

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2022] NZEnvC 209

IN THE MATTER

of the Resource Management Act 1991

AND

an appeal under clause 14 of
Schedule 1 of the Act

BETWEEN

MANAWA ENERGY LIMITED
(FORMERLY KNOWN AS
TRUSTPOWER LIMITED)

(ENV-2020-CHC-50)

Appellant

AND

MARLBOROUGH DISTRICT
COUNCIL

Respondent

Environment Judge J J M Hassan – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 14 October 2022

CONSENT ORDER

A: Under s279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

(1) the appeal is allowed, and Marlborough District Council is directed to:

(a) amend the proposed Marlborough Environment Plan as set out



in Appendix 1 attached to and forming part of this consent order (except those provisions highlighted green that are discussed below, determination of which remains reserved);

(b) make any consequential amendments to the numbering of provisions and relevant planning maps resulting from (a) above (including correcting the numbering of the parties' '3.18.2.3' to read '2.18.2.3).

(2) the appeal otherwise remains extant.

B: Under s285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns the appeal by Manawa Energy Limited (formerly known as Trustpower Limited) against part of the decision of the Marlborough District Council in relation to Volume 1: Ch 18, and Volume 2: Ch 2, Ch 3, and Ch 19 of the proposed Marlborough Environment Plan ('pMEP') that were allocated to Topic 17 – Energy.

[2] The court has now read and considered the consent memorandum of the parties dated August 2022 which sets out the agreement reached to resolve a number of appeal points allocated to the Energy topic. The remaining appeal points remain to be resolved at a later date.

Potential issues as to scope for deletion of r 3.1.60

[3] The consent memorandum seeks deletion of r 3.1.60. Search of the court file records thus far has not revealed that there is scope for this change. Manawa Energy's originating submission refers to the development, operation, maintenance and upgrading of new and existing renewable electricity generation

activities. However, I leave this matter reserved from determination to allow parties, should they wish to pursue this change, to assist the court on the matter of jurisdictional scope.

Other relevant matters

[4] A number of parties gave notice of an intention to become a party under s274 of the Resource Management Act 1991 ('RMA' or 'the Act'). Those s274 parties whose interest extends to this topic have signed the consent memorandum.

[5] The consent memorandum records that the points resolved by this order are sufficiently discrete and will not affect the resolution of any other appeal or topic. The consent memorandum records the parties' assurance that there are no issues of scope or jurisdiction.¹

Direction and conclusion

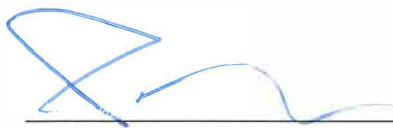
[6] On the question of whether r 3.1.60 is to be deleted as requested, leave is reserved to parties to file a further joint memorandum within 15 working days to assist the court on matters of jurisdictional scope. In the meantime, the making of a consent order is reserved. Unless the court is so satisfied, this aspect of the consent order will be declined.

[7] The court makes the order in A: under s279(1) RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s297. The court understands for present purposes that:

- (a) all relevant parties to the proceedings have executed the memorandum requesting this order;

¹ Consent memorandum dated August 2022 at [7]-[8], [10].

- (b) all relevant parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to the relevant requirements and objectives of the RMA including, in particular, pt 2.



J J M Hassan
Environment Judge



Volume 1

Chapter 18: Energy

1. Amend Objective 18.1, as follows:

[RPS, R, C, D]

Objective 18.1 – Optimise the use of Marlborough’s renewable energy resources.

Marlborough contains significant and diverse energy resources. These resources are almost exclusively renewable in nature and include hydro, wind, wave, tidal, photovoltaic, passive solar and biomass. Only a small proportion of these renewable energy resources are currently utilised.

Accessing local sources of renewable energy at all scales would directly benefit Marlborough’s communities by reducing our current vulnerability to supply disruptions. The greater the diversity of energy resources utilised, the more resilient the supply of energy will be. Generation schemes located close to where electricity is used would be most efficient, as less electricity would be lost in transmission compared to that experienced when electricity has to travel from a more distant generation source.

Realising the potential to generate electricity from some of these sources is readily available now, but others will require technological advances. As this happens and the balance of energy costs shift, there will be increasingly affordable opportunities for the generation of electricity. This type of energy generation will provide alternatives for remote communities and properties and it is anticipated that these will become increasingly viable in urban and industrial areas as well.

2. Amend Policy 18.1.3, as follows:

[R, C, D]

Policy 18.1.3 - When considering the environmental effects of proposals to use and develop renewable energy resources, to have regard to:

- (a) the benefits to be obtained from the proposal at local, regional or national levels, including for economic, social or cultural wellbeing; and:
 - ~~(i) — maintaining or increasing security of renewable electricity supply by diversifying the type and/or location of electricity generation;~~
 - ~~(ii) — maintaining or increasing renewable electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions;~~
 - ~~(iii) — for economic, social or cultural wellbeing; and~~
- (b) effects on the immediate and surrounding environment, including effects on air quality, water quality, water quantity, ecosystems, natural character, outstanding landscapes, visual amenities, the cultural values of Marlborough’s tangata whenua iwi and from noise;
- (c) the degree of effect (extent, magnitude) and the degree to which unavoidable adverse effects can be remedied or mitigated, including the relative degree of reversibility of the adverse effects associated with the proposed generation technologies;

- (d) where the adverse effects are significant, alternatives to the development in terms of either means, location or scale; and
- (e) the environmental values affected or enhanced and whether these are of local, regional or national significance.

~~(f) the logistical or technical practicalities associated with locating renewable electricity generation infrastructure.~~

When considering an application for resource consent(s) or notice of requirement for the use and development of renewable energy resources, the Council will have regard to the positive and adverse effects on the environment from developing renewable energy resources. An overall assessment of the costs and benefits will be required and this policy provides guidance on the matters that are relevant to this consideration. The costs can include opportunity costs associated with the loss in ability to use the same resource for different purposes.

The adverse effects described in the policy are not unique to the energy sector and have been addressed in other chapters of the MEP. The use of renewable energy resources should not compromise the achievement of other objectives or policies of this MEP. This may require on-site and/or off-site remediation or mitigation to occur, or avoidance altogether in a particular location. It is acknowledged that regard must be had to the objective and policies of the NPSREG.

~~(f) of the policy recognises that the development of some renewable electricity generation activities are constrained by functional requirements such as where the resource is located and proximity of the development to the National Grid or distribution network.~~

Consideration can also be given to matters (a) to (e) when determining the status of activities involved in developing and operating renewable energy projects. For example, where domestic or small scale developments such as micro wind and hydro have minimal adverse effects on the environment, they can be enabled through permitted activity rules.

3. Move Policy 18.1.5 to sit under the new objective (see 5 and 6 below) as Policy 18.2.4.

4. Delete Policy 18.1.6, as set out below.

~~[R, C, D]~~

~~Policy 18.1.6 — Provide for the ongoing generation of electricity from existing renewable energy generation infrastructure by having particular regard to:~~

- ~~— Maintaining the output from existing renewable electricity generation schemes; and~~
- ~~— Enabling the maintenance of renewable electricity generation schemes, and their upgrading where the adverse effects on the environment can be avoided, remedied or mitigated to an acceptable level.~~

~~This policy recognises the national significance of renewable electricity generation activities. Even minor reductions in generation output can collectively have significant impact on national and regional electricity output. The policy also recognises that upgrades of existing schemes can contribute to a national objective, as set out in the National Policy Statement for Renewable Electricity Generation 2011.~~

5. Add a new objective to Chapter 18, as set out below.

[RPS, D]

Objective 18.2 - Recognise the national and regional significance of renewable electricity generation activities by providing for their development, operation, maintenance and upgrading.

This objective gives effect to the National Policy Statement for Renewable Electricity Generation (NPSREG), particularly Policies E1-E4 which direct regional policy statements and regional and district plans to include provisions to provide for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities. Renewable electricity generation is essential for supplying the electricity needs of the District and to address the Government's climate change aspirations.

6. Add policies for the new objective, as set out below.

[RPS, D]

Policy 18.2.1 - Recognise and provide for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, including by:

- (a) providing for the use of renewable natural resources;
- (b) having particular regard to the locational, logistical and technical constraints associated with renewable electricity generation activities;
- (c) enabling the appropriate maintenance and upgrading of existing renewable electricity generation schemes; and
- (d) maintaining or increasing the generation output of existing renewable electricity generation activities.

This policy gives effect to the NPSREG. In particular, Policy C1 acknowledges the practical constraints associated with the development, operation and upgrading of new and existing renewable electricity generation activities. It also acknowledges that renewable electricity generation activities can only occur where the resource is located, irrespective of the underlying zone. It is important to enable the maintenance and upgrading of existing schemes, and to ensure that generation output is maintained or increased.

[R, C, D]

Policy 18.2.2 - Enable activities associated with investigating, identifying and assessing potential sites and energy sources for renewable electricity generation activities.

This policy gives effect to Policy G of the NPSREG, which enables the identification of renewable electricity generation possibilities. This is a critical component for the development of new renewable electricity generation activities.

[R, C, D]

Policy 18.2.3 - When considering proposals to develop and operate renewable electricity generation activities, have particular regard to the benefits to be obtained from the proposal at local, regional or national levels, including:

- (a) maintaining or increasing security of renewable electricity supply by diversifying the type and/or location of electricity generation;
- (b) maintaining or increasing renewable electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions;
- (c) for economic, social or cultural wellbeing; and
- (d) the contribution the proposal will have towards New Zealand meeting its renewable electricity generation targets.

This policy gives effect to Policy A and B of the NPSREG, recognising the benefits of renewable electricity generation activities and their role in meeting national carbon emission reduction targets.

[R, C, D]

Policy 18.2.41.5 – Manage other activities to the extent reasonably practicable to avoid reverse sensitivity effects on consented or existing renewable electricity generation activities.

This policy recognises the national significance of renewable electricity generation activities and the potential for other activities to adversely affect those generation activities. Even minor

reductions in generation output can collectively have a significant impact on national and regional electricity output. This policy seeks to such avoid such reverse sensitivity effects to the extent that is reasonably practicable, as required by Policy D of the National Policy Statement for Renewable Electricity Generation 2011.

7. Add methods to implement the new policies, as set out below.

Methods of implementation

The methods listed below are to be implemented by the Council unless otherwise specified.

[R, C, D]

18.M.8 District rules

Enable the use of appropriate land resources for micro renewable energy developments through permitted activity rules (including standards) for small scale and domestic solar and wind generation installations. Where a proposal does not meet the standards specified for permitted activities, resource consent will be required. Wind generation installations are not considered appropriate in residential environments due to the potential for adverse noise effects.

Enable appropriate operation, maintenance, replacement and upgrading of existing renewable electricity generation schemes.

Provide for the re consenting of existing hydro-electric power schemes through controlled activity rules.

[R, C, D]

18.M.9 Regional rules

Enable the use of water resources for micro renewable energy developments through permitted activity rules for the taking, damming or diversion of water associated with small scale and domestic hydro-electric generation installations. Permitted activity rules will not be appropriate for some surface water bodies because they contain significant instream values.

Apply regional rules to larger scale renewable energy developments involving the use and occupation of the coastal marine area, the taking, damming or diversion of water or the discharge of contaminants to land, water or air.

Enable appropriate operation, maintenance, replacement and upgrading of existing renewable electricity generation schemes.

Provide for the re consenting of existing hydro-electric power schemes through controlled activity rules.

[RPS, D]

Volume 2:

Chapter 2 – General Rules

8. Add a new rule to 2.4, as follows:

[R]

2.4.2. The lawfully established damming and diversion of water, and the lawfully established take and use of water, associated with the operation and maintenance of a hydro-electric power scheme that existed on the date this plan becomes operative, except where already provided for in 2.2.

Standards and terms:

2.4.2.1. The consent application(s) replace existing resource consents; and

2.4.2.2 There must be no increase in the existing volume or rate of take or diversion.

Matters over which the Council has reserved control:

2.4.2.3. The volume and rate of water taken or diverted, and the timing of the take or diversion;

2.4.2.4. Intake velocities and measures to avoid or mitigate fish entrainment;

2.4.2.5. Water levels;

2.4.2.6 Compliance with environmental flow and allocation limits;

2.4.2.7 Measures to avoid, remedy or mitigate any adverse effects on the following:

(i) cultural values;

(ii) lawfully established users of the lake or river;

(iii) downstream sediment transport processes;

(iv) aquatic ecosystems, areas of significant indigenous vegetation, and significant habitats of indigenous fauna;

(v) outstanding natural features and outstanding natural landscapes, and natural character;

(vi) amenity values (including recreation), and existing public access to and along the margins of lakes and rivers;

2.4.2.8 Fish passage;

2.4.2.9 Measures to manage land stability and erosion;

2.4.2.10 Measures to control flooding;

2.4.2.11 Maintenance and contingency requirements;

2.4.2.12 Monitoring and information requirements;

2.4.2.13 Duration of consent;

2.4.2.14 Review of consent conditions; and

2.4.2.15 Compliance monitoring.

9. Add a new rule to 2.18, as follows:

[R]

2.18.2. The lawfully established discharge of water to water, and the lawfully established discharge of contaminants to water, associated with the operation and maintenance of a hydro-electric power scheme that existed on the date this plan becomes operative, except where already provided for in 2.16.

Standards and terms:

2.18.2.1. The consent application(s) replace existing resource consents; and

2.18.2.2 There must be no increase in the existing volume of discharge or the nature of contaminants being discharged; and

2.18.2.3 The discharge must result from the activities provided for in Rules 2.4.2 and/or 2.9A.1.

Matters over which the Council has reserved control:

2.18.2.4 Measures to avoid, remedy or mitigate any adverse effects on the following:

(i) cultural values;

(ii) lawfully established users of the lake or river;

(iii) downstream sediment transport processes;

(iv) aquatic ecosystems, areas of significant indigenous vegetation, and significant habitats of indigenous fauna;

(v) outstanding natural features and outstanding natural landscapes, and natural character;

(vi) amenity values (including recreation), and existing public access to and along the margins of lakes and rivers;

2.18.2.5 Measures to manage land stability and erosion;

2.18.2.6 Measures to control flooding;

2.18.2.7 Measures required to comply with Section 107(1) of the RMA;

2.18.2.8 Maintenance and contingency requirements;

2.18.2.9 Monitoring and information requirements;

2.18.2.10 Duration of consent;

2.18.2.11 Review of consent conditions; and

2.18.2.12 Compliance monitoring.

10. Add a new controlled activity rule prior to 2.10, as follows:

2.9A. Controlled Activities

Application must be made for a Controlled Activity for the following:

[R]

2.9A.1 The lawfully established use of structure in the bed of a lake or river associated with the operation and maintenance of a hydro-electric

power scheme that existed on the date this plan becomes operative, except where already provided for in 2.7.

Standards and terms:

2.10.1.1. The consent application(s) replace existing resource consents; and

Matters over which the Council has reserved control:

2.9A.1.2 Measures to avoid, remedy or mitigate any adverse effects on the following:

(i) cultural values;

(ii) lawfully established users of the lake or river;

(iii) downstream sediment transport processes;

(iv) aquatic ecosystems, areas of significant indigenous vegetation, and significant habitats of indigenous fauna;

(v) outstanding natural features and outstanding natural landscapes, and natural character;

(vi) amenity values (including recreation), and existing public access to and along the margins of lakes and rivers;

2.9A.1.3 Maintenance and contingency requirements;

2.9A.1.4 Monitoring and information requirements;

2.9A.1.5 Duration of consent;

2.9A.1.6 Review of consent conditions; and

2.9A.1.7 Compliance monitoring.

With consequential amendments to 2.10 as follows

2.10. Discretionary Activities

Application must be made for a Discretionary Activity for the following:

...

[R, D]

2.10.2. Any activity in, on, under or over the bed of a lake or river not provided for as a Permitted Activity, Controlled Activity or limited as a Prohibited Activity.

11. Add a new suite of rules prior to Rule 2.45, as follows:

Operation, maintenance, replacement or minor upgrading of renewable electricity generation activities, and associated activities

2.45. Permitted Activities

Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent where they comply with the applicable standards in 2.46:

[D]

2.45.1. The operation, maintenance, replacement or minor upgrading of any lawfully established renewable electricity generation structure.

2.46. Standards that apply to specific permitted activities

2.46.1. The operation, maintenance, replacement or minor upgrading of any lawfully established renewable electricity generation structure.

2.46.1.1 The maximum height of a building must not exceed 5m.

2.46.1.2 The maximum gross floor area of a building must not exceed 65m².

2.46.1.3 In the case of replacement, there must not be any increase in scale of the structure.

2.46.1.4 A building must not be sited in, or within 8m of, a river, lake (with the exception of Lake Argyle), drainage channel, Drainage Channel Network, the landward toe of any stopbank, or the sea.

2.46.1.5 All buildings must be setback 8m from the front boundary.

2.46.1.6 Excavation, filling, vegetation clearance (indigenous and non-indigenous), noise and discharge rules for the relevant zone in which the renewable electricity generation activity is located must be complied with.

2.47 Discretionary Activities

Application must be made for a Discretionary Activity for the following:

[D]

2.47.1. The operation, maintenance, replacement or minor upgrading of any lawfully established renewable electricity generation structure that does not meet the applicable permitted activity standards.

With consequential numbering changes to the existing 2.45, 2.46 and 2.47.

Chapter 3 – Rural Environment Zone

12. Delete Rule 3.1.60, as follows:

[D]

~~3.1.60. Maintenance and replacement of an existing renewable electricity generation activity.~~

13. Add a new rule to 3.4, as follows:

[R]

3.4.5. The lawfully established discharge of contaminants to land associated with the operation and maintenance of a hydro-electric power scheme that existed on the date this plan becomes operative, except where already provided for in 3.1.

Standards and terms:

- 3.4.5.1. The consent application(s) replace existing resource consents; and
- 3.4.5.2 There must be no increase in the existing volume of discharge or the nature of contaminants being discharged; and
- 3.4.5.3 The discharge must result from the activities provided for in Rules 2.4.2 and/or 2.9A.1.

Matters over which the Council has reserved control:

- 3.4.5.4 Measures to avoid, remedy or mitigate any adverse effects on the following:
- (i) cultural values;
 - (ii) lawfully established users of the lake or river;
 - (iii) downstream sediment transport processes;
 - (iv) aquatic ecosystems, areas of significant indigenous vegetation, and significant habitats of indigenous fauna;
 - (v) outstanding natural features and outstanding natural landscapes, and natural character;
 - (vi) amenity values (including recreation), and existing public access to and along the margins of lakes and rivers;
- 3.4.5.5 Measures required to comply with Section 107(1) of the RMA;
- 3.4.5.6 Maintenance and contingency requirements;
- 3.4.5.7 Monitoring and information requirements;
- 3.4.5.8 Duration of consent;
- 3.4.5.9 Review of consent conditions; and
- 3.4.5.10 Compliance monitoring.

Chapter 19 – Open Space 3 Zone

14. Add a new controlled activity rule prior to 19.4, as follows:

19.3A. Controlled Activities

Application must be made for a Controlled Activity for the following:

[R]

19.3A.1 The lawfully established discharge of contaminants to land associated with the operation and maintenance of a hydro-electric power scheme that existed on the date this plan becomes operative, except where already provided for in 19.1.

Standards and terms:

- 3.4.5.1. The consent application(s) replace existing resource consents; and
- 3.4.5.2 There must be no increase in the existing volume of discharge or the nature of contaminants being discharged; and

3.4.5.3 The discharge must result from the activities provided for in Rules 2.4.2 and/or 2.9A.1.

Matters over which the Council has reserved control:

3.4.5.4 Measures to avoid, remedy or mitigate any adverse effects on the following:

- (i) cultural values;
- (ii) lawfully established users of the lake or river;
- (iii) downstream sediment transport processes;
- (iv) aquatic ecosystems, areas of significant indigenous vegetation, and significant habitats of indigenous fauna;
- (v) outstanding natural features and outstanding natural landscapes, and natural character;
- (vi) amenity values (including recreation), and existing public access to and along the margins of lakes and rivers;

3.4.5.5 Measures required to comply with Section 107(1) of the RMA;

3.4.5.6 Maintenance and contingency requirements;

3.4.5.7 Monitoring and information requirements;

3.4.5.8 Duration of consent;

3.4.5.9 Review of consent conditions; and

3.4.5.10 Compliance monitoring.

