



## **REQUEST TO REFER RESOURCE CONSENT APPLICATIONS TO THE ENVIRONMENT COURT**

### **South Wairarapa District Council Decision on request for direct referral to the Environment Court under section 87E of the Resource Management Act**

#### **1. REQUEST FOR DIRECT REFERRAL TO THE ENVIRONMENT COURT**

Pursuant to Section 87D(1) of the Resource Management Act (the Act), the applicant (Far North Solar Farms Limited), has requested that South Wairarapa District Council (SWDC) allow the resource consent to be determined by the Environment Court rather than SWDC.

The direct referral request was received by SWDC on 9 June 2023.

All further information requested under s92 of the Act was received by Council 7 September 2023.

#### **2. SUMMARY OF CONSENTS SOUGHT**

Resource consent application RM220103 was submitted to SWDC by Far North Solar Farm Limited on 21 December 2021. The land use consent application is for a 175-megawatt peak solar farm including:

- 321,160 photovoltaic solar panels on arrays mounted on tracking tables, with a maximum height of 4.5m above the ground
- 40 inverters, lines and associated structures
- Buildings not required for primary industry or residential purposes exceeding 25m<sup>2</sup>
- Associated site works and new accessways
- Screening planting

The application relates to the following locations, 415 Moroa Road, Greytown; 312 Bidwills Cutting Road, Greytown; 1942 State Highway 2, Greytown and 18 Pharazyns Road, Featherston, legally described as Pt LOT 6 DP 8803 (WN391/56) Pt LOT 7 DP 8803 (WN391/56) Pt LOT 10 DP 3106 (WN583/131, WN583/132) SECTION 27 MOROA SETT (WNE1/330) LOT 1 DP 52574 BLKS IV WAIRARAPA SD BLK (WN22A/575) PT SEC 122 MOROA DISTRICT (WN36B/542) LOT 1 DP 76478 (WN43B/286).

Land use consent is required under District-Wide Land Use Rule 21.6(a) as a Discretionary Activity and Rural (Primary Production) Zone Restricted Discretionary Activity Rule 4.5.5(c) and 4.5.5(e)(i) of the District Plan as follows:

#### 21.6 Discretionary Activities

- (a) Any activity that does not comply with the standards for permitted activities or is otherwise not specified as a controlled, or restricted discretionary activity.

#### 4.5.5 Restricted Discretionary Activities

The following are Restricted Discretionary Activities:

- (c) Any activity that is not required for primary production and residential purposes that requires either:

- (a) the construction or use of a building over 25m<sup>2</sup> in gross floor area; or

(b) the external storage of goods, products or vehicles (including contractors yards); and is not otherwise listed as controlled, restricted discretionary, discretionary or non-complying activity.

(e) Any activity that does not meet one or more of the standards for permitted or controlled activities.

Resource consent is therefore required under the District Plan as a Discretionary Activity.

### **3. APPLICANTS REASONS FOR DIRECT REFERRAL**

The following reasons for direct referral were outlined in the section 87D(1) request dated 9 June 2023:

- The submitters are well informed and in some cases are recognised experts in the matters relevant to Council’s consideration under s104 of the RMA.
- Elected Local Board members in some submissions have been confirmed by the Applicant.
- Against this background, the application process would benefit from the comprehensive range of case management tools available to the Court.
- The strength of the opinions within the community indicates that, in all likelihood, this application would inevitably be appealed to the Environment Court if heard by Council in the first instance.

### **4. STATUTORY PROVISIONS RELATING TO THE REQUEST**

Sections 87C and 87D of the Act allow the applicant to request that a notified resource consent application be processed by the Environment Court, rather than the consent authority. The applicant must make this request within the period commencing on the day the application is first lodged and ending 5 working days after submissions close and it must be made on the prescribed form.

The request for direct referral was made in the prescribed form (Form 7A of Resource Management (Forms, Fees, and Procedure) Regulations 2003) and was received by SWDC on 9 June 2023.

The consent application was publicly notified by SWDC on 8 May 2023, the request was received within five working days of the close of submissions.

The request for direct referral is therefore an ‘eligible’ request under Section 87D of the Act.

In my view, the application is complete for the purposes of Section 87E of the Act and SWDC is in a position to make a fully informed decision on the applicants request for direct referral.

### **5. STATUTORY PROVISIONS RELATING TO THE DECISION**

There are no specific criteria set out within the Act to guide SWDC in deciding whether it grants or declines an eligible request for direct referral. SWDC retains full discretion in this regard.

Section 87C of the Act states that no submitter has a right to be heard on the request received from the applicant.

## 6. ASSESSMENT OF DIRECT REFERRAL REQUEST

SWDC agrees with the reasons for the direct referral as set out by the applicant. SWDC has considered the following criteria to be relevant in considering whether to agree to, or decline the request:

### **a. Public interest and likelihood of appeals**

The submissions received during the public notification period raised a range of concerns relating to the proposal. This is expected given that this application is the first received for a solar farm in the Wairarapa, the nature and scale of this proposal is relatively large and introduces a new type of land use in the Wairarapa into its rural environment.

I therefore agree with the applicant that the significant level of public interest and complex issues raised by interested parties generates an increased likelihood that any decision on the application made by consent authorities may come before the Environment Court in any event through an appeal.

In my view, having the applications determined by the Environment Court in the first instance will avoid duplication, cost and delays in processing the applications relating to the Project. This aligns with the purpose of sections 87D and 87E and will be more efficient in terms of cost and time for most (if not all) parties.

### **b. Complexity of the proposal**

The Operative Combined District Plan was originally prepared over 17 years ago and was made operative in 2011 once the final appeals were resolved. At the time of preparing and determining the Operative District Plan, solar farms were not an anticipated activity, but were a distant possibility of an unknown scale and nature.

Given that this is the first solar farm application received in the Wairarapa and that the proposal introduces a new type of land use into the rural environment, the matters to be determined may be contentious, and have been the subject of debate in the past due to the significance of the Rural Zone to the Wairarapa community.

Expert evidence will be required to assist in the determination of the applications, which in my view would be best tested through cross examination and through other procedures available in the Court.

### **c. Impact on parties**

I have considered the impacts on the parties, in relation to the time and costs of the application being determined by the Environment Court, compared to a Council Hearing.

It is possible that referring the application to the Environment Court may result in submitters being deterred from participating in an Environment Court Hearing. However, this may be the case with any appeal following a Council decision.

It is important to note that submitters have the right to continue their participation in the application process as they would in any Council process. Should any submitter wish not to appear in Environment Court proceedings, their respective written submissions will still be considered by the Court in determining the application.

The Environment Court is well practiced in hearing the submissions and evidence of lay submitters and the direct referral process recognises this as all parties 'first' chance to make submissions and call evidence (if any) on the proposal. It has been specifically designed for

that purpose. Court support is available throughout the Court proceedings to help submitters and affected parties understand the process.

I do not consider that submitters or the applicant will be unduly prejudiced by the application being determined by the Environment Court and in my view the direct referral will allow for a single process and is therefore likely to reduce costs, duplication and delays for all parties.

**d. Cost considerations and streamlined decision making**

It is my view that having the application determined by the Environment Court in the first instance will provide more efficiency as it will involve a single process. It is likely that a decision on the application made by SWDC through the Councils hearing process may be appealed to the Environment Court. It will therefore be more efficient in terms of cost and time for most parties.

I agree with the applicant that the level of public interest and complex issues raised by interested parties generates an increased likelihood that any decision on the application made by consent authorities will come before the Environment Court through an appeal. In such cases, the Environment Court would rehear the applications. Therefore, in my view, having the applications determined by the Environment Court will avoid duplication, cost and delays in processing the application. This aligns with the purpose of sections 87D and 87E as well as the intentions and purpose of the Resource Management (Simplifying and Streamlining Amendment Act 2009).

**e. Any other relevant matters**

There are no other relevant matters or special circumstances that I consider warrant the request for direct referral to be declined by SWDC.

**7. RECOMMENDATION**

Having considered the applicant's reasons for the request; the relevant statutory provisions of the Act; and the matters outlined above as relevant to this decision, it is recommended that SWDC **grants** the applicants request for the application to be determined by the Environment Court rather than SWDC.



Decision recommended by: **Kendyll Hammond, Planning Manager**



Decision approved by: **Russell O'Leary, Group Manager Planning and Environment**

Date of Decision: **11 September 2023**