adverse effects of subdivision, use and development on the values of each identified Outstanding Natural Feature or Landscape are avoided where possible, and where avoidance of adverse effects is not possible, adverse effects are remedied or mitigated.

Policy 11.3

To enable activities within areas of Outstanding Natural Features and Landscapes where they have been historically established and continuously maintained, by providing for existing activities and limited new activities in appropriate circumstances. For other activities, require a comprehensive assessment of the effects of activities on the values of the Outstanding Natural Features and Landscapes.

Chapter 12 – Coastal Environment

Objective 12

Protection and maintenance of the coastal environment from inappropriate subdivision, use, and development; through the preservation of the natural character of the coastal environment, maintenance of ecological function and habitats, and maintenance and enhancement of recreational, visual and cultural values.

Policy 12.4

To protect the coastal environment from inappropriate subdivision, use and development by managing activities in a way that:

- *avoids adverse effects in areas of outstanding natural character in the coastal environment;*
- *avoids adverse effects in outstanding natural features and landscapes in the coastal environment; and*
- *avoids significant adverse effects and avoids, remedies or mitigates any other adverse effects on all other natural features, natural landscapes, and areas of natural character within the coastal environment.*

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES)

Based on the applicants review of Environment Canterbury’s Listed Land Use Register, the piece of land to which this application relates is not a HAIL site, and therefore the NES does not apply. The applicant has also provided assessment to confirm the proposal would be able to be undertaken as a permitted activity under the NES.

Has the applicant requested that the application be publicly notified? [Section 95A(3)(a)]

No

Does the application require public notification under section 95C? [Section 95A(3)(b)]

No – the applicant has provided sufficient information for Council to proceed with and process the application.

Has the application been made jointly with an application to exchange recreation reserve land under section 155AA of the Reserves Act 1977? [Section 95A(3)(c)]

No

Recommendation:

- That the application need not be publicly notified in accordance with Section 95A(2)(a) of the Resource Management Act 1991.

Is the application for an activity subject to a rule or national environmental standard that precludes (i.e. prevents or prohibits) public notification? [Section 95A(5)(a)]

No

Is the application for one or more of the following, but no other, activities:

- a controlled activity;
- a restricted discretionary, discretionary, or non-complying application for a boundary activity?

No

Does a rule or national environmental standard require public notification of the application? [Section 95A(8)(a)]

No

Written approvals (Sections 95D, 95E(3)(a) and 104(3)(a)(ii))

No written approvals have been provided with the application.

Permitted baseline

I have noted the proposal complies with all the relevant standards for permitted activities except for the maximum height of the telecommunications facility. The proposal includes a 10 metre high monopole. The permitted baseline provides for a maximum height of 4 metres.

Pursuant to Section 95D, will the activity for which consent is sought have, or is likely to have, adverse effects on the environment that are more than minor?

When assessing whether adverse effects on the environment will be, or are likely to be, more than minor, any effects on the owners and occupiers of the application site and adjacent properties must be disregarded (section 95D(a)). The assessment of affected persons under section 95E includes persons on adjacent properties as well as those within the wider environment.

As a restricted discretionary activity my discretion is restricted to the relevant matters set out in the District Plan which are outlined above. I have relied on the landscape and visual assessment prepared by DCM and submitted as part of the application in making my assessment.

The height, size, scale, external colour/finish, reflectivity and design of the utility building, structure or above ground utility line and support structure;

Any technical and operational constraints and route, site and method selection process; and

The proposed telecommunications facility will have a maximum height of 10 metres. This is 6 metres higher than what is provided for as a permitted activity within the outstanding natural landscape and coastal environment overlays in the district plan. The applicant notes the tower operates via line of sight and therefore has a functional requirement to be placed on a high point within the area and cannot be completely screened from all views.

In terms of mitigation measures, I note that the equipment will be finished in a light grey colour that complies with the permitted standard for maximum light reflectance of 40%. The landscape report prepared by DCM considers that given the colour finish, the facility is likely to blend in with the skyline backdrop where viewed from surrounding sites and this will result in very low or indiscernible effects.

The applicant notes several other locations were considered, however alternative locations were not progressed as they were considered to be either too visually prominent or did not provide adequate coverage to the identified end users. The applicant also notes the proposed infrastructure is effectively providing for co-location of facilities. The Rural Connectivity Group is an independent entity established to build infrastructure shared by New Zealand's three mobile network operators (Spark, Vodafone and 2 degrees). The applicant notes it was not feasible to co-locate the proposed telecommunications facilities onto the existing telecommunications structure as it is not suitably designed to hold the additional weight of the Rural Connectivity Group equipment, but that in the future there is opportunity for the existing utility structure to be co-located onto the current proposed telecommunications facility.

*The location of the utility building, structure or above ground utility line and support structure and earthworks, specifically in relation to their impact on any natural landform features;
Effects on natural character or landscape values;*

DCM judge the equipment site as being located within a part of the area identified as being within an outstanding natural landscape that is highly modified due to the rural use and character resulting from that use, and therefore the telecommunications facility is not seen as being inconsistent with the existing physical and natural environment. It is noted the proposal has been set back from the prominent coastal cliffs to not detract from the high aesthetic value of the more coastal landscape.

*The extent to which indigenous vegetation is required to be removed;
Effects on geopreservation sites listed in Appendix 11.1;*

No vegetation clearance and only minimal earthworks are required. The earthworks required are well within what the permitted standards provide for within areas of outstanding natural landscapes and coastal environments. No geopreservation sites are identified within the immediate works area.

Visibility from publicly accessible view points;

DCM provide a study of key viewshafts within a five kilometre radius of the proposed site and provide a summary of effects on the streetscape and users; recreation users; and nearby residents, considering the effects to be less than minor on all identified viewers. Overall the authors considered perceived adverse effects are mitigated by the recessive non-reflective colour proposed, as this will make the proposal likely to blend in with the skyline backdrop where views against sky are possible, and the retention of native vegetation on site will screen the tower from a number of viewshafts.

I have considered the relevant objectives and policies outlined in the planning framework section above. I am satisfied the proposal will be consistent with these objectives and policies.

Based on the above, I consider that any adverse effects of this proposal on the environment would be less than minor.

Notwithstanding the above, do any special circumstances exist in relation to this application which would lead you to conclude that the application should be notified? If the answer is yes, why? [Section 95A (9)]

No – The application is to install, operate and maintain a telecommunications facility which is a restricted discretionary activity under the Hurunui District Plan and the National Environmental Standard for Telecommunications Facilities. There has been no known public interest in the application. I have not identified any factors that would bring the application outside the common run of things, unusual or abnormal or exceptional, but may be less than extraordinary or unique. Taking into account what the District Plan signals for this site, I consider the circumstances of this application are not outside the normal run of things, unusual, abnormal or exceptional.

Recommendation:

- That the application need not be publicly notified in accordance with Section 95A of the Resource Management Act 1991.

Are there any affected protected customary rights groups or affected customary marine title groups? [Section 95B(2)]

No

Is the proposed activity on or adjacent to, or may affect, land subject to a statutory acknowledgment? [Section 95B(3)] If yes, is the person or party affected under Section 95E and if so why?

No

Does a rule or national environmental standard preclude limited notification of the application? [Section 95B(6)(a)]

No

**Is the application for a resource consent for the following, but no other, activities: [Section 95B(6)(b)]
- a controlled activity (but not a subdivision)?**

No

**Who may be considered an affected person in relation to this application?
A person is an affected person if the activity's adverse effects on the person are minor or more than minor (but are not less than minor). [Section 95E]**

I do not consider there are any affected parties in relation to this application. I consider my assessment under section 95D above is applicable to my consideration under section 95E.

I note the site is owned by the Hurunui District Council and the applicant is working through additional requirements to site the facility on a council reserve.

Has the written approval of every person who may be considered an affected person in relation to this application been obtained? [Section 95E (3)(a)]

N/A

If the answer to the above question is no, is it unreasonable in the circumstances to require the obtaining of every such approval? [Section 95E (3)(b)]

N/A

Notwithstanding the above, do any special circumstances exist in relation to this application that warrant notification of the application to any other persons not already determined to be eligible for limited notification? If the answer is yes, why? [Section 95B(10)]

No – I consider my response to section 95A(9) is applicable.

Recommendation:

- **That the application need not be limited notified in accordance with Section 95B of the Resource Management Act 1991.**

Statutory Requirements

Applications for **restricted discretionary activities** are considered under Sections 104 and 104C which states that the consent authority must only consider those matters specified in the plan to which it has restricted the exercise of its discretion and may grant or refuse the application. It may impose conditions under Section 108 if granted only for those matters specified in the plan over which it has restricted the exercise of its discretion.

Section 104 states that subject to Part II, the consent authority must have regard to –

- (a) any actual and potential effects on the environment of allowing the activity; and
- (b) any relevant provisions of –
 - (i) a national environmental standard;
 - (ii) other regulations;
 - (iii) a national policy statement;
 - (iv) a New Zealand coastal policy statement;
 - (v) a regional policy statement or proposed regional policy statement;
 - (vi) a plan or proposed plan; and
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

When considering an application for resource consent the consent authority shall have regard to Section 104(1) of the Resource Management Act 1991. What are the actual and potential effects on the environment of allowing the activity?

I considered the adverse effects in my section 95D and 95E assessments above, and I consider this assessment covers off the actual and potential effects except for positive effects.

The applicant has outlined positive effects of this application in providing improved communication services in the Gore Bay area, including:

- Mobile coverage to approximately 100 end users (residents and businesses) and visitors of the wider Gore Bay area.
- Improved resilience in emergency situations. Coverage will be provided to all mobile phones regardless of which operator they are a customer of.
- The facility will allow for future telecommunications upgrades in the future should they be required.

The proposed telecommunications tower is said to provide significant benefits to the community by improving network coverage in the area, enhancing the functional aspects and safety of recreation users, rural workers and residents by allowing for easier methods of communication and improved access to emergency services.

Overall, I consider the actual and potential effects on the environment of allowing the proposal would be adequately mitigated.

Relevant provisions of a national environmental standard, other regulations, national policy statement, New Zealand coastal policy statement, regional policy statement, proposed policy statement, regional plan or proposed regional plan [Section 104(1)(b)]

This application has been assessed under the relevant National Environmental Standard for Telecommunications Facilities Regulations 2016, as well as the District Plan as directed by the regulations.

Are there any other matters which are relevant and reasonably necessary to determine the application (including Part II matters)?

With respect to Part II of the Act, the proposal will continue to promote the sustainable management of natural and physical resources. Section 5 requires the promotion of the sustainable management of natural and physical resources. This means ensuring that the use and development of physical resources is managed in such a way as to enable people and communities to provide for their social and economic well-being while meeting the reasonable foreseeable needs of future generations and avoiding, remedying or mitigating the adverse effects of the proposal on the environment.

If the application is for a non-complying activity, does it meet at least one of the provisions of Section 104D (1)?

N/A

Recommendation: That for the above reasons the application **be approved** pursuant to Sections 104 / 104C of the Resource Management Act 1991, subject to the following conditions:

CONDITIONS OF CONSENT

1. *The activity shall proceed in general accordance with the plans and details submitted with the application and referenced as RC210123 in Council records.*
2. *The tower structure shall be finished in a non-reflective light grey colour with a maximum light reflectance value of 40%.*

Reported and Recommended by:



Nicola Kirby, **Senior Planner**

Date: 13 August 2021

DECISION:

I have read and considered the above report and recommendation by the Council's officer, Nicola Kirby, and the information available to Council in respect of the application for consent to install, operate and maintain a telecommunications facility. I agree with the recommendations made and decide that the Council officer's recommendations should be adopted.



Helga Bennett, **Senior Planner**

Date: 19 August 2021