

**BEFORE THE MACKENZIE DISTRICT COUNCIL
INDEPENDENT HEARINGS PANEL**

Under the Resource Management Act 1991

In the matter of proposed Plan Change 20 (Strategic Chapters) to the
Mackenzie District Plan, stage 1 of the Mackenzie District
Plan Review

LEGAL SUBMISSIONS ON BEHALF OF GENESIS ENERGY LIMITED

22 November 2022

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MAY IT PLEASE THE HEARINGS PANEL:

INTRODUCTION

1. These submissions are presented on behalf of Genesis Energy Limited (**Genesis**) in support of its submission and further submission on proposed Plan Change 20 (Strategic Chapters) to the Mackenzie District Plan (**PC20**).
2. Genesis lodged a submission on PC20 on 8 September 2022, followed by a further submission on 3 October 2022. As an electricity generator and owner and operator of the Tekapo Power Scheme (**TekPS**), Genesis is primarily concerned with ensuring that the activities fundamental to both the continued operation, maintenance and upgrade of the Tekapo and Waitaki Power Schemes, and future renewable electricity infrastructure, are appropriately recognised and enabled by PC20 and the broader Mackenzie District Plan Review (**MDPR**) process.
3. Genesis has considered the section 42A report¹, including the recommendations contained within that report as well as Appendix 1 (the recommended amendments to the Mackenzie District Plan (**MDP**)). Genesis acknowledges the work that has gone into preparing the section 42A report, and endorses the section 42A report author's recognition of the importance of the District's energy generation facilities² at a local, regional and national level.³
4. It is also acknowledged that the section 42A report has accepted Genesis' proposed inclusion of "*(...) the contribution that existing and new renewable electricity generation and transmission assets located in the District make to the nation*", appropriately reflecting the National Policy Statement for Renewable Electricity Generation 2011's (**NPS-REG**) Objective.
5. However, the remainder of Genesis' relief sought has been rejected on the basis that, in the section 42A report author's view, it is either better left to other chapters in the MDP (noting those other chapters are subject to later stages of the MDPR process) or it is unnecessary to include the level of specificity Genesis seeks (particularly in relation to greenhouse gas (**GHG**) emissions).

¹ Dated 19 October 2022.

² [38] of the section 42A report.

³ Appendix 1 to the section 42A report, p2, *ATC – A Thriving Community Chapter, Introduction*.

6. These legal submissions focus on the outstanding relief sought and briefly mention matters raised in Genesis' further submission.
7. The expert planning evidence of Dr Philip Mitchell dated 15 November 2022 explains why the relief Genesis is seeking should be accepted. For the reasons set out in that evidence, and in these legal submissions, Genesis continues to seek the relief sought in its submissions.⁴
8. Put simply, the importance of renewable energy generation (**REG**) within the District must be afforded sufficient recognition in the overarching Strategic Chapters of the MDP. Such recognition is needed to ensure plan users have a clear way-finder for the MDP as a whole, and to properly inform the drafting of subsequent plan changes (including the Energy Chapter). This, in turn, is critical to giving effect to the NPS-REG and Canterbury Regional Policy Statement (**CRPS**) within the District, and meeting the sustainable management purpose of the Resource Management Act 1991 (**RMA**).

LEGAL FRAMEWORK

9. The legal framework is summarised in the s42A report.⁵ These submissions do not repeat that detail, however counsel is available to answer any questions in relation to it that may arise.
10. The test that has been established in case law is essentially a two-step process involving, first, a consideration of whether the plan addresses all the relevant mandatory requirements in the RMA, followed by a section 32 evaluation of the provisions.⁶
11. The Environment Court in *Colonial Vineyard Ltd v Marlborough District Council*⁷ succinctly described the process as a series of questions as follows:
 - (a) What are the benefits and costs of the proposed plan and the alternatives?
 - (b) Does the proposed plan give effect to any relevant national policy statements, the New Zealand Coastal Policy Statement, and the regional policy statement?

⁴ Contained in Table 2 of Dr Mitchell's evidence.

⁵ Section 6. They are also explained in the section 32 evaluation.

⁶ While distinctions have been made in case law between whole of plan reviews, plan changes and variations for scope reasons, for example *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* (2016) 19 ELRNZ 595, the "test" by which they are evaluated *de novo* by the Environment Court is essentially the same.

⁷ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17].

- (c) Does the proposed plan achieve the purpose of the RMA?⁸
12. As set out in the section 32 evaluation, the Strategic Direction Chapters are based on the National Planning Standards which require, amongst other matters *"an outline of the key strategic or significant resource management matters for the district."* This outline, and its importance in assisting plan users, is addressed further below.
13. In *Rogers v Christchurch City Council*⁹, the Court described the strategic directions chapter of the Christchurch District Plan as providing *"an overarching direction for the other plan chapters"*, having *"primacy over the objectives and policies in them."*¹⁰ In that case, the Court looked to the strategic directions *"for **guidance** on the implementation and administration of"* (emphasis added) the rural chapter objective and policies.
14. In other words, the provisions in the strategic chapter(s) of a plan are meant to be integrating and co-ordinating and address District-wide matters (like infrastructure whose activities are matters of national significance).¹¹ In doing so they need to guide the plan user – in effect as a way-finder from the start.
15. The case law supports the section 42A report author's comments¹² that the *"Strategic Direction Chapters provide overarching direction to be achieved through the remainder of the District Plan and as such, they are intended to **guide** the review of provisions within other chapters, as the MDPR progresses."* (Emphasis added)

PLANNING FRAMEWORK

16. The relevant planning documents are very briefly summarised in the section 32A evaluation.¹³
17. The preamble to the NPS-REG states:

⁸ Although this final step may be redundant in circumstances where it is not necessary to resort to Part 2.

⁹ [2019] NZEnvC 119.

¹⁰ *Rogers v Christchurch City Council* [2019] NZEnvC 119 at [48].

¹¹ See for example the criticisms from the Environment Court of the undue weight that has been given to the strategic directions within the Christchurch Replacement Plan and the Queenstown Lakes District Plan. *Rogers v Christchurch City Council* [2019] NZEnvC 119 and *Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 150 at [27].

¹² At paragraph [18].

¹³ In the Table from page 3.

The contribution of renewable electricity generation, regardless of scale, towards addressing the effects of climate change plays a vital role in the wellbeing of New Zealand, its people and the environment.

18. The two matters of national significance set out in the NPS-REG are:
 - (a) *"the need to develop, operate, maintain and upgrade renewable electricity generation activities throughout New Zealand";* and
 - (b) *"the benefits of renewable electricity generation."*
19. Given the resources of the District, all parts of the NPS-REG's A – G are relevant to the MDP (excluding geothermal and ocean resources). The Hearings Panel must carefully step its way through the requirements of the NPS-REG, each of which it has to give effect to.
20. The CRPS provisions relevant to Genesis' submission are set out in Dr Mitchell's evidence. The CRPS recognises¹⁴ that:
 - (a) *"Energy is a critical factor in enabling the community to provide for their well-being, health and safety (...)"*
 - (b) *"The contribution of renewable electricity generation is of national significance and plays a vital role in meeting increasing energy demand, and that significance is to be recognised and provided for. The benefits of renewable generation at all scales can avoid, reduce or displace greenhouse gas emissions, and also increase security of supply (...)"*

CONTEXT AND BACKGROUND

New Zealand's climate change commitments

21. Genesis is an electricity generator and energy retailer with a diverse portfolio of renewable and thermal electricity generation assets across New Zealand, including hydro, thermal and wind.
22. The Government has ambitious climate change commitments¹⁵, underpinned by New Zealand's existing highly renewable electricity system. In addition to managing its existing generation assets, Genesis is committed to finding and

¹⁴ At page 212.

¹⁵ As Dr Mitchell notes at [17] of his evidence, the Government has agreed a framework that anticipates reducing greenhouse gas emissions by 11% below 1990 levels by 2030, reducing them to net zero by 2050.

maximising opportunities for future development of renewable energy, to assist New Zealand in meeting its climate change goals.

23. To deliver on our climate change commitments we need unprecedented growth in REG projects. Hydroelectric power generation is already of significant relevance in the District, and the District has considerable opportunities for new REG.

Tekapo and Waitaki Power Schemes

24. Genesis owns and operates the TekPS, which comprises two hydro-electric power stations located in and around Lake Takapō / Tekapo, the Takapō / Tekapo River, the Tekapo Canal and Lake Pūkaki located at the head of the Waitaki Valley in the Mackenzie District.
25. The TekPS forms part of the larger Waitaki Power Scheme, with the other power stations forming that larger scheme owned and operated by Meridian Energy Limited (**Meridian**). The Waitaki Power Scheme includes the electricity generation activities in the Waitaki River Catchment (defined in the operative MDP).
26. As Dr Mitchell explains,¹⁶ the TekPS generates approximately 980 gigawatt hours per annum of renewable electricity, which equates to the annual electricity usage of approximately 120,000 households. In addition, nearly half of that generation again is generated by Meridian using the same water discharge from the TekPS into Lake Pūkaki.
27. The Waitaki Power Scheme contributes, on average, 25% of New Zealand's REG and provides approximately 60% of New Zealand's controllable hydro storage capacity.¹⁷ All that storage occurs within the District.
28. The REG activities of both the TekPS and the larger Waitaki Power Scheme are recognised as matters of national significance under the NPS-REG. In addition, the Waitaki Power Scheme is recognised for its importance at a national level in the National Policy Statement for Freshwater Management (**NPS-FM**)¹⁸, and identified in the CRPS as regionally significant infrastructure.¹⁹

¹⁶ At [14] of his evidence.

¹⁷ [14(d)-(e)] of Dr Mitchell's evidence.

¹⁸ 3.31 of the NPS-FM.

¹⁹ 8.1.4 of the CRPS.

PC20 (including relief sought)

29. PC20 is part of the broader MDPR which is being progressed in five stages, divided by topic.²⁰
30. Stage one of the MDPR addresses PC20 (Strategic Chapters). Stage two, which has been formally notified, and is scheduled to be heard in March and April 2023, deals with PC21 and PC22 (Urban and Light). Stages three to five deal with the remaining topics, and have not yet been notified. The hearings for stages three to five are currently scheduled to take place between April 2024 and early 2025.
31. The Energy and Infrastructure topic will be addressed as part of stage three.
32. Following formal notification of PC20 earlier this year, Genesis made a submission²¹ and further submission.²²
33. The key points for Genesis are summarised below.

GENESIS' SUBMISSION

Chapter ATC – A Thriving Community; Introduction

34. Genesis sought, and the section 42A report author accepted, the inclusion in the fourth paragraph of the words "*existing and new*". Genesis supports that outcome for the reasons given.
35. Genesis sought a new fifth paragraph as follows:

Part of the nationally significant Waitaki Power Scheme (WPS) is located within the district. The WPS is the largest hydro-electric power scheme in New Zealand and significantly contributes to decarbonising New Zealand's economy, mitigating the potential effects of climate change and reducing the District's reliance on non-renewable energy sources;

36. This change was accepted in part but the reference to mitigating the effects of climate change part was rejected. While Genesis supports the inclusion of the specific reference to the Waitaki Power Scheme and considers that appropriate both as an issue of significance for the District and in light of the need for guidance for plan readers, rejection of the climate change linkage is unhelpful. There is much good news within the District, as to the role it plays

²⁰ Panel's Minute 1, p5.

²¹ On 8 September 2022.

²² On 3 October 2022

in reducing Aotearoa New Zealand's GHG emission profile, which should be maximised. Explaining why the Waitaki Power Scheme deserves special mention assists a plan reader early on in understanding the linkage between GHG emission reduction and the benefits of the resource usage of the District provide both regionally and nationally.

Strategic Objectives ATC-O4; Renewable Energy

37. Genesis sought, in its submission, to replace the existing text with the following wording:

~~*The local, regional and national benefits of the District's renewable electricity generation and electricity transmission assets are recognised and their development, operation, maintenance and upgrade are provided for.*~~

Renewable electricity generation activities, including the nationally significant Waitaki Power Scheme, and the electricity transmission network:

- a) *are recognised for their local, regional and national benefits, including reducing greenhouse gas emissions;*
- b) *are provided for, including their development, operation, maintenance and upgrade;*
- c) *are protected from reverse sensitivity effects; and*
- d) *provide for the current and future energy needs of the District's communities and economy.*

38. The section 42A report author considered that (a) and (b) as sought were already included in the proposed wording. That is correct to a degree but, critically, does not:

- (a) recognise the shift in wording proposed – the changes sought by Genesis relate to REG "activities". That wording is much broader than the arguably limiting use of "assets" (the meaning of which is unclear);
- (b) recognise that physical resources – "assets" – are only part of the REG picture in the District. Equally (and arguably more) important are the underlying natural resources in the District that attracted the construction of those "assets". In response to Minute 2 the section 42A report author agreed that "energy resources are natural resources (...)",²³

²³ Response to Minute 2, page 1.

- (c) expressly recognise, despite the wording in the introductory text being changed, "*existing and new*" REG;
 - (d) give effect to the NPS-REG (in particular clause E) by including a broader application to all REG; new and existing. Rather, the wording relates solely to the assets, whereas it should, in Genesis' submission, include the resource; and
 - (e) provide the clarity to plan readers that is provided by the drafting sought by Genesis.
39. In relation to (c), although reverse sensitivity was accepted as a relevant issue for the District (particularly noting "*the District's predominantly rural nature and significant energy resources have the potential to be affected by reverse sensitivity*"²⁴), it would be more appropriate (as in the section 42A report author's view reverse sensitivity is not an outcome itself but rather an action to recognise and provide for²⁵) to include direction relating to reverse sensitivity in other chapters, including where such direction is appropriate to achieve the Strategic Objectives.²⁶
40. However, reverse sensitivity is described in the NPS-REG as an outcome. Policy D, to which the Hearings Panel must give effect, states "*Decision-makers shall, to the extent reasonably possible, manage activities to avoid reverse sensitivity effects on consented and existing renewable electricity generation activities.*" Given the recognition of REG as a matter of significance in the District, it is appropriate both in giving effect to the NPS-REG, and in providing guidance for plan users, to include reference to reverse sensitivity.
41. In relation to (d), the section 42A report states that it is problematic as it is not something that can be achieved through a district plan. While actual achievement of that cannot be guaranteed through the MDP it is certainly – if GHG emission obligations are to be achieved – a matter to be strived for. It also responds to the issue at a regional level, as stated in the CRPS, that "*Canterbury is a significant producer of hydro-electricity (...) However, overall Canterbury is a net importer of energy.*"

²⁴ [54] of the section 42A report.

²⁵ *Ibid.*

²⁶ [55] of the section 42A report.

42. It is entirely logical, and very much a resource management issue for the District, that the District's ability to provide for its energy needs through REG is recognised as an outcome.
43. As above, the purpose of the Strategic Chapters is to provide guidance to assist with the later application of the MDP. The additional clarity to Objective ATC-O4 better assists users of the WDP, is more certain, and provides the requisite guidance to be applied to the later Energy Chapter.

Strategic Objectives UFD-O1; Urban Form and Development,

44. For the same reasons as above, it is also appropriate that the following wording sought by Genesis be included:

The District's townships and settlements grow and develop in a consolidated way that:

...

5. responds to the needs of the community, including diversity in housing and business opportunities.; and

6. protects significant infrastructure and activities in the District from reverse sensitivity effects.

GENESIS' FURTHER SUBMISSION

45. A summary of Genesis' key points (and not limiting its submission) in relation to its further submission, and the approach adopted in the section 42A report, are set out below.
46. Genesis opposed submissions by Forest and Bird to:
 - (a) change the Strategic Direction, Introduction by deleting present drafting and insert new drafting as proposed. Genesis supports the section 42A report reasoning²⁷ not to include the changes sought, including on the basis that the proposed provisions align with the National Planning Standards. Genesis also supports the proposal by the section 42A report author to separate out the second paragraph into two;
 - (b) change the Natural environment, Introduction wording. While not accepting the change sought,²⁸ because of the Forest and Bird submission the section 42A report author changed the wording of the

²⁷ At paragraph [64].

²⁸ At paragraphs [123] and [124].

introduction. Genesis supports those changes as they provide helpful guidance; and

- (c) change to Objective NE-O1 (and a new NE-O2). The section 42A report author responded to this by removing the list of resources in NE-O1 and amending the introduction. Genesis supports those changes.

47. Genesis opposed submissions by ECan that:

- (a) sought, across a number of the provisions, required management of adverse effects. Genesis supports the section 42A report author's reasons for rejecting these changes;²⁹ and
- (b) sought redrafting of objectives ATC-O4. Genesis agrees with the reasons given by the section 42A report author for rejecting those changes.³⁰

48. Genesis supported changes (in part) by ECan to ATC-5 and O6. Those changes were largely rejected by the section 42A report author.³¹ Genesis agrees with Meridian that the proposed new drafting for ATC-O5 could be improved and supports the wording proposed by Ms Ruston in her evidence.

SECTION 32AA EVALUATION AND CONCLUSION

49. Overall, the changes sought by Genesis are the most appropriate way to achieve the purpose of the RMA, noting the relevant provisions of Part 2 as well as the statutory requirement to give effect to the NPS-REG and the CRPS. The changes sought by Genesis also fit better within the guidance purpose of the Strategic Directions chapter as set out in the National Planning Standards. While not strictly relevant to an evaluation of objectives, Genesis also considers, as set out in Dr Mitchell's evidence, that its proposed changes are more efficient and effective, and provide both greater clarity and guidance for WDP users.

22 November 2022

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²⁹ At paragraphs [58] – [61]

³⁰ Ibid.

³¹ At paragraphs [102] – [104].