



Resource Management Act 1991 Section 125 Report

Consent Number:	RC070250
Applicant:	MainPower New Zealand Limited
Site Address:	791 Mt Cass Road, Waipara
Legal Description:	Lot 2 DP 401564 (CFR 404395), Lots 5-9, 14, 16, 19 DP 424383 & Section 13 SO 18669 (CFR 494787), Lot 1 DP 5900 and Lot 100-101, 47-74, 98-99 DP 661 and Part Reserve DP 661 and Part Withers Street DP 661 (CB335/110), RS39398, RS39400 and RS39401 (CFR 233108)
Description of Application:	To extend the timeframe for lapse of consent of RC070250 [and subsequent variation RC190024]

Introduction

Proposal

1. MainPower New Zealand Limited (“the Applicant”) seeks to extend the period after which resource consent RC070250 lapses pursuant to section 125 of the Resource Management Act 1991 (“the RMA”).
2. The resource consent was granted by a substantive decision of the Environment Court on 8 December 2011¹. The decision of the Environment Court confirming the conditions applying to RC070250 was issued on 7 February 2012². Condition 21 of the consent specifies a lapsing date of eight years.
3. The Applicant seeks to extend the period of the consent for a further five years to a specified lapse date of 7 February 2025.

Background

4. Resource consent RC070250 provides for the establishment and operation of a wind farm at Mt Cass, Waipara. The consent authorises one of three different turbine layouts being the R33, R60 and R90 layouts. The consented activity includes the following activities:
 - turbines and turbine platforms;
 - roading (including connection to individual platforms);
 - electrical plant (including a substation and switching yard);
 - operation building;
 - concrete batching plant and aggregate storage area;
 - underground cables between the turbine sites and the substation;
 - erection of overhead transmission lines;
 - excavation and deposition of excavated material not used for fill or roading (at soil disposal sites);
 - stockpile areas for road aggregates and topsoil;
 - temporary storage of plant and equipment (at laydown areas); and
 - the extension of the existing Mt Cass walkway.

¹ MainPower NZ Limited v Hurunui District Council [2011] NZEnvC384

² MainPower NZ Limited v Hurunui District Council [2012] NZEnvC021

5. On 1 April 2019, Council granted a change of condition (RC190024) application pursuant to section 127 of the RMA. The decision changes conditions 1, 5 and 17 of RC070250, with consequential changes to conditions 6, 8, 15, 31, 54, 94 and 99. The change of condition was processed on a non-notified basis and no affected persons were identified as being affected.
6. The change of conditions amended conditions in relation to the R90 turbine layout. Specifically, condition 1 was changed to decrease the number of R90 consented turbines from 26 to 22, and to alter the maximum height of the turbines from ground level (m). This change would enable the applicant to use the General Electric Renewable Energy 4.2-117 with Low Noise Trailing Edge turbine ("GE turbine"), which the applicant advised is a more efficient and technically advanced turbine than was commercially available when resource consent applications were made in 2008 and 2010. The GE Turbine has a maximum height of 135 metres rather than the 130 metres previously specified.
7. Condition 5 was also changed to amend the plan references relating to the R90 layout. The reference to Golder plans CG153.4 was deleted and replaced with the reference to the amended R90 layout plans referenced as MainPower Plans 4755.1 and 4755.2. As consequence of amending the plan reference in condition 5, consequential changes were required to other conditions which referenced Golder plans CG153.4 to reflect the updated plan references. Consequential changes were made to conditions 6, 8, 15, 31, 54, 94 and 99. These were consequential changes only to ensure that the updated R90 layout plans were referenced.
8. A further change was made to condition 17 to reflect that the specific colour of the GE Turbine is a recessive grey being RAL 7035 (Resene "Double Concrete"). The change reflects that in relation to the R90 layout the colour of the turbine would be this specific colour.
9. On 20 May 2019, in accordance with condition 2, the Applicant advised that the turbines to be constructed on the Mt Cass wind farm site will be the GE4.2117 turbines (i.e. the R90 layout).

Application and supporting documentation

10. The Applicant has applied to extend the period during which consent can be given effect to, such that the consent will lapse on 7 February 2025 (instead of 7 February 2020).
11. The application was received on 12 June 2019. In summary it provides:
 - An evaluation of the substantial progress or effort made to date in giving effect to the consent. The application asserts the following are relevant:
 - An outline of economic and practical realities for electricity generation in New Zealand including projected electricity demand and factors that influence the electricity market and investment in generation, and the role of renewable energy generation in future supply;
 - The extent of work completed (monitoring and review) to enable a better understanding of the wind resource on the site in order to facilitate and improve windfarm design and efficiency, and to inform decisions around turbine selection, siting, and ultimately generation potential;
 - Securing land access arrangements including easements with adjoining landowners.
 - 'Post consent' windfarm design to determine the most appropriate windfarm design within consent constraints.
 - Bio-remediation trials on cut limestone with the subsequent results reported on in a draft landscape pattern book after several months of exposure.
 - Initial on-site ground water monitoring to determine baseline data.
 - Preparation of rehabilitation planting plans including tender documents for seed collection and rearing of plants and restoration work.
 - A range of onsite geotechnical investigations to provide the main geotechnical inputs into the windfarm design.

- A survey of rare plants, in particular Limestone Wheatgrass, which was carried out in January through to March 2019.
 - Advancing the design of the wind farm electricity works including applying for a distributed generation network connection as required under the Electricity Industry Participation Code for the connection of the generation to MainPower's network.
 - Preparation of a detailed design for the transmission line.
 - Fulfilling or partial fulfilling of consent conditions in relation to undertaking ecological baseline surveys.
 - Preparation of a future works programme with potential timeframes provided for in a Gantt chart which visually depicts the progression of the main work streams through to 2021.
- An evaluation of the effect of the extension on affected persons;
 - An evaluation of the effect of the extension applied for on the objectives and policies of the Hurunui District Plan; and
 - Consideration of other matters including the Canterbury Regional Policy Statement and the National Policy Statement for Freshwater Management.
 - A legal opinion from Natural Resources Law Limited on whether there is an adequate and appropriate basis for the Council to extend the lapsing date of the land use consent.
12. On 9 July 2019, Council requested further information be provided in support of the application to extend the lapse date of the land use consent for the Mt Cass Wind Farm. Council requested that the applicant provide:
- An evaluation of what changes, if any, have occurred in the social environment;
 - A detailed list (or table) of exactly which conditions are required to be fulfilled prior to physical works commencing on site, confirmation as to whether these conditions have been fulfilled; when the condition was fulfilled; and what actions were taken to fulfil the condition, including the cost of meeting the condition;
 - A copy of the annual environmental reports including appendices for the years 2012-2013, 2013-2014 and any reports subsequent to 2016.
 - A copy of the final report on the baseline monitoring in relation to avifauna populations and migratory seabirds.
 - Identify what consents required from the Canterbury Regional Council and the timeframe for lodging these.
 - Confirmation on the intended timing on the establishment of the Community Liaison Group and what steps will be taken to progress this condition.
 - A user friendly format of the forward work programme (this request was subsequently withdrawn by Council).
13. The Applicant provided further correspondence in response to the above request as follows:
- An evaluation of changes in social environment;
 - A table showing preconstruction conditions and progress towards fulfilment of those conditions;
 - A spreadsheet showing preconstruction budget and spend;
 - Copies of annual environment reports including appendices in relation to baseline monitoring in relation to avifauna populations and migratory seabirds;
 - Notice that applications for consents required from the Canterbury Regional Council are expected to be prepared and lodged before the end of the calendar year 2019;
 - Landscape pattern book; and

- A letter from Natural Resources Law Limited in regard to the interpretation of condition 147 (i.e. the formation of the Community Liaison Group).

Site and surrounds

14. The decision of the Environment Court³, broadly described the locality as follows:

[5] Mt Cass is located 3 km from the Omihi junction, 5 km to the south-east of Waipara and 10 km north-east of Amberley. These settlements are located in the Waipara Basin and Mt Cass is one of a series of ranges framing the south-eastern part of the Basin. The wind farm would extend 7.5 km along the ridgeline of Mt Cass at an elevation of between 400 m and 569 m and would be visible from the settlements.

[6] Mt Cass is one of the three peaks (Totara and Oldham Peak are further to the north-east) on a cuesta landform; and asymmetric ridge of sedimentary rocks – in this case principally limestone.⁴ Typical of this type of landform Mt Cass has a steep north-west facing front slope (called a scarp or escarpment) and a gentle south-eastwards dipping backslope.

[7] Just below the scarp slope and parallel to the ridge line is a wide flat area identified in the evidence as the 'northern terrace'. It is on this lithological feature that the main access road is to be sited. The northern foothills are rounded gentle features within the landscape. By comparison the land beyond the south-east dip slope and lying towards the coast is rugged hill country which terminates abruptly at the cliff face of an uplifted marine terrace.

[8] Located along both sides of the ridgeline are boulder fields and scree slopes. These are more prominent on the scarp which also has areas of cliff face. On the upper slopes of Mt Cass native forest and shrubland is found interspersed with patches of pasture. Pasture and silviculture (forestry plantations) predominate on the lower slopes.

[9] The site's five landowners farm the land (sheep and cattle)⁵ and intend to continue farming if consent is granted. MainPower has in place agreements and easements enabling the development of the wind farm.⁶

[10] In the wider Waipara Basin, and some parts of the north facing foothills, viticulture is well established.

15. The nature and context of the receiving environment has not changed materially since the grant of consent.

Statutory requirements

16. Section 125(1A) of the RMA states (relevantly) that "a consent does not lapse under subsection (1) if, before the consent lapses, -
- (a) The consent is given effect to; or
 - (b) An application is made to the consent authority to extend the period after which the consent lapses, and the consent authority decides to grant an extension after taking into account –
 - (i) Whether substantial progress or effort has been, and continues to be, made towards giving effect to the consent; and
 - (ii) Whether the applicant has obtained approval from persons who may be adversely affected by the granting of an extension; and
 - (iii) The effect of the extension on the policies and objectives of a plan or proposed plan.

[(1B) Sections 357A and 357C to 358 apply to subsection (1A)(b).]

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³ MainPower NZ Limited v Hurunui District Council [2011] NZEnvC384

⁴ Weka Pass Limestone overlies Amuri Limestone

⁵ The landowners are MainPower New Zealand Ltd, Dovedale Farm Ltd, Hamilton Glens Ltd, Organic Farm Ltd and Tiromoana Station Ltd

⁶ Hurley EIC at [2.5]-[2.6]

Matters for consideration

17. The application must be made before the consent lapses.
18. As at the date of this application, the existing consent has not lapsed, therefore this application must be accepted for consideration.
19. An application to extend the time period before the consent lapses is not an opportunity to reassess the merits of the resource consent previously approved. The statutory matters to be considered are those set out at section 125 of the RMA. The matters at sections 104 to 104D are not relevant to this assessment.
20. In order for an application made under section 125 to be approved, all three matters set out at s125(1A)(b) must be taken into account. None of the three matters are a “test” in themselves. However, the Council must exercise its discretion having taken each of them into account.
21. I am aware that virtually every court decision regarding section 125 quotes a passage from a Planning Tribunal case decided in 1987⁷:

‘There are compelling reasons of policy why a planning consent should not subsist for a lengthy period of time without being put into effect. Both physical and social environments change. Knowledge progresses. District schemes are changed, reviewed and varied. People come and go. Planning consents are granted in light of present and foreseeable circumstances as at a particular time. Once granted a consent represents an opportunity of which advantage may be taken. When a consent is put into effect it becomes a physical reality as well as a legal right. But if a consent is not put into effect within a reasonable time it cannot properly remain a fixed opportunity in an ever-changing scene. Likewise, changing circumstances may render conditions, restrictions and prohibitions in a consent inappropriate or unnecessary. Sections 70 and 71 [now ss 125 and 127 of the Resource Management Act 1991] give legislative recognition and form to these matters of policy which, in the ultimate, do but recognise that planning looks to the future from an ever-changing present.’

22. When making my recommendation, I have kept the philosophical reasons for a lapsing period in mind.

Has substantial progress or effort been, and continues to be, made towards giving effect to the consent? (Section 125(1A)(b)(i))

23. Section 125(1A)(b)(i) requires the Council to take into account whether substantial progress or effort has been made towards giving effect to the consent and whether that progress is continuing to be made. This is different from having to be satisfied that substantial progress or effort has been made.
24. The application and supporting documents show the Applicant has, over the past seven years expended effort and funds towards progressing the consent. The supporting financial information indicates that the Applicant has invested \$3.8m towards giving effect to the consent since obtaining the resource consent in 2012 (\$2.5m actual plus \$1.3 forecast).
25. Although no physical ‘development’ works have been undertaken on the site, the application sets out the effort and progress made to date. Broadly, that effort has included:
 - a. Reaching agreements over land access;
 - b. Continuation of wind resource monitoring and measurement to support final turbine selection and micrositing decisions;
 - c. Onsite geotechnical investigations and a seismic survey to provide the main geotechnical inputs in the final layout and design;

⁷ Katz v Auckland City Council (1987) 12 NATPA 211 at 213

- d. Implementation of a variety of consent conditions which provide for preparatory work including baseline ecological monitoring, preparation of draft management plans; and notification to Council of the final choice of turbine;
- e. Extensive commercial discussions and negotiations with turbine manufacturers, leading to the decision to construct the GE turbines;
- f. Obtaining a variation to the land use consent to enable a revised layout for the GE turbines;
- g. Electrical connection design including detailed design of transmission line and modifications to Transpower's Waipara grid exit point; and
- h. Extensive financial, risk and procurement modelling and negotiations with financial institutions to enable funding for the project to be secured.

26. The consent includes 46 pre-construction conditions that are required to be met prior to activities authorised by the consent commencing on site. The pre-construction conditions largely relate to the preparation of a comprehensive suite of management plans and the collection of baseline data with the purpose of evaluating construction effects or biodiversity offsetting benefits, amongst other conditions. To date 22 conditions have been met or are in the process of being met, with the remaining pre-construction conditions to be met once the detailed design of the wind farm is completed.

27. In determining the relevance of the work undertaken by the Applicant to date, I have considered para [4] of *Biodiversity NZ v Solid Energy*⁸ which stated:

'In light of the mischief underlying the reason for s 125, and the purpose of s 125, there is no material distinction between planning work such as preparation of management plans, and physical works or activities that are at the heart of a suite of consents'

28. The Court of Appeal in *Body Corporate 97010*⁹ observed that "substantial progress or effort" does not require physical progress on site, and consenting authorities are entitled to take into account practical and economic realities where they pertain to the specified consented activity.¹⁰

'...the Council was entitled to take into account the practical and economic realities of constructing and completing a major development of this type, including fluctuations in market demand and the need to raise finance...the Council was entitled was entitled to treat the variation application as a step towards the implementation of the consent originally granted.'

29. I have also taken into account that "substantial effort" is something less than "substantial progress"¹¹. Section 125 requires consideration of both under the same subsection.

30. From the material I have read it appears there was something of a "gap" in progress between 2016-2018. The "gap" appears to be explained by a downturn in market conditions and therefore uncertainty as to financial feasibility. I understand that even with interruptions, substantial progress or effort can still be made. In the *Body Corporate*¹² case the Court said:

'While continuity is required, there may be reasonable interruptions which do not break the overall picture of continuing towards the end in view.'

31. And in the *Biodiversity Defence Society*¹³ case the Court said:

⁸ *Biodiversity Defence Society Incorporated v Solid Energy New Zealand Limited* [2013] NZHC 3283

⁹ *Body Corporate 970101 v Auckland City Council* (2000) 6 ELRNZ 217

¹⁰ At [68]-[71].

¹¹ *Body Corporate 970101 v Auckland City Council* (2000) 6 ELRNZ 217

¹² At [70].

¹³ *Biodiversity Defence Society Incorporated v Solid Energy New Zealand Limited* [2013] NZHC 3283 at [83]

'I accept there may have been a degree of deferment of exercise of the licences to integrate with economic activity. But such integration of projects with economic activity is realistic, and was recognised by the Court of Appeal in the Body Corporate 97010 dealing with the alteration of the scale of the apartment project, as a result of market forces.'

32. Although no physical works have been undertaken on the site, in my opinion the information provided by the Applicant shows that it has (up to the date of section 125 application), made at least substantial effort and most likely substantial progress. The Applicant has invested considerable effort, including financial investment, towards giving effect to the consent. Although not all aspects of this effort / progress have been directed to compliance with consent conditions the actions taken are on the whole considered to be contributory, if not essential, to progressing the Applicants ability to give effect to the consent. I reach my conclusion as to whether substantial progress or effort has been made taking into account the practical and economic realities of constructing and completing a major development of this type including fluctuations in market demand and the need to raise finance.

Is substantial progress / effort continuing to be made?

33. As well as making an assessment of whether substantial progress or effort has been made, the RMA requires me to evaluate whether it continues to be made.
34. The Applicant has provided an overall project development schedule in the form of a Gantt chart, showing how it intends to progress the development of the windfarm. The project is currently progressing through the detailed design phase with commencement of construction scheduled to occur around 2020.
35. The overall development schedule demonstrates commitment to ongoing substantial effort and progress. The work program details at a high-level, activities to reach practical completion of construction and indicates that with no delays, construction would be completed in two years i.e. 2021.
36. The Applicant notes that as with any large complex capital project such as Mt Cass, the committed resource and cost of getting to an investment decision to construct are in the tens of millions across all stakeholders. They note that stakeholders must have certainty that the consent remains current through the full development phase after allowing for any unpredictable but foreseeable events such as credit crises (such as the 2008 Global Financial Crisis), natural disasters (such as the 2010 and 2011 Canterbury Earthquakes, 2016 Hurunui Kaikoura Earthquake), outbreak of disease (2018 Mycoplasma bovis), severe adverse site weather conditions, subcontractor distress, default, replacement. The Applicant notes that stakeholders and in particular bank funders, will not commit capital for construction if there is any uncertainty in consent remaining current through construction. It is for this reason that the Applicant has requested a five year extension to the lapse date.
37. The Applicant is progressing with obtaining final baseline data in terms of ground water quality monitoring; weed monitoring and treatment; and threatened plant monitoring. In addition, the Applicant is in the process of engaging relevant experts to progress the development of the individual management plans required as conditions of consent.
38. I consider that the level of investment and effort expended to date, and the schedule of intended future work / effort toward giving effect to the consent, demonstrates that the applicant has a clear intention for continued effort into the future.

Has approval been obtained from every person who may be adversely affected by the granting of the extension? (Section 125(1A)(b)(ii))

39. The second matter which must be taken into account under section 125(1A)(b) is whether there are persons who may be adversely affected by the granting of the extension, and if so, whether the applicant has obtained their approval.
40. In addressing this, regard is required to be had to the effects of the extension rather than the effects of the activity itself (*Body Corporate 970101 v Auckland City Council* [2000] NZRMA 202 (HC); confirmed on appeal

[2000] 3 NZLR 513). The effects associated with the original consent granted, or any subsequent variations thereto, cannot be revisited as part of an application for extension.

41. Accordingly, when considering whether any person would be affected, the relevant effects are limited to those that would be generated by the extension of time. These can include the occurrence of construction at a later point in time than originally envisaged, the creation of unacceptable uncertainty, or where there have been changes to the physical and social environment since the grant of the original consent.

Changes in physical environment

42. Land use activities within the immediate surrounding environment consist predominantly of rural activities such as pastoral farming, viticulture and forestry activities. The other key land use activity in the vicinity of the site, is the Kate Valley Landfill. This facility existed at the time of granting consent and remains a significant activity in the area. Kate Valley has recently installed four generators, where methane gas is captured from the landfill and converted into electricity. There is the potential capacity to generate up to four Megawatts from these generators.
43. Further afield, Council has recently granted resource consent (RC180104) for a dwelling and two accommodation units and a workshop at 9 Mt Cass Road (located approximately 4 km from the wind farm site). No physical works have been undertaken on this site.
44. In addition, a number of new dwellings have been constructed within the Waipara Township which is located approximately 5 kilometres from the Mt Cass Wind Farm site. The majority of these new dwellings are located within two recently completed subdivisions located on Glenmark Drive.
45. Overall there has been no substantial change to the character or nature of the receiving physical environment since the consent was granted. The site and surrounds remain typically rural, with the predominant land use based on primary production (pastoral farming, viticulture and forestry) on large landholdings. Residential activity is limited to residential dwellings associated with rural land use activities and development within the Waipara Township. Other than those activities referred to above, there is no evidence of new residential development or lifestyle block subdivision occurring in the vicinity of the site.
46. As such, I consider that the “extras” in the physical environment are minimal and do not indicate there would be any concern as to the effects of the extension. In addition, I consider that the patterns of development are no more or less hostile to a windfarm than when consent was granted.

Changes in social environment

47. In terms of the social environment, I note that there have been some changes in land ownership in the surrounding environment. The change in ownerships have tended to be either transfers within wider family groups or to other landowners from the wider Hurunui district. There has also been population change in the Waipara Township, with new dwellings having been constructed within the township.
48. I note that in the time since the consent was granted in 2012, public sentiment in relation to climate change has shifted. Research by Colmar Brunton for the Ministry for the Environment in 2018 found that 62% of the New Zealand population supported Governments intention to set a more ambitious target for reducing emissions.¹⁴ Research by Horizon Research Limited has tracked attitudes toward climate change since 2006¹⁵. In 2006, 8% of the population regarded climate change as an urgent issue compared with 2019 when 43% of the population saw the issue as urgent. 26% saw climate change as a problem now in 2019 compared with 16% in 2006. This shift indicates a social environment that may be more sympathetic towards development of renewable energy in the form of a windfarm.

Effects taking place at a later time than originally envisaged

49. The effects associated with the development and operation of the Mt Cass Wind Farm were subject to detailed consideration by the Environment Court. The resource consent application was granted by the Court

¹⁴ Environmental Attitudes September 2018, Ministry for the Environment

¹⁵ <https://www.horizonpoll.co.nz/page/541/public-conc>

subject to 184 conditions. These conditions seek to address the actual and potential effects associated with the establishment and operation of the wind farm.

50. The proposed extension is for a period of five years. I note that the timing and implementation of the consent does not alter the effects of the wind farm development. The applicant is confident that all the conditions of consent are capable of being implemented if the five year extension to the lapsing period is granted.
51. I am satisfied that the extension of time within which to give effect to the consent would not exacerbate any of the effects that were of concern to submitters at the time of the original application. In addition, given that the physical and social environment are essentially the same, I am satisfied that the extension itself will not impose unanticipated or undue adverse effects on its surrounds.

Uncertainty

52. The consideration of any unacceptable uncertainty relates to existing but unimplemented resource consents having an undue influence on people and activities in the surrounding environment. I have considered whether there is potential that investment or land use decisions on sites adjacent to the application site have, or may be, deferred until such time as the consent lapses or is given effect. The consent in effect forms part of the 'existing environment' and the extension may limit development potential or opportunity on adjacent sites upon consideration of cumulative effects (such as landscape and visual amenity effects).
53. I note that the now operative Hurunui District Plan ("ODP") contains a new rule which requires that '*no new sensitive activity may be established within 2000 metres of an existing or consented commercial scale energy activity.*' A 'sensitive activity' is defined as '*including residential activities, minor dwellings, visitor accommodation, entertainment facilities, health care facilities, and community services.*' Given the rural context of the surrounding environment, any future potential sensitive activity would most likely relate to residential activities, minor dwellings or visitor accommodation. The proposed extension to the lapse date would mean that any development of this sort within 2000 metres of the wind farm site would require resource consent as a discretionary activity.
54. The surrounding environment consists predominantly of large landholdings containing rural based activities such as pastoral farming, viticulture and forestry. There are no small vacant 'lifestyle blocks' within 2000 metres of the wind farm site, nor has the Council approved any subdivision consents for this type of development within vicinity of the wind farm site which would potentially generate a demand for new residential activity.

Summary

55. The decision of the Environment Court recorded that in terms of the lapsing period:

[483] MainPower has sought a lapsing period of eight years from the date of the commencement of its consent. While this is supported by the District Council many submitters requested a shorter period being dubious about whether the proposal would proceed and wishing to have certainty – as much as they are able to gain, as to their future environment.

56. The Court was satisfied, for the reasons advanced by MainPower that an eight year lapse period was appropriate.
57. I consider that the effects on other parties arising from uncertainty surrounding whether or not the wind farm will proceed are considered negligible. There has been minimal change to the physical and social environment or to activities in the vicinity that could result in adverse effects on new parties or which could restrict their land use potential.
58. Overall it is considered that there are no affected persons from whom Council requires written approval to be obtained.

What will be the effect of the extension on the policies and objectives of the District Plan or any other relevant plan? (Section 125(1A)(b)(iii))

59. Section 125(1A)(b)(iii) requires the Council to take into account the effect of the extension on the objectives and policies of any plan or proposed plan.

Hurunui District Plan

60. The objectives, policies and rules considered at the time of the original application have been superseded by the ODP which was made operative on 21 June 2018. The ODP represents a change in approach of provisions from those in the previous District Plan. The ODP framework presents its provisions based on either zones (i.e. Rural) or topics (i.e. Energy).
61. Under the previous District Plan, all of the land in the Hurunui District was zoned as General Management Area except for those areas identified as Environments of Concern. The zoning of the Mt Cass Wind Farm site under the previous District Plan was 'General Management' therefore the relevant objectives and policies under the Management Section, and the district wide rules under Section A applied. Under the previous District Plan, the proposal was a discretionary activity.
62. Under the ODP the wind farm site is zoned Rural and is located within an Outstanding Natural Feature identified as the Mt Cass ONF. The area of the site identified as the Mt Cass ONF was determined as part of the Environment Court decision granting the application.
63. The ODP now includes a specific chapter addressing Energy (Chapter 7) which is intended to give effect to the National Policy Statement on Renewable Energy Generation. While there were provisions relating to renewable energy generation activities in the previous District Plan, the provisions in the ODP are more specific. The ODP introduces a framework that specifically anticipates the establishment and/or expansion of a range of renewable energy production activities district wide, whilst maintaining appropriate environmental bottom lines. Rule 7.4.5(4) of the ODP provides for new commercial scale energy activities as a discretionary activity. Therefore, the activity status of the proposal is the same as under the previous District Plan.
64. Response Planning, acting for the Applicant, has provided an assessment of the extension against the relevant objectives and policies at the time of the application and the current objectives and policies in the ODP. This comparison evaluation is contained in Appendix 3 of the Application. The Mt Cass Wind Farm proposal was found to be consistent with the objectives and policies that existed in 2012.
65. The Environment Court found that the Mt Cass wind farm site is both an area of significant vegetation and an outstanding natural feature. Nevertheless, the Court found that the proposal was consistent with the relevant objectives and policies of the then operative District Plan.
66. I concur with the conclusions in the Response Planning report that while there have been some changes to the objectives and policies related to landscape and vegetation, they are not significant changes and do not represent a change in approach from that considered by the Environment Court. As such, I am satisfied that the proposal remains consistent with the objectives and policies of the ODP.

Canterbury Regional Policy Statement

67. The Canterbury Regional Policy Statement became operative on 15 January 2013 after resource consent was granted. It is recognised that the Hurunui District Plan must give effect to the Canterbury Regional Policy Statement. The ODP was prepared under the current Regional Policy Statement and as such must be considered to give effect to this document. There has been no tension identified with the objectives and policies of the ODP that would undermine the integrity of that document. Given that it must give effect to the Canterbury Regional Policy Statement it is considered that there are no integrity issues arising with that document as well.

National Policy Statement on Freshwater Management

68. The National Policy Statement for Freshwater Management (NPSFM) came into effect on 1 August 2014. It is recognised that the Hurunui District Plan must give effect to any National Policy Statement. The ODP has been prepared under the NPSFM 2014 and as such must be considered to give effect to this document. While there have been some changes to the NPSFM in 2017, it is considered that none of the provisions changed would affect the matters addressed in the ODP or result in any tension. There has been no tension identified with the objectives and policies of the ODP that would undermine the integrity of that document. Given that it must give effect to the NPSFM it is considered that there are no integrity issues arising with that document as well. It is noted that while freshwater was a matter considered in the application there are not any significant freshwater bodies on the site.

National Policy Statement for Renewable Electricity Generation

69. The National Policy Statement for Renewable Electricity Generation 2011 (NPSREG) came into effect (13 May 2011), setting out the objective and policies for renewable electricity generation under the Resource Management Act 1991. The principle objective of the NPSREG is:

To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation.

70. The NPSREG identifies that renewable electricity generation, plays an important role in the wellbeing of New Zealand, its people and the environment. In considering the risks and opportunities associated with various electricity futures, central government has reaffirmed the strategic target that 90 per cent of electricity generated in New Zealand should be derived from renewable energy sources by 2025 providing this does not affect security of supply. The ODP has introduced a framework to support renewable energy generation.

71. The NPSREG was considered at the Environment Court hearing, however did not exist at the time the former District Plan was prepared. The provisions in the ODP relating to renewable energy generation are more detailed than in the previous plan. This is reflective of the ODP needing to give effect to the NPSREG.

Summary

72. In summary, the policies and objectives of the District Plan and other relevant plans are no less or more favourable to the proposal than what they were when consent was granted.

Conclusion

73. As outlined earlier the consideration of an extended lapse date does not represent an opportunity to reconsider the merits of an application, rather it is the effects of the extended period that are to be considered. There are a number of competing factors that require consideration.

74. Of relevance are factors associated with the manner in which environments change over time; this includes physical changes, social changes and perceptions, and changes in environmental standards, approaches and expectations of communities.

75. As noted in the assessment above, there have been no substantive changes to the physical and social environments within the vicinity of the windfarm, and there are no reasonably foreseeable changes which might make implementation of the windfarm inappropriate.

76. The ODP introduces a framework that specifically anticipates the establishment and/or expansion of a range of renewable energy production activities district wide, whilst maintaining appropriate environmental bottom lines. While there have been some changes to the objectives and policies in relation to landscape and vegetation, they are not significant changes and do not represent a change in approach from that considered by the Environment Court. As such, I consider that the continued existence of the Mt Cass Wind Farm consent is more aligned with the provisions of the ODP than the inoperative District Plan which has

been superseded. Furthermore, the conditions of the consent, are appropriate in terms of mitigation and environmental outcomes sought by the ODP.

77. The Applicant has requested an extension of five years to the existing consent to establish and operate a wind farm to a specified lapse date of 7 February 2025.
78. Where an applicant seeks to extend a period for giving effect to a consent a balancing exercise must be undertaken where the reasons supporting a longer lapsing period are weighed against countervailing considerations, such as those discussed in *Katz v Auckland City Council*.¹⁶ As required by s125 this report has considered a range of factors upon which to base a recommendation.
79. In my opinion:
- Substantial progress or effort has been, and is continuing to be, made towards giving effect to the consent;
 - There are no persons from whom written approval should be required;
 - The extension is not inconsistent with the relevant objectives and policies of the Operative Hurunui District Plan.
80. I have also taken into account the fact that the establishment of renewable energy generation is a matter of national significance, and giving effect to existing and new renewable energy developments is seen as contributory toward achieving central government renewable energy targets by 2025. This factor lends weight to the conclusion I would have reached in any event, that it is appropriate for an extension to be granted.
81. In terms of the five year extension sought, the Applicant has indicated in the Gantt chart and assurances provided as part of this application, that a further period of five years would enable completion of the wind farm construction. I agree that a further period of five years is an appropriate duration to be applied for the extension.

Recommendation: That for the above reasons pursuant to section 125(1) of the Resource Management Act 1991 the consent shall now lapse on 7 February 2025.

Reported and Recommended by:


Helga Bennett, **Senior Planner**

Date: 14 August 2019

DECISION:

I have read and considered the above report and recommendation by the Council's officer, Helga Bennett and the information available to Council in respect of the application to extend the timeframe for lapse of consent of RC070250 [and subsequent variation RC190024]. I agree with the recommendation made and decide that the Council officer's recommendations should be adopted.


Judith Batchelor, **Manager Regulatory Services**

Date: 15 August 2019

¹⁶ *Katz v Auckland City Council* (1987) 12 NZTPA 211