

2 April 2026

The Assessment Manager  
Toowoomba Regional Council  
PO Box 3021  
**TOOWOOMBA QLD 4350**

Attention: **Mr Richard Green**  
By Email: [development@tr.qld.gov.au](mailto:development@tr.qld.gov.au)

Dear Richard,

**CHANGE APPLICATION (MINOR CHANGE) – SECTION 78, PLANNING ACT 2016 – CHANGE APPLICATION (MINOR CHANGE) - UNDEFINED USE (METEOROLOGICAL MAST) - 9426 GORE HIGHWAY, CAPTAINS MOUNTAIN – LOT 25 DY883, LOT 26 DY851 & LOT 56 SP215189** (Council Ref: MCUI/2021/169; Our Ref:2025-620)

I act on behalf of the applicant, Captains Mountain Wind Farm Pty Ltd (Vestas), in respect of the above matter.

We hereby lodge a Change Application pursuant to section 78 of the *Planning Act 2016* (the Act), that relates to Development Permit for Material Change of Use for an Undefined Use (Meteorological Mast) on land at 9426 Gore Highway Captains Mountain, being that land described as Lot 25 DY883, Lot 26 DY851 & Lot 56 SP215189 (Council Ref: MCUI/2021/169).

The applicant seeks to make a 'minor change' to Development Permit pursuant to Schedule 2 of the Act. This application is made to Toowoomba Regional Council (**Council**) in their capacity as Assessment Manager.

The nature of the change sought, and the facts and circumstances relied upon in support of such change are detailed in sections 1.0 and 2.0 below.

## **1.0 DESCRIPTION OF PROPOSED CHANGE**

### **1.1 BACKGROUND**

The background to this Change Application is as follows:

- On 19<sup>th</sup> January 2021, Wind Power Development Australia Pty Ltd (Vestas) made a Development Application for a Development Permit for Material Change of Use for an Undefined Use – Meteorological Mast (Met Mast) over the subject land at 9426 Gore Highway, Captains Mountain.
- The application sought approval of a 105 meter high Meteorological Mast of steel lattice construction supported by guy wires. The mast was equipped with wind and weather sensors at

various heights, which allowed for measurements of meteorological data including wind speed, wind direction, wind shear, wind turbulence and air density.

- Toowoomba Regional Council approved the application subject to reasonable and relevant conditions by Decision Notice dated 8 June 2021. A copy of the Decision Notice is attached as **Appendix A**.
- Toowoomba Regional Council confirmed by correspondence dated 10 August 2021 that the Development Approval had force and effect following the expiration of the submitters appeal period.

## 1.2 SCOPE OF PROPOSED CHANGE

The applicant is seeking changes to Development Permit for Material Change of Use for an Undefined Use (Meteorological Mast) on land at 9426 Gore Highway Captains Mountain, being that land described as Lot 25 DY883, Lot 26 DY851 & Lot 56 SP215189. The applicant is proposing to undertake a range safety upgrades to the previously lawfully approved meteorological mast. The safety upgrades will include:

- Aviation rotamarka ring spindle powerline warning markers
- Ground based anchor markings
- Lower guyed markers at anchors
- Painting of mast
- Painting of cattle fencing
- Aviation light medium intensity red flashing 24h

These changes will alter the aesthetic appearance of the existing facility and are accordingly sought to be authorised under a Minor Change to Development Approval MCUI/2021/169.

Further information and specifications for the respective safety upgrades are detailed and illustrated as follows:

- Rotamarka product specification is enclosed as **Appendix B**.
- Ground based anchor marking image is enclosed as **Appendix C**.
- Painting of mast – repetitive red and white banding including seven (7) bands in the following order from the base:
  - 5x Red
  - 5x White
  - 5x Red
  - 5x White
  - 5x Red
  - 5x White
  - 4x Red

Total number of sections Red: 19 (18x GL55 + 1x GL36)

Total number of sections White: 15 (15x GL55)

Proposed colour scheme is illustrated in **Appendix D**.

- A medium intensity flashing aviation warning light and appropriate shrouding are proposed to be mounted at the apex of the mast. Light and shrouding specifications and plans are enclosed as **Appendix E**.

The incorporation of the preceding safety measures does not necessitate any change to existing plans or conditions of development approval.

In addition to the incorporation of the safety measures previously detailed, the approval is sought to be changed to amend Condition 4 which presently requires the cessation of the use on or before five (5) years unless otherwise agreed by Council. This would require the use to cease on or about 8 July 2026.

A longer period of wind testing is now required and accordingly my client is seeking amendments to the referenced condition to enable this to occur for up to an additional five (5) years or until 8 July 2031.

The condition proposed to be amended as part of this Change Application is detailed in section 2.0.

## 2.0 CONDITIONS PROPOSED TO BE AMENDED

This Change Application relates to Development Permit for an Undefined Use (Meteorological Mast) (Council reference: MCUI/2021/169) dated 8 June 2021, attached to this correspondence as **Appendix A**.

The condition proposed to be amended is reproduced in both its current and amended form and are followed by a summary of the reasons and/or justification for the change.

### CESSATION OF USE

#### Existing Condition

4. The Undefined Use (Meteorological Mast) use must cease on or before five (5) years from the date of commencement of use unless otherwise approved by Council.

#### Proposed Change

4. The Undefined Use (Meteorological Mast) use must cease on or before ~~five (5) years~~ **ten (10) years** from the date of commencement of use unless otherwise approved by Council.

#### Planning Justification

Condition 4 imposed an arbitrary initial timeframe for the facility reflecting the intention at the time it was established that it would be a temporary facility. This remains the case however with the recent decommissioning of the nearby Blackwell Road Meteorological Mast, and the need to maintain wind resource assessment continuity and satisfy potential financier due diligence requirements, the operational life of this facility will necessarily have to be extended.

## 3.0 MINOR CHANGE CRITERIA & ASSESSMENT

### 3.1 MINOR CHANGE CRITERIA

Section 78 of the *Planning Act 2016* (the Act) allows a person to request a 'minor change' to a development approval. A 'minor change' is defined under Schedule 2 of the Act as follows:

- “ **minor change** means a change that-
- (b) for a development approval-

- (i) would not result in substantially different development; and
- (ii) if a development application for the development, including the change, were made when the change application is made would not cause-
  - (A) the inclusion of prohibited development in the application; or
  - (B) referral to a referral agency, other than to the chief executive, if there were no referral agencies for the development application; or
  - (C) referral to extra referral agencies, other than to the chief executive; or
  - (D) a referral agency, in assessing the application under section 55(2), to assess the application against, or have regard to, a matter, other than a matter the referral agency must have assessed the application against, or had regard to, when the application was made; or
  - (E) public notification if public notification was not required for the development application.

An application pursuant to section 78 of the Act involves the application of a two-step test:

1. A threshold question as to whether the application is for a minor change<sup>1</sup>; and
2. An assessment pursuant to section 81. In particular, section 81(2) provides that the responsible entity must consider all matters it would or may assess against, or have regard to, as if the change application was a development application.

### 3.2 GOVERNING PRINCIPLES - MINOR CHANGE ASSESSMENT

The following governing principles relating to the assessment of a Minor Change may be derived from applicable case law in the Planning & Environment Court:

- (A) The Development Assessment Rules (DAR) Schedule 1 principles:
  - are a guide only;
  - there is no stated legislative requirement to consider them; and
  - may, not must, result in 'substantially different development'.
- (B) A comparison is required between pre- and post- change development approval scenarios;
- (C) The consideration must be directed to the proposed changes in the context of the whole of the authorised development;
- (D) The proposed changes must be considered as 'a matter of fact and degree' and 'broadly and fairly';
- (E) The words 'substantially different' must be given their natural meaning: *essential, material or important*;
- (F) The relevant test is that the change not result in a substantially different development, not merely that it not result in some substantially different development.
- (G) Not only should changes be considered in the context of the overall approved development, they must be considered from a qualitative and quantitative town planning impacts perspective.

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<sup>1</sup> Which must be answered in the affirmative having regard to the definition of minor change under Schedule 2 of the Planning Act 2016

### 3.3 ASSESSMENT AGAINST MINOR CHANGE CRITERIA

The proposed change has been assessed against the Minor Change criteria as follows:

#### 3.3.1 Substantially Different Development

The Development Assessment Rules, version 1.2 (the DA Rules), includes Schedule 1: Substantially Different Development. Item 4 of Schedule 1 outlines nine (9) criteria for consideration as to whether a change application involves substantially different development.

A change may be considered to result in substantially different development if the proposed change:

**(A) involves a new use; or**

The proposed change does not involve a new use of premises.

**(B) results in the application applying to a new parcel of land; or**

This change does not result in the inclusion of a new parcel of land.

**(C) dramatically changes the built form in terms of scale, bulk and appearance; or**

The proposed changes do not drastically alter the built form in terms of scale, bulk and appearance.

**(D) changes the ability of the proposed development to operate as intended; or**

The proposed change does not affect the ability of the proposed development to operate as intended.

**(E) removes a component that is integral to the operation of the development; or**

The proposed change does not remove a component that is integral to the operation of the development.

**(F) significantly impacts on traffic flow and the transport network, such as increasing traffic to the site; or**

The proposed change will not significantly impact on traffic flow or the transport network.

**(G) introduces new impacts or increase the severity of known impacts; or**

The proposed change does not introduce new impacts or increase the severity of known impacts.

**(H) for a development prescribed by the Planning Regulation as requiring social impact assessment as identified under section 106T of the Act –**

**- introduces new social impacts or increase the severity of known social impacts; or**

The proposed change is not prescribed by the Planning Regulation as requiring social impact assessment

**(I) removes an incentive or offset component that would have balanced the negative impact of the development; or**

The proposed change does not remove an incentive or offset component that would have balanced a negative impact of the development.

**(J) impacts on infrastructure provision.**

The proposed change will not impact on infrastructure provision. Infrastructure will be provided in accordance with the existing approvals over the site.

### 3.3.2 No Prohibited Development

The proposed change does not include any prohibited development.

### 3.3.3 Referral Agencies

The proposed change does not involve:

- referral to a referral agency where there were no referral agencies;
- referral to extra referral agencies; or
- a referral agency in assessing the application under section 55(2), to assess the application against, or have regard to, a matter, other than a matter the referral agency must have assessed the application against, or had regard to, when the application was originally made.

### 3.3.4 Public Notification

The proposed change does not necessitate public notification of the application where such notification was not previously required.

### 3.3.5 Owners Consent & Approved Form

In accordance with section 79 of the *Planning Act 2016*, landowner's consent is required to be provided. On this basis, consent has been provided with respect to Lot 25 DY883, Lot 26 DY851 & Lot 56 SP215189.

The Change Application is also made on the approved form. Both the Change Application Form and landowner's consent are included as **Appendix F**.

## 4.0 PLANNING ACT 2016 - SECTION 81 ASSESSMENT

Section 81 of the *Planning Act* sets out the requirements for the assessment of change applications for a minor change to a development approval. The applicable provisions of this section are as follows:

- (1) *This section applies to a change application for a minor change to a development approval.*
- (2) *In assessing the change application, the responsible entity must consider—*
  - (a) *the information the applicant included with the application; and*
  - (b) *if the responsible entity is the assessment manager—any properly made submissions about the development application or another change application that was approved; and*
  - (c) *any pre-request response notice or response notice given in relation to the change application; and*
  - (d) *if the responsible entity is, under section 78A(3), the Minister—all matters the Minister would or may assess against or have regard to, if the change application were a development application called in by the Minister; and*
  - (e) *if the responsible entity is, under section 78A(4)(a), the chief executive—all matters the chief executive would or may assess against or have regard to, if the change application were a development application declared to be an application for State facilitated development under section 106D; and*
  - (f) *if paragraphs (d) and (e) do not apply—all matters the responsible entity would or may assess against or have regard to, if the change application were a development application; and*
  - (g) *another matter that the responsible entity considers relevant.*

- (3) Subsections (4) and (5) apply if the responsible entity must, in assessing the change application under subsection (2)(d), (e) or (f), consider—
  - (a) a statutory instrument; or
  - (b) another document applied, adopted or incorporated (with or without changes) in a statutory instrument.
- (4) The responsible entity must consider the statutory instrument, or other document, as in effect when the development application for the development approval was properly made.
- (5) However, the responsible entity may give the weight the responsible entity considers is appropriate, in the circumstances, to—
  - (a) the statutory instrument or other document as in effect when the change application was made; or
  - (b) if the statutory instrument or other document is amended or replaced after the change application is made but before it is decided—the amended or replacement instrument or document; or
  - (c) another statutory instrument—
    - (i) that comes into effect after the change application is made but before it is decided; and
    - (ii) that the responsible entity would have been required to consider if the instrument had been in effect when the development application for the development approval was properly made.

Section (4) requires the responsible entity to assess or have regard to the statutory instrument that was in effect when the application was made. Section (5) identifies that the responsible entity may have regard to statutory instruments or other documents that applied when the change application was made.

The original Development Permit was issued under the *Toowoomba Regional Planning Scheme 2012* as it existed and had effect on 8 June 2021. The proposed changes do not introduce any new components which may be inconsistent with the *Toowoomba Regional Planning Scheme 2025*.

## 5.0 SUMMARY OF MINOR CHANGE

Based on the preceding correspondence, we contend that the proposed change comprises a “Minor Change” pursuant to schedule 2 of the *Planning Act 2016*, as the proposed change:

- (i) Does not result in substantially different development.
- (ii) Does not include prohibited development pursuant to Schedule 10 of the *Planning Regulation 2017*.
- (iii) Does not require referral to referral agencies where referral was not previously required; or referral to additional referral agencies, or referral to assess additional referral matters not required to be assessed when the application was originally made; and
- (iv) Does not necessitate the development being subject to public notification when public notification was not previously required.

On this basis, it is considered that Toowoomba Regional Council may lawfully consider the proposed change to Decision Notice MCUI/2021/169, as part of a Change Application (Minor Change) in accordance with the relevant provisions of the *Planning Act 2016*.

## 6.0 SUPPORTING DOCUMENTATION

Attached to this correspondence at **Appendix F** are the following documents required to accompany a Change Application:

- Change Application Form (DA Form 5); and
- Landowner's Consent Form.

The application will be supported by the relevant application fee of [REDACTED] in accordance with Council's 2025/2026 Register of Fees and Charges. Payment of this fee will be made once the fee is confirmed by Council at the time of lodgement of the application.

Should you require any additional information or clarification please do not hesitate to contact the undersigned on phone 07 4632 2535, mobile 0427 737 526 or by email at [andrew@precinctplan.com.au](mailto:andrew@precinctplan.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "A Bullen", with a long horizontal stroke underneath.

**Andrew Bullen**  
**Precinct Urban Planning**

## APPENDIX F – MINOR CHANGE FORM & LAND OWNERS CONSENT