

**Before the Independent Hearings Panel
For Mackenzie District Council**

Under the Resource Management Act 1991

In the matter of the Mackenzie District Plan Review

And

In the matter of Plan Change 20 - Strategic Chapters

Legal submissions on behalf of Nova Energy Limited in relation to PC20

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Solicitor on the Record
Contact solicitor

Stephen Quinn
Matthew Dicken

stephen.quinn@dlapiper.com
matthew.dicken@dlapiper.com

+64 4 474 3217
+64 4 474 3224

Level 4, 20 Customhouse Quay, Wellington 6011
PO Box 2791, Wellington 6140
Tel +64 4 472 6289

INTRODUCTION

- 1 These legal submissions are presented on behalf of Nova Energy Limited (**Nova**) in relation to Plan Change 20 of the Mackenzie District Plan Review (**PC20**).

- 2 These submissions provide the Panel with a broad overview of the interests and submissions made on behalf of Nova in relation to PC20 for the purpose of the strategic directions chapters of the Proposed Mackenzie District Plan (**Proposed Plan**).

- 3 The submissions provide an overview of Nova, their operations and interests in the Mackenzie District and Canterbury Region, and the primary outcomes sought by Nova through submissions on PC20.

- 4 These submissions draw on the evidence of Christopher Pye which was filed on behalf of Nova on 15 November 2022, and summarise the submissions, further submissions and relief sought by Nova.¹

BACKGROUND

- 5 The premise for these submissions is that the strategic direction chapters of PC20, and the Proposed Plan more generally, ought to provide for potential future use of renewable energy resources of the district. This in turn will provide significant benefits to the regional and national economies, and enhance social well-being of communities.

- 6 Nova have submitted on the Proposed Plan as a reflection of its interests in the district, and region. These interests are described in the evidence of Mr Pye and detailed further below.

Todd Corporation and Nova Energy Limited

- 7 As set out in the evidence of Mr Pye, and in the submissions on PC20 filed by Nova, Nova is a 100 percent New Zealand owned and operated

¹ Statement of Evidence of Christopher Pye, dated 15 November 2022.

company focussed on the supply of energy. As a retailer, wholesaler and generator, Nova serves approximately 100,000 customers nationally.²

- 8 The evidence of Mr Pye describes that Nova is a subsidiary of the Todd Corporation, one of New Zealand's leading companies for over 130 years. 100% owned by the Todd family, Todd Corporation.³

employs approximately 800 people across more than 20 different locations throughout New Zealand and Australia, and has interests in energy, property development, telecommunications, minerals, healthcare, technology and philanthropy.

- 9 Nova is associated with numerous electricity generation assets across New Zealand, including a solar farm, peaking plants and cogeneration facilities. The Nova business also includes energy retail brands MegaTel and Wise Prepay, and a majority interest in solar developer Sunergise International and its subsidiaries Sunergise New Zealand and Clay Energy.⁴

Nova interests in the Mackenzie District

- 10 Nova is committed to the environmental, social and economic wellbeing of the Mackenzie District, Canterbury Region, and New Zealand generally. In the Mackenzie District specifically, Todd Corporation has land ownership and development interests which underpin the reason for Nova submitting on the Proposed Plan. Alignment ought to be provided between the Proposed Plan and National Planning frameworks to enable development of new renewable electricity generation within the District.⁵

- 11 As set out in the evidence of Mr Pye, Nova is investing in renewable solar power generation in a number of parts of the country to contribute to New Zealand's future demand increases and to provide an affordable

² Pye, at [10].

³ Pye, at [11].

⁴ Pye, at [12].

⁵ Pye, at [17].

and reliable energy supply to all New Zealanders, as the country transitions to a low emissions economy.⁶ Accordingly, Nova submit that the Mackenzie District is 'highly suitable' for future grid scale solar renewable electricity generation development, based on the natural renewable energy resources available and the National Grid infrastructure for distribution of renewable electricity to New Zealanders.⁷

Status as regionally and nationally significant activities

- 12 The evidence of Mr Pye outlines the regional and national economic benefits of renewable electricity generation industry. The focus of Mr Pye's evidence is two-fold – firstly, by detailing how the development of renewable electricity generation resources will aid the transition to a low emissions economy, and secondly, detailing how the Mackenzie District's suitability and capacity to contribute to renewable energy generation.
- 13 It is the evidence of Mr Pye that the Mackenzie District's energy system is a significant contributor to the productivity and economic growth of the district, region and nation.⁸ Nova submits that the District's energy system is therefore significant, and provision ought to be included in the Proposed Plan for future development.

Transition to low emissions economy

- 14 The evidence of Mr Pye details how the development of renewable electricity generation resources is a public policy direction and supported by recent legislative changes.⁹ The legislative changes include the amendments to the Climate Change Response Act 2002 (**CCRA**) by the Climate Change Response (Zero Carbon) Amendment

⁶ Pye, at [15].

⁷ Pye, at [16].

⁸ Pye, at [26].

⁹ Pye, at [18].

Act 2019, and Government's three emissions budgets and first Emissions Reduction Plan (**ERP**).

- 15 The ERP sets out the policies and strategies for meeting the emission budgets and focuses (in part) on the role that a highly renewable electricity system can play to further electrify industry and transport.¹⁰
- 16 It is submitted that the Mackenzie District is in a prime position to aid in the achievement of the emissions budgets and alignment with the ERP policies and strategies. This is because, as set out in the evidence of Mr Pye, the Mackenzie District:
- 16.1 Contains high quality natural renewable energy resources, suitable for renewable electricity generation development,¹¹
- 16.2 Has a solar radiation profile within parts of the District that are highly suitable for grid scale solar electricity generation development,¹² and
- 16.3 Contains a high-capacity electricity transmission infrastructure, linking the district to both the North and South Islands and supporting future renewable electricity generation development.¹³
- 17 Nova submits that in order to deliver New Zealand's electricity generation decarbonisation objectives, alignment of the District Plan with the future requirements of National Planning frameworks is essential to enable development of new renewable electricity generation infrastructure within the District and Region, particularly in a District where suitable natural renewable energy resources occur.¹⁴

¹⁰ Pye, at [20]-[21].

¹¹ Pye, at [27].

¹² Pye, at [28].

¹³ Pye, at [29].

¹⁴ Pye, at [30].

18 It is the evidence of Mr Pye that:¹⁵

Failing to create an enabling environment for renewable energy generation development, via the strategic chapter of the District Plan, risks providing a platform for niche interests to complicate and frustrate consent applications. This is misaligned with national direction and could encourage development capital to be directed towards other Districts with more supportive and certain planning frameworks.

19 It is submitted that in order to create 'a thriving community', the Council must carefully consider how it will align plan provisions with the District's aspirations and strategy. Accordingly, the key outcomes sought by Nova seek to ensure that alignment occurs, particularly as it relates to ensuring flexibility for renewable electricity generation development.

KEY OUTCOMES SOUGHT

20 On 9 September 2022, Nova submitted on the PC20 – Strategic Directions provisions of the Proposed Plan. Whilst the submissions filed cover the broad range of sections, chapters and provisions, these legal submissions will focus on the key outcomes sought. The balance of these submissions will therefore cover the following:

20.1 Overview of specific reasons for submissions.

20.2 Description of the District.

20.3 A Thriving Community (ATC) Chapter.

20.4 Natural Environment Chapter (NE) Chapter.

Overview

21 By way of overview, Nova sought to ensure the relevant planning provisions of the Proposed Plan are effective both in supporting existing

¹⁵ Pye, at [32].

electricity generation operations and facilitating future growth through adequate flexibility. Nova considers that the District-wide objectives as proposed are generally supportive and facilitative of appropriate energy activities and infrastructure, though they could be more specific as to the provision for new activities and infrastructure. Nova submits that the most appropriate way to achieve this outcome is to make specific provision for it.

22 Nova seeks to ensure that the Proposed Plan enables the development of both new renewable electricity generation and energy storage activities. Ensuring flexibility in the plan for these activities provides an environment where the barriers to entry for innovative technologies are reduced, thereby increasing the likelihood of economic feasibility.

23 Appropriate future renewable electricity activities and infrastructure can have significant and direct positive effects, increasing low emissions energy supply to support energy independence and resilience consistent with national policy direction and creating economic and employment opportunities. Specifically, allowing sufficient provision for the future development of appropriate renewable electricity activities and infrastructure is consistent with the following relevant National Policy statements:

23.1 National Policy Statement on Electricity Transmission (**NPSET**) – it would directly support the overall objective to recognise the national significance of the electricity transmission network and provide for the establishment of new transmission resources to meet the needs of present and future generations; and

23.2 National Policy Statement for Renewable Energy Generation (**NPSREG**) – it would directly support the overall objective of the NPSREG to increase the proportion of New Zealand’s electricity generated from renewable energy sources.

24 Overall, Nova largely supports the deletions and addition of provisions proposed by the Council, with the exception of the relief sought in

relation to the ACT Chapter, NE Chapter and Description of the District in the Introduction/General Provisions section of the Proposed Plan. Detail of the relevant submissions will be described below.

- 25 Considering the Council’s staged approach to the review of the Operative District Plan, Nova recognises that futures stages of the review will provide opportunity to ensure the Proposed Plan provides for the greater recognition and provision for current and future development and operations sought. However, it is submitted that the scope of PC20 is such that it provides a good opportunity to outline their interests.

Description of the District

- 26 Nova submitted on the insertion of the 'Description of the District' Chapter. Nova supported its inclusion in part, and sought amendment to the provision to acknowledge the abundance of energy sources in the District.

- 27 Nova submits that the following amendment to paragraph four of the chapter is required to achieve the relief sought:

'The District contains many natural resources of significance, including mahika kai resources, night sky darkness, outstanding natural features and landscapes, significant indigenous biodiversity, renewable energy resources and a range of water bodies.'

- 28 The Council's section 42A report rejected the relief sought to add energy references in the 'Description of District', stating that:¹⁶

the paragraph in this short introductory section to the plan is focussed on specific natural resources of importance.

- 29 As set out in the evidence of Mr Pye, Nova considers that its submission point to include references to energy resources in the 'Description of the District' chapter remains relevant. This is particularly notable in

¹⁶ Section 42A Report: Plan Change 20 – Strategic Chapters, dated 19 October 2022, at [38].

relation to high solar irradiation within parts of the District, which is 'natural resource of importance' and accordingly meets the criteria suggested by officers.

A Thriving Community Chapter

- 30 Nova submitted on the insertion of the ATC Chapter and objectives. The premise for their submissions was that Nova considers locally, regionally and nationally important infrastructure is necessary to support the functioning of community, recognising their effects must be appropriately managed. Nova also considers it is important that the proposed plan recognises and enables '*appropriate*' future development so that there is provision for new energy facilities and infrastructure where appropriate.
- 31 Nova sought relief which would amend Objectives ATC-O3 and ATC-O4 to include the wording '*existing and appropriate future*'.
- 32 The Council's section 42A report did not find the addition of that wording necessary as it is 'implicit', particularly as it is made clear in the introduction which refers to both operation of existing infrastructure as well as the development of new infrastructure.¹⁷
- 33 As set out in the evidence of Mr Pye, Nova supports the section 42A report recommendations relating to the introduction section of the ATC Chapter, in particular the amendment to include existing and new, within ATC – A Thriving Community Chapter, Introduction.¹⁸

Natural Environment Chapter

- 34 Nova submitted on the insertion of the 'Natural Environment' Chapter, including the strategic objective NE-O1. Nova also made further submissions on the 'Introduction Section' to the NE Chapter. Nova

¹⁷ Section 42A Report, at [90].

¹⁸ Section 42A Report, Appendix 1, at 2.

supported the addition of NE-O1 in so far as it recognises the values of the natural environment.

35 Nova submit that the importance of appropriate future development of infrastructure must be reiterated here. Provision for infrastructure development ought to be balanced in consideration with its integration into existing environments.

36 As set out in the evidence of Mr Pye, Nova's position on the recommendations of the section 42A report are as follows:

36.1 Nova opposes the section 42A reports recommendation of a proposed amendment of “~~importance~~ ~~significance~~” within NE – Natural Environment Chapter, Introduction, paragraph 1.

36.2 Nova also considers that the NE – Natural Environment Chapter, Introduction wording should specifically include (as an example of a natural resource of 'significance') either 'renewable energy resources' or 'sources of renewable energy', especially given the solar irradiation profile in large areas of the District is highly suitable for grid scale solar electricity generation development.¹⁹

37 Nova submit that the Strategic Direction chapters ought to focus on the outcome. It is the evidence of Mr Pye that harnessing the District's abundant natural energy resources is, in Nova's opinion, an appropriate outcome statement in this instance.²⁰

CONCLUSION AND RECOMMENDATIONS

38 Based on the evidence by Mr Pye, and the submissions and further submissions on behalf of Nova, it is submitted in conclusion that:

¹⁹ Nova further submission in opposition to the submission of Forest and Bird (5).

²⁰ Pye, at [39].

- 38.1 The Mackenzie District has significant renewable energy resources to support future renewable electricity generation development.
- 38.2 New Zealand requires substantial and rapid development of renewable electricity generation, to meet prescribed decarbonisation targets.
- 38.3 District Plans should support development of new renewable electricity generation capacity, located at the sources of renewable energy and transmission infrastructure, based on the assessment of effects.
- 39 The relief sought and as described in these legal submissions are recommended as necessary amendments to achieve alignment of the District Plan with the future requirements of National Planning frameworks, transition to a low emissions economy, and social and economic well-being for the District and Region.

LEGAL FRAMEWORK

- 40 Due to the introductory nature of these submissions and relatively well settled legal principles, the legal framework has not been addressed in detail in these submissions.
- 41 At a high level, the Panel is limited to making recommendations on amendments that are within scope (ie having been fairly and reasonably raised) of submissions on the PC20 provisions of the Proposed Plan. The Proposed Plan must give effect to the relevant higher order documentation, including the RPS,²¹ and not be inconsistent with a water conservation order or relevant regional plan matter,²² and be prepared in accordance with the Council's functions as set out in section

²¹ Section 75(3)(c), RMA.

²² Section 75(4), RMA.

31 of the Resource Management Act 1991 (**RMA**), Part 2 and the requirements of section 32 of the RMA.

42 Relevant caselaw, such as *Colonial Vineyard Ltd v Marlborough District Council*,²³ set out the statutory requirements in detail.

Date 22 November 2022



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Stephen Quinn / Matthew Dicken
Solicitor for Nova Energy Limited

²³ [2014] NZEnvC 55, at [17].