



DECISION OF THE HURUNUI DISTRICT COUNCIL

SECTION 127 REPORT ON CHANGE OR CANCELLATION OF CONDITION(S)

RESOURCE MANAGEMENT ACT 1991

Consent Number:	RC210137
Applicant:	Mainpower New Zealand Limited
Site Address:	791 Mt Cass Road, Waipara
Legal Description:	Lot 2 DP 401564 (RT: 404395); Lots 5-9, 14, 16, 19 DP 424383 & Section 13 SO 18669 (RT: 494787); Lot 19 DP 424383, Section 13 SO 18669 & Section 108 SO 469452 (RT: 672871); 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 (RT: CB335/110); and RS 39398 and RS 39400 and RS 39401 (RT: 233108)
Description of Application:	To change conditions 5, 6, 8, 15, 16, 23, 24, 31(h), 54, 94, 99, 134(a) and 175 and add new conditions 2(a) and 24(a) of resource consent RC070250
Activity status:	Discretionary activity
Zoning:	Rural Zone

Introduction

The applicant is seeking to change conditions 5, 6, 8, 15, 16, 23, 24, 31(h), 54, 94, 99, 134(a) and 175 and add new conditions 2(a) and 24(a) of resource consent RC070250. This resource consent was granted through an Environment Court Decision [2012]NZEnvCO21 for land use consent to establish and operate a wind farm at Mt Cass, Waipara. The conditions of consent have subsequently been amended in accordance with section 127 of the Resource Management Act 1991 ('RMA') by way of resource consents RC190024 and RC200008.

The change of conditions seeks to enable:

- Amendments to the size, form and location of the substation and operations and maintenance buildings (condition 16).
- A small change to the location of the exclusion zone shown on the design plans to enable the road realignment to be adjusted in line with the micro-siting ecological assessment recommendations. This will result in consequential changes to conditions which reference the design plans with the amended exclusion zone (conditions 6, 8, 15, 31(h), 54, 94 and 99).
- An additional condition to clarify that the resource consent is the property of and will be exercised by Mt Cass Wind Farm Limited (MCWFL). MCWFL is owned by Mainpower New Zealand Limited and has been set up to manage the design, construction and operation of the wind farm and to meet the 'arm's length' rules of the Electricity Industry Act 2010¹.
- Changes to the timeframe to provide the certified Construction Management Plan.
- Administrative change to condition 134(a) to refer to the correct turbine layout.
- Administrative changes to condition 175 to ensure consistency in the cross referencing to provide clarity on the consent holders obligations.

A change in the road alignment providing access to turbine A03 is also described and shown on the updated layout plans. The Consent Holder advises that this amendment is in accordance with the micro-siting process provided for in conditions 8-11, however it has been described in this application as the change is within the Department of Conservation (DoC) Covenant Area and therefore needs to be documented in the land use consent.

¹ Part 3 of the Electricity Authority Act 2010 is to promote competition in the electricity industry by prohibiting a person who is involved in electricity distribution from being involved in a generator where that may create incentives and opportunities to inhibit competition in the industry; and by restricting relationships between a distributor and a generator or retailer, where those relationships may not otherwise be at arm's-length.

Background

The Consent Holder has previously been granted resource consent (RC070250) to establish and operate a 22-turbine wind farm at Mt Cass. The resource consent was granted by a substantive decision of the Environment Court on 8 December 2011². The decision of the Environment Court confirming the conditions applying to RC070250 was issued on 7 February 2012³. The consent authorises the installation of wind turbines and turbine platforms, underground cabling between the turbines and a new substation, electrical plant and roading.

A subsequent change of condition application (RC190024) was granted by Council on 1 May 2019 to vary conditions in relation to the R90 turbine height, number and colour.

Statutory Requirements

Section 127 of the Resource Management Act states:

“127. Change or cancellation of consent condition on application by consent holder –

- (1) The holder of a resource consent may apply to a consent authority for a change or cancellation of a condition of the consent (other than any condition as to the duration of the consent).*

- (3) Sections 88 to 121 apply, with all necessary modifications, as if –*
 - (a) the application were an application for a resource consent for a discretionary activity; and*
 - (b) the references to a resource consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.*

- (4) For the purposes of determining who is adversely affected by the change or cancellation, the local authority must consider, in particular, every person who –*
 - (a) made a submission on the original application; and*
 - (b) may be affected by the change or cancellation.”*
 - (c)*

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?

Existing environment

In considering the adverse effects of the proposed change of conditions on the environment, it is relevant to consider the existing environment. The existing environment includes the consented Mt Cass Wind Farm. This includes the turbine layout, roading layout, set-down areas, windfarm footprint and effects of the R90 turbines as confirmed by change of condition RC190024.

The consented windfarm includes a comprehensive suite of conditions that are required to be met in the establishment and operation of the windfarm. These conditions include setting out parameters of any development, including the exclusion areas and the limits on the amount of indigenous shrub land and indigenous forest that can be cleared and the amount of exposed limestone that can be disturbed. As such, the following assessment provides a comparison of the effects of the proposed changes against the effects of the consented wind farm.

Operations & Maintenance, and Substation (Switch room) building

As noted earlier, the consented Mt Cass Wind Farm provides for electrical plant including a substation and switching yard in addition to an operations building. These buildings were consented under resource consent RC070250, however the design of the buildings has changed due to the different requirements of both the civil construction contractor and General Electric (GE) as the future operator. A landscape assessment prepared by Mr Glasson of Glasson Huxtable Landscape Architects provides an assessment of the proposed building and switch yard changes on landscape character and visual effects. I have relied on the judgement of Mr Glasson in terms of assessing landscape and visual effects.

² MainPower NZ Limited v Hurunui District Council [2011] NZEnvC384

³ MainPower NZ Limited v Hurunui District Council [2012] NZEnvC021

Mr Glasson notes that the proposed substation area will be located on a terrace below the Mt Cass ridgeline, adjacent to the north ramp road. This area consists of a pastoral landscape with intermittent rock outcrops and copses of native vegetation, however the substation site is virtually clear of any significant vegetation. Mr Glasson notes that the site will see the proposed buildings nestled into a naturally flat and indented site, well below the skyline.

The proposed development consists of a cluster of buildings including the operations and maintenance building, substation switchroom building, generator, diesel tanks, and three large water tanks. The development will be set within a large, sealed compound with 14 carparks and turnaround areas. The whole space requires an area of approximately 75m x 40m.

The operations and maintenance building will be in the style of a farm shed with a gable roof. The operations and maintenance building consists of a taller section comprising the store and a lower section comprising the office, while the switching room is of a modular type on piers. Mr Glasson notes that both building forms are preferable to the previous design submitted with the original resource consent which had a barrel-vaulted roof, because they will be more compatible with other buildings in this rural landscape.



Figure 1: Bulk comparison elevations

The proposed building height will be a maximum of 8m, with the exterior of the buildings to be finished in Resene 'Smokey' and 'Lichen'. Mr Glasson considers that these colours will reflect the colours of the landscape and assist to easily integrate the buildings into the landscape. He notes that the buildings will have a significant hill backdrop and therefore they will not be seen to be piercing the ridgeline from any viewpoint.

A summary of the design differences for the proposed buildings are as follows:

- Platform:** The site is 565 m² larger than the previous option to allow for the manoeuvring of trucks. The yard is 7.0 metres longer in the east-west direction than the previous option.
- Building size:** The original buildings were 183 m² each. The operations and maintenance building is now 680 m² in order to house workshops, warehouse, stores, utilities, and offices. The substation switchroom building is now 91 m², smaller than previously proposed.
- Building height & form:** Previously the building style was of a barrel-vaulted roof type. The operations and maintenance building now replicates a farm shed with gable roofs, while the switching building is of a modular prefabricated type located on piers. The original building was 8.5 m high whereas the proposed switching room is now 5.9 m in height. The operations and maintenance buildings are 8.2m with the office being 4.9m in height.
- Cladding & colour:** The original cladding and roofing was to consist of corrugated Colorsteel 'Smokey'. The same material and colour will be used for the operations and maintenance building. The office and oil store position of this building and the substation building will be finished in the colour 'Lichen'.

In terms of landscape effects, Mr Glasson notes that the buildings will be in the same general location as previously designed, with a hill backdrop to the buildings. There will be no loss of any significant vegetation or boulder formation. In essence, when considering the new building designs, there will be no further adverse change to the landscape effects. The area for this development is slightly larger, but this is easily accommodated within the landform.

With respect to visual effects, Mr Glasson notes that the operations and maintenance building and the substation switchroom may potentially be viewed from one public location, and that is from State Highway 1 (SH1) near to the intersection of SH1 and Reeces Road, Omihi. He considers that given the viewing distance of 5.4 km, it would be difficult to discern the proposed buildings given the recessive colours being used, the form of the buildings, the setback on the terrace and the low height of the buildings. He notes that any potential effects as a result on glinting from the buildings in the afternoon sunlight would be similar to any effects associated with the consented buildings. As such, he considers that any adverse visual effects due to the modified design would be very low.

The landscape assessment further notes that planting of native vegetation will be undertaken in front of the development and to the sides and rear (uphill) of the buildings and the car park to help mitigate any adverse visual effects of the proposal.

Given the above matters, I am satisfied that any adverse landscape and visual effects as a result of the proposed design modifications to the utilities area would be less than minor.

Micro-siting

As part of the mitigation measures for the Mt Cass Wind Farm, the Consent Holder is required by conditions of consent to undertake a process known as micro-siting. The micro-siting process seeks to avoid or minimise adverse effects on ecological values and karst landscapes within the site. RMA Ecology Limited were engaged by the Consent Holder to undertake the micro-siting assessment. A preliminary assessment in relation to the roading layout and turbine site locations was undertaken in August 2020.

During the design process, the applicant identified that an optimised roading layout along the Northern Terrace Road near Turbine A012 would encroach on the exclusion zone to the north of the alignment. At this location, the road is proposed to be located between two trees and avoiding the exclusion zone would require the removal of one of these trees. The preliminary ecological assessment carried out by RMA Ecology Limited recommends a shift in the alignment for the road near Turbine A012 due to the high ecological score associated with the vegetation in the centre of the consented alignment. As such, consent is sought to change the consented exclusion zone boundary to enable the road realignment to be constructed.

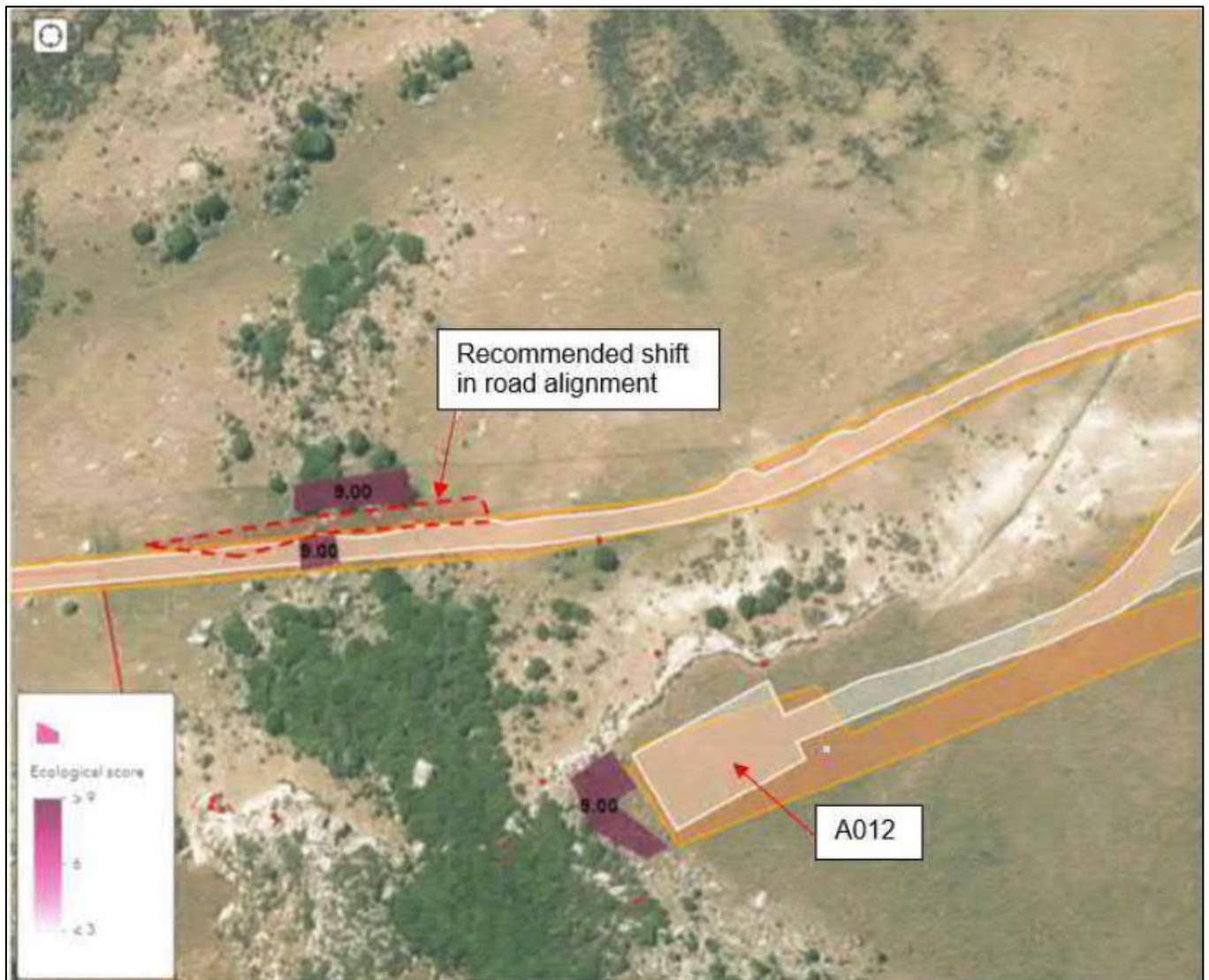


Figure 2: Micro-siting preliminary ecology assessment – road realignment recommendation shown as hatched line

Road realignment

Through the design process, it has been identified that an optimised roading layout along the Northern Terrace Road near Turbine A012 would encroach on the exclusion zone to the north of the alignment. At this location the road is proposed to be located between two trees and avoiding the exclusion zone would require the removal of a tree. The Mt Cass Wind Farm – Micro-siting preliminary ecology assessment (Appendix C) recommended shift in alignment of the road to the north of Turbine A012, as identified in Figure 2, due to the high ecological score associated with the vegetation in the centre of the consented alignment. A change to the consented exclusion zone boundary is proposed to enable the road realignment recommendation to be constructed. The change is shown in Figure 2, however the alteration is too detailed to be identifiable on the scale of the consent layout plans (Refer Appendix D).

In addition to the above, the road alignment to Turbine A03 is proposed to be amended from the consented layout to minimise the potential adverse effects on ecological values and karst landscapes, as identified in Figure 3 below. An ecological assessment completed by RMA Ecology Limited for the proposed alignment identifies the alternative access predominantly crosses an area of grazed pasture whereas the consented alignment passes through several large areas of indigenous vegetation and karst outcrops. RMA Ecology conclude that the alternative access road alignment to Turbine A03 will result in less disturbance to native plants, habitats for lizards, and karst outcroppings in contrast to the consented access road alignment. They note that while the alternative access road will require the removal of one At Risk matagouri plant, this is <1% of the matagouri within the wider Mt Cass Wind Farm site and is considered to have a negligible effect on the population.

I have relied on the judgement of RMA Ecology Limited in regard to the proposed changes to the road alignments. Based on their findings, I consider that any adverse effects on ecology as a result of the proposed change to the road alignment (and subsequently the plans for the windfarm) would be less than minor.

Mt Cass Wind Farm Limited

The Applicant has requested that a new condition be added to make it clear in the consent conditions that Mt Cass Wind Farm Limited will be the party exercising the consent. The intention behind requesting the condition is to shift the obligations under the resource consent to MCWFL as it will be MCWFL that is building and operating the wind farm and is therefore in the best position to meet the requirements of the consent. The applicant notes that given there is no mechanism for the transfer of a land use consent under the Resource Management Act 1991 (RMA), the only option is to include a condition in the consent that allows MCWFL to assume MainPower's obligations under this consent by rebutting the presumption that a land use consent runs with the land under section 134 of the RMA.

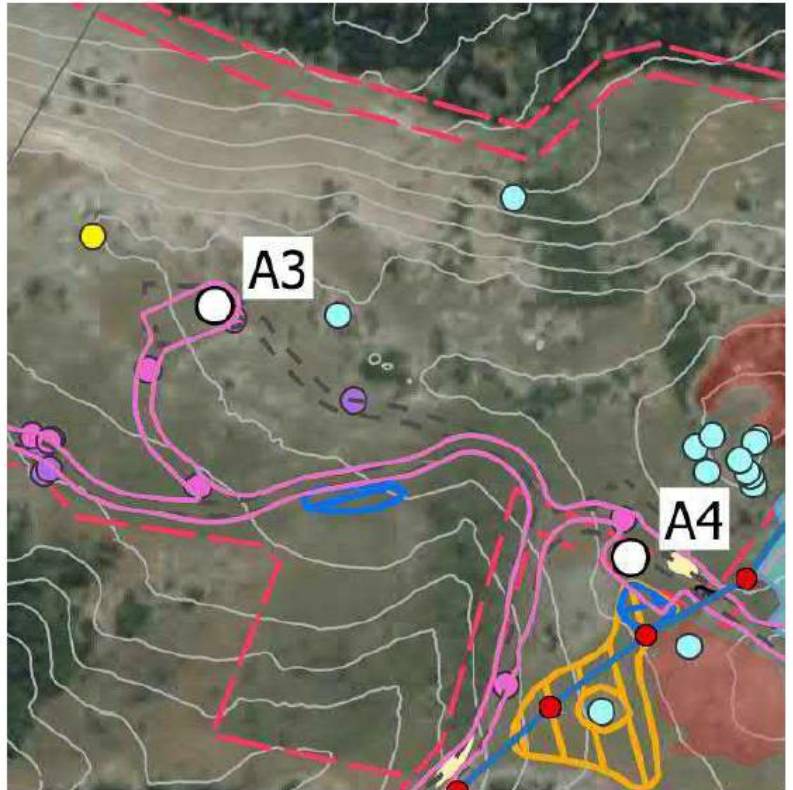


Figure 3: Consented access road alignment (grey) compared to the proposed access road alignment (pink)

The Mt Cass Wind Farm will be constructed across four properties with the land being owned by Organic Farm Holdings Limited, Dovedale Farm Limited, Hamilton Glens Limited, and MainPower New Zealand Limited. Easements and agreements are in place between MCWFL and each of these land owners authorising the construction and operation of the wind farm. The applicant notes that MCWFL is best placed to meet the obligations under these agreements.

The applicant notes that MCWFL is a 100% owned subsidiary of MainPower New Zealand limited, however the "arm's length" rules within the Electricity Industry Act 2010 require management separation between MainPower and MCWFL. It is therefore preferable that MCWFL exercises the consent and is accountable to Hurunui District Council, Environment Canterbury and the landowners for performance of its obligations. The applicant therefore considers that inclusion of a condition in the consent is considered to be a more transparent means of achieving this rather than a series of agreements and indemnities between MCWFL and MainPower.

Council has sought legal advice in relation to the proposed new condition. Council solicitors have advised that they have no concerns with respect to the wording of condition as amended on 29 September 2021 (email received from Ms S Barnes of Mainpower). I note that a similar approach was used by the Hastings District Council in respect of the resource consent acquired by Meridian Energy Limited to operate the Harapaki Wind Farm.

Construction Management Plan

The existing conditions of consent require that both the Environmental Management Plan (EMP) and Construction Management Plan (CMP) be provided to the Manager Environmental Services Hurunui District Council at least three months prior to undertaking any activities authorised by the consent. Both the EMP and the CMP are required to be reviewed and certified by a suitably qualified, independent and experienced expert approved in writing by the Council to confirm that the activities undertaken in accordance with the management plan will achieve compliance with the relevant consent conditions. The certification from the suitably qualified, independent and experienced expert is required to be provided to the Council.

The applicant seeks to change the conditions to enable the submission of the CMP to the Council for review acting in a technical certification capacity at least 30 working days prior to the commencement of construction rather than 3 months. The Consent Holder notes that the CMP would already have gone through a full review process with the suitably qualified, independent and experienced expert and the shorter timeframe will enable construction to commence sooner whilst maintaining the intent of the conditions which seek to ensure the CMP is prepared to achieve compliance with all relevant consent conditions.

I note that a shorter review period is consistent with the conditions of other wind farm decisions including the conditions for the Hurunui Wind Farm (RC11011) granted by the Environment Court on 14 April 2013. Decreasing the timeframe to provide the CMP to Council will increase the time available for the Consent Holder to fine tune and finalise the CMP prior to lodging it with Council and as such will potentially require less amendments as construction details progress. Overall, I am satisfied that any adverse effects of the proposed change in the timing of providing the CMP would be less than minor.

Condition 134[a]

Condition 134[a] refers to turbines 24/26 to 26/26 in the R90 layout not being operated until after an assessment report has been submitted to the Council demonstrating there are no special audible characteristics present. The applicant notes that this condition should have been varied as part of resource consent RC190024 as under the amended turbine layout approved under RC190024, Turbines A21-A22 will be the closest turbines to the McLaughlin residence in accordance with the advice note. As such, the applicant requests that this condition be changed to ensure clarity for all parties. I agree that it is appropriate to change the condition as sought.

Condition 175

An administrative change to condition 175 is also sought to ensure consistency in the cross referencing to provide clarity on the consent holders obligations. It appears that the reference to condition 170 in condition 175 should correctly refer to condition 174 and that the reference to condition 169 should correctly refer to condition 173. I consider that it is appropriate to provide for the changes sought to ensure clarity for all parties.

Conclusion

Given the matters discussed above, I am satisfied that any adverse effects in relation to the proposed change of conditions 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 (4)]

No – The application seeks to change conditions 5, 6, 8, 15, 16, 23, 24, 31(h), 54, 94, 99, 134(a) and 175 and add new conditions 2(a) and 24(a) of resource consent RC070250. The application is not 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 signal 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 either or both of the following, but no other, activities: [Section 95B(6)(b)]

- a controlled activity (but not a subdivision);
- an activity prescribed in regulations (section 360H(1)(a)(i))?

No

Who may be considered an affected person in relation to this application? [Section 95E]

For the purposes of determining who is affected in relation to this application, I must consider, in particular, every person who made a submission on the original application and who may be affected by the change of conditions.

In terms of background, the original application (RC070205) was lodged by MainPower New Zealand Limited in 2007 for land use consent to establish and operate a wind farm on the ridge of Mt Cass. The application was publicly notified on 21 June 2008 and received a total of 339 submissions, 116 opposed the application with the remainder being either in support or neutral.

In 2008, the Council appointed three commissioners to hear and determine the application for resource consent together with related submissions. A hearing was held over 10 days. The commissioners determining the application concluded that the part of the site between Mt Cass and Totara Peak incorporating limestone platforms, the native woody vegetation and the limestone escarpment constituted an outstanding natural feature in terms of s6(b) of the Resource Management Act 1991 ("RMA"). The commissioners also found that the indigenous vegetation on Mt Cass Ridge was significant in terms of s6(c) of the RMA. The commissioners concluded that the scale and degree of adverse impacts on the limestone pavement, the significant indigenous vegetation and significant habitats of indigenous fauna were very significant. The commissioners decided that the benefits of the wind farm if consent were granted did not outweigh the adverse impacts as they saw them on the s6 matters.

The application was declined by the Council and Mainpower appealed the decision to the Environment Court (ENV-2009-CHC-100). A number of parties joined the appeal pursuant to section 274 of the RMA.

In January and February of 2010 the parties to the MainPower appeal engaged in Environment Court mediation. As a result of these discussions, MainPower prepared a series of maps identifying alternative layouts, collectively referred to as the "Mediated Layout". A number of parties to the mediation including, Hurunui District Council, the Department of Conservation and Canterbury Regional Council, agreed on the revised layout for the proposed wind farm, subject to the imposition of appropriate conditions.

Aspects of the revised wind farm layouts agreed at the mediation were considered to be out of scope of the original application and as such a new resource consent application (RC100059) was lodged to cover those aspects. As part of the process of resolving the Mt Cass appeal, the parties agreed that MainPower would request direct referral of the supplementary application to the Environment Court for determination under section 87D of the Resource Management Act 1991 (ENV-2010-CHC-200). The supplementary application, all submissions received by the Council on the application and a report on the supplementary application prepared by the Council under section 87F of the Resource Management Act 1991, were filed with the Court on 20th August 2010.

The application directly referred to the Court attracted 72 submissions, 57 opposed to the application with the remainder being either in support or neutral.

In terms of potential adverse effects on persons (including submitters), I consider that any adverse effects would be in terms of landscape and visual effects, ecological effects and noise effects.

With regards to potential adverse landscape and visual effects, I consider these would be associated with the proposed change to the substation, operations and maintenance buildings including the switch yard. In assessing these effects, I rely on the judgement of Mr Glasson. He considers that any changes on landscape character and visual effects in terms of views from private properties, could be closer than views from public locations and that the visual effect maybe slightly greater than from public viewpoints. However, he concludes that any adverse visual effect will still be no more than a very low one. I note that the proposed buildings will be in the same general location as previously designed, will be of a similar cladding and colour and will be viewed with a hill backdrop. Having considered the proposed change to the buildings and switch yard area in the context of the consented windfarm, I am satisfied that any adverse landscape and visual effects on persons would be less than minor.

With respect to the proposed road realignment to Turbine A03, I note that the proposed alignment is located within Department of Conservation (DoC) covenant land. The applicant has advised that DoC have reviewed the proposal and confirmed they have no issues with the change in alignment. The applicant notes that following approval of this change of condition application, the DoC Conservation Covenant will be amended to reflect the proposed access realignment. I note that the proposed realignment of the road to Turbine A03 would result in less disturbance to native plants, habitats for lizards, and karst outcroppings in contrast to the consented access road alignment. In this regard, I consider any adverse effects on DoC would be less than minor. For clarification, I note that the applicant will still need to gain consent from DoC for the proposed changes to the Conservation Covenant.

With respect to the proposed change to condition 134[a], I note that this condition was imposed to ensure that there are no special audible characteristics associated with the operation of the wind turbines. The reference to specific turbines seeks to ensure that those turbines located closest to the McLachlan property (as referred to in the advice note) are not operated until such time that the report required by the condition confirms that there are no special audible characteristics. I am satisfied that the proposed change to the condition will ensure that the turbines located nearest to the McLachlan property are accurately referenced. The proposed change of condition will not change the intent of the condition and as such I am satisfied that any adverse effects on the McLachlan's as a result of this change, will be less than minor.

The remaining changes to conditions, relate to administrative matters that have no effects on the environment.

Overall, I am satisfied that no persons will be adversely affected in relation to the changes sought and as such no persons are considered to be affected in relation to the change of condition application.

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

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 explanation 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.**

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?

The adverse effects on the environment have been outlined and assessed in the preceding section 95D and section 95E discussions. I consider that all the effects relating to relation to landscape and visual effects, ecological and acoustic effects are also actual or potential effects on the environment and that the assessment in section 95D and section 95E is equally applicable under section 104.

Overall, I consider that any actual and potential effects on the environment from the proposed change of conditions would be adequately avoided or mitigated.

How do any relevant objectives, policies, rules or other provisions of the District Plan relate to the proposal?

I consider the following objectives and policies to be relevant to the change of condition application:

Chapter 3 - Rural

Objective 3.1

The character and amenity values of rural areas of the district are maintained while providing for a variety of activities including those associated with primary production.

Policy 3.5

To enable a variety of activities to occur within rural areas while managing adverse effects on character and amenity values by seeking that the scale and siting of development:

- 1. Maintains a dominance of open space and plantings over buildings, especially when viewed from public places such as roads;*
- 2. Maintains privacy and rural outlook for residential activities;*
- 3. Protects access to light for sensitive activities and primary production;*
- 4. Achieves an appropriate level of compatibility with existing development within the surrounding area;*
- 5. Avoids unduly affecting the amenity of existing sensitive activities being exposed to noise and adverse light emissions at night;*
- 6. Avoids, mitigates or remedies adverse visual effects if sited on prominent ridges or immediately adjacent to strategic arterial roads, district arterial roads and collector roads, or to Lake Sumner Road; and*
- 7. Is appropriate to the location, including recognising the need for activities reliant on a natural resource to be located where the resource is available.*

Policy 3.6

To manage potential conflict between incompatible activities in the rural environment so that:

- 1. Residential and other sensitive activities are located away from incompatible rural, and rural based industrial activities and other activities that have a functional or locational need to locate in the Rural Zone;*
- 2. The continued use and development of existing primary production activities, rural based industrial activities and other activities that have a functional or locational need to locate in the Rural Zone are not unreasonably inhibited by the establishment of new sensitive activities; and*
- 3. The location of activities likely to generate effects beyond the property boundary are controlled.*

Policy 3.8

To control noise emissions at reasonable levels and where they exceed those levels, mitigate the effects of noise through noise reduction methods including separation distances between those noise-emitting activities and sensitive activities.

The objectives and policies relevant to the districts rural areas were considered in the original consent application and by the Environment Court in its decision. I have concluded that in terms of landscape character and visual effects the change to the proposed size, form and location of the substation and operations and maintenance buildings will be less than minor. I note that the proposed buildings will be in the same general location as previously designed, will be of a similar cladding and colour and will be viewed with a hill backdrop. There will be no loss of

any significant vegetation or boulder formation and the landscape assessment notes that planting of native vegetation will be undertaken in front of the development and to the sides and rear (uphill) of the buildings and the car park to help mitigate any adverse visual effects of the proposal. Given these matters, I am satisfied that any adverse effects on character and amenity values would be managed.

With respect to noise, I note that the proposed change to condition 134[a], seeks to ensure that the reference to the relevant R90 turbines is accurate given that previous change of conditions approved by Council. I am satisfied that the proposed change to the condition will ensure that the correct turbines are accurately referenced. The proposed change of condition will not change the intent of the condition and as such I am satisfied that noise emissions would be controlled at reasonable levels.

Given these matters, I am satisfied that the change of conditions is in accordance with the objectives and policies addressing the rural environment.

Chapter 13 – Biodiversity

Objective 13

Exercise Kaitiakitanga/guardianship by managing ecosystems and indigenous biodiversity within the district through:

- (a) The protection of ecosystem values, ecosystem functioning and areas of significant indigenous biodiversity;*
- (b) The maintenance of other indigenous biodiversity;*
- (c) The encouragement and support for restoration and enhancement of ecosystems and indigenous biodiversity;*
and
- (d) Recognising and valuing indigenous biodiversity as an essential part of mahinga kai and the relationship of Ngāi Tahu with its ancestral lands and waters.*

Policy 13.2

To protect areas identified as having significant indigenous biodiversity value, by avoiding, remedying or mitigating adverse effects using appropriate mechanisms including where identified through a resource consent process.

Policy 13.3

When considering resource consent applications:

- (a) Ensure that any adverse effects of the activity on the indigenous biodiversity of the district's environment are avoided, remedied or mitigated;*
- (b) Encourage landowners to take opportunities and consider the site specific management factors to promote the restoration and enhancement of indigenous vegetation and habitats;*
- (c) Encourage provision of mechanisms that assist in protection or enhancement of significant indigenous biodiversity such as QE II covenants and the use of Biodiversity Management Plans;*
- (d) Provide for consideration of biodiversity offsets where it has been demonstrated that the adverse effects have been avoided as far as practical in the first instance, minimised when total avoidance is impracticable, and any remaining adverse effects are remedied or mitigated and where the adverse effects cannot be avoided, remedied or mitigated it is demonstrated that, with the offset, that will achieve no net loss; and*
- (e) Provide for conservation lots to be created, or reduced site areas to be considered, where significant indigenous biodiversity is protected.*

The original application was assessed and consented in the knowledge that the wind farm site contains areas of significant indigenous vegetation and significant habitats of indigenous fauna. Areas of indigenous vegetation, limestone and habitat were affected by all layouts of the wind farm development.

In terms of the effects on indigenous vegetation, condition 6 designates an “exclusion zone” to protect identified areas across the site. In addition, condition 13 constrains the extent of clearance of indigenous shrubland and indigenous forest. In paragraph [236] the Court found Conditions [6] and [13] to be adequate to control the potential effects of construction activities on indigenous vegetation and the limestone features.⁴

⁴ Environment Court decision no. [2011] NZENVC, Paragraph 236

As part of the micro-siting process, RMA Ecology Limited have identified that an optimised roading layout along the Northern Terrace Road near Turbine A012 would encroach on the exclusion zone to the north of the alignment. They recommend that the alignment of the road be shifted to the north, due to the high ecological score associated with the vegetation in the centre of the consented alignment. Therefore, the proposed change to the boundary of the exclusion zone to allow the realignment of the road at this point, would result in a better biodiversity outcome than the consented alignment. Similarly, RMA Ecology recommend that the road alignment to Turbine A03 be altered to avoid several large areas of indigenous vegetation and karst outcrops. RMA Ecology conclude that the alternative access road alignment to Turbine A03 will result in less disturbance to native plants, habitats for lizards, and karst outcroppings in contrast to the consented access road alignment.

I have relied on the judgement of RMA Ecology Limited in regard to the proposed changes to the road alignments. Based on their findings, I consider that those areas of high ecological value and biodiversity would be protected.

Overall, I am satisfied that the change of condition proposal would be in accordance with the objectives and policies of the District Plan.

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)]

The District Plan was made operative on 21 June 2018 and gives effect to the higher order instruments referred to in section 104(1)(b), including the Canterbury Regional Policy Statement and regional plans. I have no reason to consider there is any illegality, uncertainty or incompleteness in the District Plan. Accordingly, I have not addressed the higher order instruments specifically in this decision.

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 reasonably foreseeable needs of future generations and avoiding, remedying or mitigating the adverse effects of the proposal on the environment.

Recommendation

That for the above reasons the application to change conditions 5, 6, 8, 15, 16, 23, 24, 31(h), 54, 94, 99, 134(a) and 175 and add new conditions 2(a) and 24(a) of resource consent RC070250 [2012]NZEnvC021 granted on 7 February 2012 be **approved** pursuant to Section 127 of the Resource Management Act 1991.

Conditions 2, 5, 6, 8, 15, 16, 23, 24, 31(h), 54, 94, 99, 134(a) and 175 shall now read:

2. *At least six months prior to the start of any construction activities the Consent Holder shall advise the Manager Environmental Services of Hurunui District Council of the choice of turbine to be constructed on the site.*

2[a]. This consent does not attach to the land and is personal to Mt Cass Windfarm Limited. This consent shall not be used by any other person or party without the express written approval of Hurunui District Council.

Advice note: This condition does not prevent Hurunui District Council from determining that this consent is personal to some other person or party when presented with an application under s127 of the Resource Management Act 1991.

5. *If the R90 turbine layout is constructed, the following aspects of the layout, construction and operation of the windfarm shall, subject to conditions [8 to 11 and 13], be in accordance with the ~~MainPower Plans 4755.1 and 4755.2 dated 10 April 2019~~ Mt Cass Wind Farm plans 4755.1 and 4755.2 Rev B dated 4 May 2021:*
 - a. *Location of roads and car parking areas*
 - b. *Location and extent of construction laydown areas other than those associated with turbine platforms*
 - c. *Extent of areas disturbed by earthworks*
 - d. *Location and extent of spoil disposal areas*
 - e. *Location of the exclusion zone.*

6. *No construction activities authorised by this consent shall occur within the exclusion zones identified in the Golder Associates plans referred to in conditions [3] and [4] and the ~~Mainpower~~ Mt Cass Wind Farm plans referred to in condition [5], except for fencing, the walking track referred to in condition [143] and any stabilisation of rocks.*

8. *The proposed turbine locations are shown on the Golder Associates plans referred to in conditions [3] and [4] and ~~MainPower~~ Mt Cass Wind Farm plans referred to in condition [5]. The Consent Holder may change the final location of the turbines (a process known as micrositing) provided that:*
 - a. *No turbine in the R90 layout shall be located more than 140 metres from the locations of the turbines shown on ~~MainPower Plans 4755.1 and 4755.2 dated 10 April 2019~~ Mt Cass Wind Farm plans 4755.1 and 4755.2 Rev B dated 4 May 2021;*
 - b. *No turbine in the R33 of R60 layouts shall be located more than 100 metres from the locations of the turbines shown on Golder Associates plans CG151.4 and CG152.4 dated 27 May 2011;*
 - c. *No turbine in the R60 or R90 layouts shall be located within the areas marked with a red hatch on CG161.3 and CG164.3; and*
 - d. *Subject to condition [13], the final placement of turbines shall avoid, but if unable to avoid, then shall minimise effects on indigenous shrubland and forest⁵ and on exposed limestone pavement⁶ and boulderfield⁷ as provided for in condition [10].*

15. *Any concrete batching on the wind farm site shall be located in the area identified on the Golder Associates plans referred to in conditions [3] and [4] and MainPower Mt Cass Wind Farm plans referred to in condition [5].*

16. *The substation buildings shall be designed generally in accordance with the Noordanus Architects' plans ~~RC02, RC05 and RC06 dated April 2010~~ P1.01-G, P1.02-H, P1.03-H dated 9 August 2020. The exterior cladding, guttering, downpipes and roof of the substation buildings shall be painted in recessive colours drawn from the background colours of the landscape of the area. A copy of the plans and elevations including suggested colours shall be provided by the Consent Holder to the landscape experts panel, for its consideration, prior to application for building consent.*

23. *At least 3 months prior to undertaking any activities authorised by this consent, the Consent Holder shall provide to the Manager Environmental Services of the Hurunui District Council for review acting in a technical certification capacity the following management plans ~~completed Environmental Management Plan.~~*
 - a. ~~Construction Management Plan~~

⁵ The following forest and shrubland communities have been recorded and will be impacted by the project at Mt Cass and are identified on the Golder Associates plan Figure 1: Mt Cass Vegetation Communities, dated July 2011 attached as Appendix 1, Community 2: Mingimingi – pasture grass shrubland; Community 3: Broadleaf – (mingimingi) – (five-finger) – (kohuhu) scrub; Community 4: Kowhai – (broadleaf)/(ongaonga) forest; Community 5: Mahoe – (houhere)/Raukawa – ongaonga – climbing fuchsia forest; Community 6: Broadleaf – five-finger – (mahoe)/(ongaonga) forest; Community 7 (Matai)/mahoe – broadleaf – (lemonwood) forest; and matagouri shrubland. For the avoidance of doubt the reference to “communities” includes all species present within those communities.

⁶ Exposed limestone pavement means those areas, in situ or otherwise, that consist of a continuous, relatively flat or moderately inclined surface with an organised system of open sub-vertical joints which fully penetrate the surface limestone bedding as identified on Golder Associates plans CG181.3, CG182.3, dated 27 May 2011 attached as Appendix 2.

⁷ Boulderfield means land in which the area of unconsolidated bare boulders (. 200 mm diam.) exceeds the area covered by any one class of plant growth-form. Boulderfields are named from the leading plant species when plant cover > 1%, as per ATKINSON, I.A.E. 1985: Derivation of vegetation mapping units for an ecological survey of Tongariro National Park, North Island, New Zealand. New Zealand Journal of Botany 23: 361-378. The extent of boulderfield is identified on Golder Associates plans CG181.3, CG182.3, dated 27 May 2011 attached as Appendix 2.

~~b. — Environmental Management Plan.~~

24. The outcome of ~~this~~ the review of the management plans provided under condition 24 and 24[a] shall be provided to the Consent Holder in writing within 30 working days of receipt of the Plans.

24[a] At least 30 working days prior to undertaking any activities authorised by this consent, the Consent Holder shall provide to the Manager Environmental Services of the Hurunui District Council for review acting in a technical certification capacity the Construction Management Plan.

31. The objective of the Construction Management Plan shall be to set out the practices and procedures to be adopted to ensure compliance with consent conditions and to meet the following objectives:
- a. To minimise the overall area of disturbance (by cuts, fill and placement of cover) of karst limestone features and indigenous vegetation, but in any event to ensure compliance with the maximum levels of indigenous shrubland and forest clearance and disturbance of limestone pavement and boulderfield set out in condition [13];
 - b. Avoid disturbance of vegetation and limestone features within the exclusion zone as set out in condition [6];
 - c. To minimise sediment generation and sediment laden runoff in accordance with condition [37];
 - d. To maintain existing surface and subsurface drainage patterns and pathways;
 - e. To ensure that appropriate monitoring and reporting of all activities is undertaken in accordance with these conditions;
 - f. To ensure that the earthworks and spoil disposal areas are contoured so that, to the greatest extent practicable, the finished landform will blend with the surrounding landscape so as not to be visually dominant from any public viewing point (excluding unformed legal roads);
 - g. To ensure that, the earthworks are undertaken in a manner which provides for final surfaces which are suitable for rehabilitation and/or recolonization by native vegetation;
 - h. To ensure that only those areas identified in the Golder Associates plans referred to in conditions [3] and [4] and ~~MainPower~~ Mt Cass Wind Farm plans referred to in condition [5] are used as spoil disposal areas;
 - i. To ensure matters relating to the extent and timing of construction traffic, and the traffic management provisions to be put in place during this time, achieve a safe and efficient road network;
 - j. To ensure that conditions of this consent relating to visual effects mitigation can be met;
 - k. To identify threatened indigenous flora within the construction zone and provide for their relocation as required by condition [32.n];
 - l. To identify Canterbury gecko and other lizard species within the construction zone and provide for their relocation as required by condition [79];
 - m. Minimise potential for disruption to any active New Zealand falcon nest identified within 200 m of any construction or earthwork area; and
 - n. To minimise the introduction and spread of weeds.

(e) Spoil Disposal Sites

54. All spoil disposal sites shall be located in accordance with the Golder Associates plans referred to in conditions [3] and [4] and ~~MainPower~~ Mt Cass Wind Farm plans referred to in condition [5] and subject to condition [10], and be managed to ensure that:
- a. Suitable locations for clean-water cut-off drains can be provided; and
 - b. A sediment control measure appropriate to the size of the disposal area can be provided to treat all runoff from the disposal area.

Road construction mitigation and remediation

94. All surplus limestone and other excavated material shall be disposed of in locations indicated on the Golder Associates plans referred to in conditions [3] and [4] and ~~MainPower~~ Mt Cass Wind Farm plans referred to in condition [5].
99. During the construction of the Northern Terrace Road and associated ramp roads to the main ridgeline, cut material shall not be sidecast down-slope of the road, but shall be removed from the work areas and disposed of at disposal sites indicated on the Golder Associates Plans CG151.4-152.4 and ~~MainPower Plans 4755.1 and 4755.2 dated 10 April 2019~~ Mt Cass Wind Farm plans 4755.1 and 4755.2 Rev B dated 4 May 2021.

Post Installation Testing

134[a] The sound from at least two wind turbines shall be measured prior to commissioning the wind farm. These measurements shall be conducted at a location within 1000m from the turbines. A compliance assessment report for the turbines shall be submitted to the Hurunui District Council's Environmental Services Manager in accordance with Section 8.4.1 of NZS6808:2010. Turbines 61/75 to 69/75 in the R33 layout, 36/42 to 39/42 in the R60 layout, or ~~24/26 to 26/26~~ A21-A22 in the R90 layout shall not be operated until a report on this test has been submitted and it shows that no special audible characteristics are present, when assessed in accordance with NZS6808/2010. The reference test method for tonality shall be that prescribed as Annex C to ISO 1996 – 2:2007.

Note: the intention is that testing is carried out prior to operating the turbines closest to the McLachlan property.

175. If the decision of the arbitration is not made available by the date of arbitration decision referred to in condition [~~170~~174], then the amount of the Performance Bond shall be the sum fixed by the Hurunui District Council under condition [~~169~~173], until such time as the arbitration does give an award in writing to the parties. At that time, the amount of the Performance Bond shall be adjusted in accordance with the arbitration decision.

Advice note:

All other conditions of the resource consent shall remain unchanged and in force.

Reported and Recommended by:



Helga Bennett, Senior Planner

Date: 1 October 2021

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 change conditions 5, 6, 8, 15, 16, 23, 24, 31(h), 54, 94, 99 and 175 and add new conditions 2[a] and 24[a] of resource consent [2012]NZEVC021 (RC070250) granted on 7 February 2012. I agree with the recommendations made and decide that the Council officer's recommendations should be adopted.



Judith Batchelor, Chief Strategy and Community Officer

Date: 4 October 2021