

# Gore District Council Decisions



## NOTIFICATION UNDER s95A AND s95B AND DETERMINATION UNDER s104

*Resource Management Act 1991*

Application reference	LU25002
Applicant	Tararua Wind Power Limited
Proposal	Application under Section 88 of the Resource Management Act 1991 (RMA) to operate a commercial food truck
Location	54 Isla Road
Legal Description	Section 2 Block III Slopedown SD (RT SL9B/587), Lot 1 DP 5932 (RT SL235/20) and unformed legal road reserve
Activity Status	Discretionary
Decision Date	7 March 2025

### SUMMARY OF DECISIONS

1. Pursuant to sections 95A-95F of the Resource Management Act 1991 (**RMA**) the application will be processed on a **non-notified** basis given the findings of Section 5 of the Section 95A and 95B report. This decision is made by Werner Murray, on 7 March 2025 under delegated authority pursuant to Section 34A of the RMA.
2. Pursuant to Section 104 and Section 104B of the RMA, consent is **GRANTED SUBJECT TO CONDITIONS** outlined in this report of the Section 104 decision imposed pursuant to Section 108 of the RMA. This consent can only be implemented if the conditions in this report are complied with by the consent holder. The decision to grant consent was considered by Werner Murray, under delegated authority pursuant to Section 34A of the RMA.

## 1. THE PROPOSAL

Consent is sought to operate a commercial food truck in association with the construction of the Kaiwera Downs Windfarm.

## 2. SITE DISCRIPTION

The site is located at 54 Isla Road. The site is used for general agricultural purposes. In addition, the site is being used for construction related activities in association with the construction of the Kaiwera Downs Windfarm. The location of the compound area where the proposed food truck is to be located is outlined by the red box in Figure 1 below.



**Figure 1: Location of the Kaiwera Downs Windfarm Compound area.**

There are no relevant instruments on either Title subject to this application. It is noted that the windfarm project and resultant new transmission line spans several different Titles. This application relates solely to the compound area that is being established.

### 3. ACTIVITY STATUS

#### 3.1 Gore District Plan

##### Operative District Plan

The site is zoned Rural in the Gore District Plan, and the proposed activity requires resource consent under the District Plan for the following reason:

- A **discretionary** activity resource consent pursuant to Rule 4.2.4 for any land use that does not comply with Rule 4.2.1 or Rule 4.2.2 and is not otherwise explicitly provided for as a permitted, controlled, discretionary, non-complying or prohibited activity by any other Rule. In this instance, it is proposed to operate a commercial food truck on the site. Commercial activities within the Rural Zone are not explicitly provided for.

##### Proposed District Plan

The Proposed District Plan was notified for public submissions on 31 August 2023. The submission period closed on 27 November 2023. The further submission period closed on 12 April 2024 and hearings are currently underway.

The site is zoned as General Rural Zone within the PDP. There are no relevant rules with immediate legal effect.

#### 3.2 National Environmental Standard for Assessing Contaminants in Soil to Protect Human Health 2011 (“NES-CS”)

The location of the food truck is not within an area of potential contamination according to Council records. Further, the proposal does not involve any earthworks and is temporary in nature. Therefore it is considered that NES-CS does not apply.

#### 3.3 Activity Status Summary

Overall, the application is being considered and processed as a discretionary activity.

### 4. NOTIFICATION ASSESSMENT

Sections 95A – 95F (inclusive) of the Resource Management Act 1991 (‘RMA’) set out the steps the Council is required to take in determining whether or not to publicly notify an application or notify on a limited basis.

#### 4.1 Public notification – Section 95A

In accordance with section 95A, the following steps have been followed to determine whether to publicly notify the resource consent application:

##### **Step 1 – Mandatory public notification**

Mandatory public notification, is not required because:

- The applicant has not requested public notification.
- Public notification is not required as a result of a refusal by the applicant to provide further information or refusal of the commissioning of a report under section 92(2)(b) of the RMA.
- The application does not involve exchange to recreational reserve land under section 15AA of the Reserves Act 1977.

## **Step 2 – Public notification is precluded**

Public notification is not precluded as follows:

- There are no rules in a plan or National Environmental Standard that preclude notification.
- The application is not:
  - a controlled activity; or
  - a boundary activity as defined by section 87AAB that is restricted discretionary, discretionary or non-complying.

## **Step 3 – Public notification is required in certain circumstances**

- There are no rules in a plan or National Environmental Standard that require notification.
- A consent authority must publicly notify an application if notification is not precluded by Step 2 and the consent authority decides, in accordance with s95D, that the proposed activity will have or is likely to have adverse effects on the environment that are more than minor. An assessment in this respect is undertaken as follows:

The following effects must be disregarded:

- Effects on the owners or occupiers of land on which the activity will occur and on adjacent land.
- Trade competition and the effects of trade competition.
- Any persons that have provided their written approval and as such adverse effects on these parties have been disregarded.

The following effects may be disregarded:

- An adverse effect of the activity if a rule or national environmental standard permits an activity with that effect – referred to as the “permitted baseline”. The relevance of a permitted baseline to this application is as follows:

### *Permitted Baseline*

The consent authority **may** disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect.

In this case, the permitted baseline is not considered relevant as all commercial activities within the rural zone require resource consent.

### *Existing Environment*

While the permitted baseline is not of relevance, the existing environment is. The existing environment comprises of the consents which have authorised the construction of the windfarm. The existing environment therefore anticipates a large number of workers within the area. It is noted that the food truck will only serve persons employed on the site. There will be no commercial food sales to the commercial public.

#### *Commercial Activity Effects*

The location of the food truck will be within an existing compound that is being established to facilitate the construction of the windfarm. The compound is located well away from any public places. The food truck will be indiscernible within the compound complex. Food will only be offered to persons who are working on the windfarm and following completion of works, the food truck will no longer operate in this area (as the compound will also be removed). There will be no public advertising of the food truck. Considering that the food truck is solely for persons working on the windfarm and the fact that no other persons will be able to purchase food, it is assessed that potential adverse effects relating to commercial activity will be less than minor.

#### *Conclusion: Effects On The Environment*

On the basis of the above assessment, in terms of s95D, it is assessed that the proposed activity will not have adverse effects on the environment that are more than minor.

#### **Step 4 – Public Notification in Special circumstances**

- There are no special circumstances that warrant public notification.

#### **4.2 Limited notification – Section 95B**

In accordance with section 95B, the following steps have been followed to determine whether to give limited notification of the application:

##### **Step 1 – Certain affected groups or persons must be notified**

- There are no protected customary rights groups or customary marine title groups affected by the proposed.
- The proposal is not on or adjacent to, and will not affect, land that is the subject of a statutory acknowledgment.

##### **Step 2 – Limited notification precluded**

- The activity is not subject to a rule or National Environmental Standard that precludes limited notification.
- The application is not for a controlled activity (other than for a subdivision of land) under a district plan.

##### **Step 3 – Certain other affected persons must be notified**

- Under Step 3, if the proposal is a boundary activity, only the owner/occupier of the infringed boundary can be considered. The activity is not a boundary activity.
- For any other activity, a consent authority must notify an application on any person, if notification is not precluded by Step 2, and the consent authority decides, in accordance with s95E, that the proposed activity will have or is likely to have adverse effects on that person that are minor or more than minor.

An assessment in this respect is therefore undertaken as follows:

*Considerations in assessing adverse effects on persons under s95E*

- a) The consent authority **may** disregard an adverse effect of the activity on a person if a rule or national environmental standard permits an activity with that effect (a “permitted baseline”). The relevance of the permitted baseline to this application is outlined in the above s95D assessment of environment effects.
- b) The consent authority **must** disregard an adverse effect of the activity on the person if the effect does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion; and
- c) The consent authority **must** have regard to every relevant statutory acknowledgement specified in Schedule 11.
- d) The consent authority **must** disregard effects on those parties who have provided written approval.

*Assessment: Effects on Persons*

Taking into account the exclusions in sections 95E, the following outlines an assessment as to whether the activity will have or is likely to have adverse effects on persons that are minor or more than minor.

No persons are deemed to be affected by the proposal for the following reasons:

- The food truck will be located within a compound that is being established to support the construction of the windfarm.
- The surrounding land is all owned by the same company. The next closest property is over 1km away. Given this distance, the food truck within the compound area will not be discernable.
- The food truck will cease operating following completion of the windfarm and subsequent removal of the compound area.

Overall, the effect on any persons will be less than minor.

*Conclusions: Effects on Persons*

In terms of section 95E of the RMA, and on the basis of the above assessment, no person is considered to be adversely affected.

**Step 4 – Special Circumstances for Limited Notification**

- There are no special circumstances that warrant limited notification of the application.

## 5. DECISION PURSUANT TO S95A AND S95B OF THE RMA

For the reasons set out above, under s95A and s95B of the RMA, the application is to be processed on a non-notified basis.

## 6. SECTION 104 ASSESSMENT

### 6.1 Matters for consideration

This application must be considered in terms of Section 104 of the RMA.

Subject to Part 2 of the RMA, Section 104 sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) *any relevant provisions of:*
  - (i) *A national environmental standard;*
  - (ii) *other regulations;*
  - (iii) *a national policy statement;*
  - (iv) *a New Zealand coastal policy statement;*
  - (v) *a regional policy statement or proposed regional policy statement;*
  - (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

### 6.2 Effects on the Environment

Actual and potential effects on the environment have been outlined in the section 95 report. Conditions of consent can be imposed under s108 of the RMA as required to avoid, remedy or mitigate adverse effects.

In addition to the effects assessed under section 95, it is noted that this proposal will result in significant positive benefits for workers on the site. The site is isolated in nature and the food truck will provide workers with the option of purchasing on the site.

### 6.3 Relevant Provisions

#### **Operative District Plan**

The relevant operative objectives and policies are contained within Part 3.1 of the ODP.



Objective 3.3 (1) seeks to maintain and enhance amenity values. Objective (2) seeks to ensure that effects of land use activities do not adversely affect the quality of the environment and are compatible with the characteristics and amenity values of each locality.

In this instance, the location of the food truck is within an area that will be dominated by temporary construction works while the windfarm is constructed. It will be removed following construction. Further, the site is isolated. As such, it is assessed the activity is compatible with the Rural zone and there will be no long-lasting effects. The proposal is therefore deemed to be consistent with the ODP objectives.

Policy 3.4(2) seeks to control the adverse effects of land use activities on the environment. As detailed above, the food truck will be removed following construction of the windfarm. There will be no lasting adverse effects on the environment. The proposal is therefore deemed to be consistent with the ODP policies.

Overall, the proposal is consistent with the ODP objectives and policies.

### **Proposed District Plan**

The Proposed District Plan was notified for public submissions on 31 August 2023. The submission period closed on 27 November 2023. The further submission period closed on 12 April 2024 and hearings are currently underway.

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GRUZ-P9 specifically provides for small scale commercial activities where there is a genuine link with the rural land. In this instance, the rural land is being used to establish a windfarm and will be removed once construction has finished. The proposal is aligned with the PDP.

### **National Policy Statement for Highly Productive Land (NPS-HPL)**

The location of the food truck is on the border of Land Use Capability (LUC) 4 and 5 land. Therefore no further consideration needs to be given to the NPS-HPL.

## **7. PART 2 OF THE RMA**

The purpose of the RMA is to promote the sustainable management of natural and physical resources.

### *Section 5 – Purpose*

The proposal takes into account Section 5 of the RMA. The proposal will not have adverse effects on natural or physical resources. The temporary nature of the proposal ensures that any potential adverse effects on the environment can be avoided, remedied, or mitigated.

### *Section 6 – Matters of national importance*

Attention has been given to matters of national importance. This site does not contain any outstanding natural features or landscapes, nor an area of significant indigenous vegetation.

### *Section 7 – Other matters*



Particular regard has been given to the maintenance and enhancement of amenity values (section 7(c)) and maintenance and enhancement of the quality of the environment (section 7(f)). The amenity of the land and surrounding area will be maintained, and the temporary commercial activity will not have adverse effects on the quality of the environment.

#### *Section 8 – Treaty of Waitangi*

This site is not within any known heritage sites or statutory acknowledgement areas and therefore, this recommendation is not inconsistent with the principles of the Treaty of Waitangi.

Overall, the proposal is considered to meet the purpose and principles of the RMA.

## **8. DECISION ON RESOURCE CONSENT**

Pursuant to Section 104B of the RMA, consent is **granted** to operate a commercial food truck in association with the construction of the Kaiwera Downs windfarm subject to the following conditions imposed pursuant to Section 108 of the RMA:

### **Consent Conditions**

1. The food truck is to operate within the ‘compound area’ as shown on the approved plans attached as Appendix A.
2. The food truck is only to serve persons who are working on the Kaiwera Downs windfarm project. There shall be no food served to the general public.
3. Further to condition 2, there shall be no advertising of the food truck business from any public to ensure members of the public do not drive to the compound area. Advertising can occur within the compound area.
4. The activity shall cease operating at the conclusion of construction of the windfarm project.

### **Advice Notes**

1. The consent holder is advised that there may be separate requirements regarding food registration requirements.
2. The conditions of consent only apply when the food truck is on the site. That is, the food truck can serve food at other locations provided all relevant rules and regulations are complied with. It is anticipated that the food truck will leave the site to operate at other areas. This consent does not require that the food truck remain on site for the duration of the project.

### **Administrative Matters**

The costs of processing the application are currently being assessed and you will be advised under separate cover whether further costs have been incurred.

This resource consent must be exercised within five years from the date of this decision subject to the provisions of section 125 of the RMA.

If you have any enquiries please contact the duty planner on phone (03) 209 0330 or email [planning@goredc.govt.nz](mailto:planning@goredc.govt.nz).

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Decision made by



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## **Appendix A: Approved Plans**

## APPENDIX A – APPROVED PLANS



