

Decision Report

Energy Bay Limited

Application RC 202.2022.136.1  
to  
Tararua District Council

7 September 2023

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## 1 Introduction

[001] Energy Bay Limited (EBL or applicant) has applied<sup>1</sup> to the Tararua District Council (TDC) to establish and operate a solar farm on a property located at 410 Mangamaire Road, Pahiatua.

**The application is granted for the reasons herein.**

## 2 Appointments

[002] The TDC, acting under s34A of the Resource Management Act 1991, appointed Independent Hearing Commissioner Rob van Voorthuysen<sup>2</sup> to hear and decide the application.

## 3 Description of the Proposal

[003] The proposal is described in EBL's AEE<sup>3</sup> and evidence<sup>4</sup> and the TDC Section 42A Report<sup>5</sup>. I adopt those descriptions (as modified by evidence presented at the hearing), but the more salient details are:

- Energy Bay provides the capability to finance, build and operate renewable energy infrastructure. Energy Bay will retain its interest in the land, but the land will be leased to Akuo New Zealand Limited (Akuo) who will develop and operate the solar power farm<sup>6</sup>;
- The proposed solar farm site is located on either side of Mangamaire Road near its intersection with Tutaekara Road, around 8km south of Pahiatua. The Site has previously been utilised as a dairy farm;
- The proposal is split into Sites A and B. Site A is located on the northern side of Mangamaire Road and covers around 49ha. Site B is bound by Tutaekara Road and Mangamaire Road and covers around 39ha. Both sites are predominantly pasture with a few scattered trees;
- Overhead powerlines (Designation 220) follow the road corridor and the rail corridor (Designation 201) runs along the north-western boundary of the site;
- Macrocarpa trees internal to Site A and some of the remnant shelterbelts associated with Site B will be removed to avoid shading of the solar panels. However, the row of Macrocarpa trees on Mangamaire Road in the north western corner of Site B will be retained;
- A new security fence (consisting of standard deer fencing) will be erected around the boundary of the farms. Due to setback requirements to overhead electricity wires, this fencing will be setback 22m from the Transpower transmission line setbacks and 11m from the Powerco lines.;
- A single row of *Cryptomeria japonica* 'Egmont' hedgerow will be planted along the road boundaries of Sites A and B and along the southern boundaries of both sites to provide visual screening. A clipped *Cryptomeria japonica* 'Egmont' hedge will achieve screening within 2-3 years of planting;
- A wetland is located immediately to the north of Site A, which appears to be a remnant from a diverted stream;
- The solar farm comprises approximately 88,500 solar panels spread across approximately 885 bases which are split between Sites A and B;
- Access to the site will be by way of existing vehicle crossings which EBL are not proposing to upgrade;
- The solar panels will be located on solar tables, with each table measuring 52 solar panels long by 2 solar panels wide (60m long and 4.9m wide). The solar tables consist of a steel structure which is attached to the ground by seven steel poles, centralised along its length. This structure is designed

<sup>1</sup> On 28 May 2021.

<sup>2</sup> Commissioner van Voorthuysen is an experienced Independent Commissioner, having sat on over 399 Hearings throughout New Zealand since 1998. He has qualifications in natural resources engineering and public policy. In 2020 he was appointed as a Freshwater Commissioner by the Minister for the Environment.

<sup>3</sup> Energy Bay Limited, Establishment and operation of a solar farm, Planz Consultants, 23 September 2023. Section 2 "Site and Surrounds" and section 3 "Proposal Description".

<sup>4</sup> Including Catherine Boulton; section 4

<sup>5</sup> Report to the Commissioner, Mr Rob Van Voorthuysen, Section 42A Report off Andrew David Basford – Planning, 9 August 2023. Sections titled "Introduction and Background", "C. The Site and Surrounding Area", "D. The Proposed Activity".

<sup>6</sup> EIC Andrew Archibald (Investment Director and Co-Founder for both Energy Bay Limited and Energy Bay Pty)

to move relative to the angle of the sun. In the morning the solar panels face east and during the day (as the sun moves) they pivot towards the west in the afternoon;

- There will be eleven inverters located across Sites A and B. Each inverter is approximately 2.8m long, 1.6m wide and 2.3m high and is white / off white in colour. The inverters convert the DC current from the solar panels to an AC current so this power source can enter the Power Co. substation located on the corner of Tutaekara and Mangamaire Roads;
- EBL estimates the solar farm will generate approximately 72.69 GWh in its first year. Based on an average annual usage of 7,000kwh/NZ home that equates to 10,384 homes. The electricity will be fed into an existing substation at Mangamaire;
- Around 20,700m<sup>3</sup> of earthworks is required across sites A and B<sup>7</sup>;
- A small identifying sign will be established. There are no hazardous substances stored on site and there is no security lighting proposed or required;
- Once operational, the applicant intends to graze stock beneath and between the solar panels and inverters; and
- The proposal is located within the Rural Management Area of the Tararua District Plan (TDP) and parts are located within a Flood Potential Area overlay.

## **4 Process Issues**

### **4.1 Written approvals, notification and submissions**

[004] Written approvals were obtained from nearby landowners and occupiers<sup>8</sup> of seven properties as set out in Table 5 of the AEE. I have disregarded any effects of the proposal on those parties.

[005] The application was notified on a limited basis to surrounding landowners and occupiers in May 2023 and seven submissions were received, with one in support and six opposed. The submissions are summarised in the Section 42A Report.<sup>9</sup> I adopt that summary but do not repeat it here. I was provided with copies of the original submissions. At the Hearing Mr Bashford confirmed that submitters Moore (4) and Smith (6) withdrew their submissions prior to the Hearing and submitters Norman (5) and Morris (7) withdrew their wish to be heard.

[006] Subsequently, post the closure of the hearing, Ms Boulton provided written approval forms from submitters Moore and Norman.

### **4.2 Officer's recommendation**

[007] Mr Bashford recommended that the application be granted and he recommended a suite of 47 conditions.

### **4.3 Hearing, appearances and site visit**

[008] I held a hearing on Thursday 31 August 2023 in the TDC offices in Dannevirke.

[009] Evidence<sup>10</sup> and legal submissions<sup>11</sup> from the applicant were pre-circulated in conformance with a procedural Minute that I issued. Copies of the legal submissions and briefs of evidence are held by TDC. At the hearing submitter Amy Blackwell (2) spoke to her submission. I do not separately summarise the matters covered here, but I refer to or quote from that material as appropriate in the remainder of this Decision. I took my own notes of any answers given to verbal questions that I posed to Hearing participants.

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<sup>7</sup> An estimated 5580m<sup>3</sup> for access tracks, 9660m<sup>3</sup> for cable trenching to establish the wiring (approximately 600mm wide and 1m deep) 2650m<sup>3</sup> of imported clean fill (screened sand for the HV trenching) 210m<sup>3</sup> for the inverter bases and 2600m<sup>3</sup> for recontouring of the site.

<sup>8</sup> David and Erin Green (129 Tutaekara Road), Ann and James Elers (154 Tutaekara Road), Carol and Wayne Morris (154A Tutaekara Road), Ryan and Jess McNicol (346 Mangamaire Road), Alan Gore and Krystal Jamieson (391 Mangamaire Road), David and Erin Green and Ethan Green (410 Mangamaire Road), and Dean and Valerie Hollister (451 Mangamaire Road).

<sup>9</sup> Section F. Notification and Submissions and Table 1 therein.

<sup>10</sup> Andrew Archibald (Investment Director and Co-Founder for both Energy Bay Limited and Energy Bay Pty), Rory Langbridge (landscape architect), Catherine Hamilton (noise and vibration expert), Peter Hayman (glare expert), Catherine Boulton (planning). At the Hearing Gregory Visser (Country Manager and Director of Akuo Energy New Zealand) addressed operational and technical issues.

<sup>11</sup> Legal Submissions for Energy bay Limited, John Maassen, 28 August 2023

[010] Counsel for EDL, John Maassen, provided verbal Reply submission at the hearing. I asked Mr Bashford and Ms Boulton to undertake further conferencing on condition wording. I received the final suite of recommended conditions on 6 September 2023. I closed the hearing that same day, having concluded that I required no further information from any of the parties.

[011] I conducted an unaccompanied site visit on the afternoon preceding the Hearing, viewing the site from Tutaekara, Mangamaire and Doughertys Roads. I paid particular attention to the location of the submitters' properties and viewed the proposed site from the corner of Ms Blackwell's vacant lot.

#### 4.4 Consent category

[012] The AEE determined that the application was a discretionary activity under the TDP. The relevant rules were 4.1.6.1(b) and standard 5.3.7.2 (renewable energy generation and renewable electricity generation facilities), 5.1.5.3 and standard 5.1.5.2(b) (land disturbance and excavation) and 5.4.7.3 and standard 5.4.7.2.(glare and artificial lighting). Mr Bashford came to the same conclusion.

#### 4.5 Permitted baseline

[013] When forming an opinion for the purposes of subsection 104(1)(a) of the RMA I may disregard an adverse effect of the activity on the environment if a national environmental standard or a plan permits an activity with that effect.<sup>12</sup> Mr Bashford noted that the proposed landscape and visual mitigation planting (originally flax) and deer fencing around the perimeter of the site could be considered under the permitted baseline. I understand that also holds for EBL's revised shelterbelt proposal and the use of *Cryptomeria japonica* 'Egmont' hedgerows. I find that those aspects of the proposal fall within the permitted baseline and so I have disregarded any potential adverse effects arising from them.

[014] Relevantly, several submitters suggested that the initially proposed flax shelterbelts would be a breeding ground for rats. Mr Bashford was unsure as to the accuracy of that assertion but he nevertheless recommended a condition requiring EBL to produce a pest management plan to control any vermin or pests around the solar farm site (recommended Conditions 17 and 34). Those conditions are now not required, both with regard to the permitted baseline and the abandonment of the use of flax.

### 5 Section 104 and 104B matters

[015] I now address the relevant aspects of the application in terms of sections 104 and 104B of the RMA.

#### 5.1 Actual and potential effects on the environment

[016] Having reviewed the documentation I find that I should address the following matters:

- Positive effects
- Glare
- Landscape and visual
- Noise
- Roading network
- Neighbouring quarry
- Highly productive land
- Transpower

[017] In saying that I agree with Mr Bashford that it is not appropriate for effects on property values to be considered as an additional effect of the proposal, for the reasons that he cites. I am also not concerned about the effects of the earthworks<sup>13</sup> because they only relate to the footprints of the solar tables, inverters

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<sup>12</sup> Section 104(2) of the RMA.

<sup>13</sup> Noting that separate earthworks consent may be required from Horizons Regional Council.

and associated cables and predominantly involve excavation and refilling with a small degree of respreading of the soil. The topsoil at the site will remain intact and capable of sustaining pasture cover<sup>14</sup>.

- [018] Regarding Māori cultural values and interests, EBL invited comments from Rangitāne o Tamaki nui-ā-Rua and Ngāti Kahungunu ki Tāmaki-nui-a-Rua. No response was received from Rangitāne and an email expressing support from Ngāti Kahungunu was provided to EBL's consultants<sup>15</sup>. Mr Bashford has nevertheless recommended a routine koiwi discovery condition<sup>16</sup> which I find to be appropriate.

### 5.1.1 Positive effects

- [019] As noted in the AEE<sup>17</sup>, the proposed solar farm will assist in achieving the NZ's target to generate 100% of electricity from renewable energy sources by 2030. The proposal will also result in an increase in electricity generation capacity and an increase in the security of electricity supply at local, regional and national levels (wherever the electricity is most needed at any one time). Unlike some electricity generation activities, the EDL proposal will not increase greenhouse gas emissions.

- [020] Mr Archibald advised:

*"The Project will involve approximately \$70-80 Million in capital investment and provide infrastructure to improve economic and employment outcomes. It will generate approximately 60 direct full-time equivalent (FTE) jobs over a 12-15 month construction period and around 5 ongoing FTE jobs. Indirectly, there will be economic benefits to the community and the wider Tararua District. Construction, operation and maintenance works are anticipated to be sourced primarily from the local community feeding into the local economy."*

- [021] These positive effects are consistent with Policy 2.8.4.2(a) of the TDP<sup>18</sup> and weigh in favour of granting the application.

### 5.1.2 Glare

- [022] Evidence on glare was provided by Peter Hayman<sup>19</sup>. He discussed the three rounds glare modelling<sup>20</sup> undertaken by Vector Powersmart that assessed variables such as the solar panel array height, road user height, shelterbelt height and the railway line. Mr Hayman noted that solar PV panels are designed to absorb the maximum possible amount of light and consequently minimise reflections. He also advised that the modelling was conservative because it assumed every day was a sunny day whereas at the proposed site it was cloudy 35% of the time.

- [023] The modelling showed no glare for the railway line and no glare for road users once mitigation was included (the shelter belts). A moderate level of glare would be observable for between 10 and 30 minutes a day at five modelled observer locations<sup>21</sup>. However, that glare would occur close to sunrise or sunset, meaning an observer would also be looking almost directly into the sun. Mr Hayman advised that this glare could be eliminated (or avoided in RMA terms) through the use of evergreen shelterbelts or by controlling the rest angle of the solar panel tracking system while the shelterbelts establish.

- [024] Regarding that last matter, at the Hearing I queried whether a condition addressing the angle of the solar panel tracking system would be appropriate while the perimeter shelter belts were growing. Ms Bouton advised that was not necessary because the land affected by the modelled glare was the elevated land to the west of the site, no dwellings were on the land and no shelter belt planting was proposed on the western boundary of Site A. I accept that evidence.

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<sup>14</sup> AEE section 9.5.

<sup>15</sup> Email from James Kendrick dated 17 August 2022. AEE, Appendix 6.

<sup>16</sup> Recommended Condition 28.

<sup>17</sup> AE section 9.9.

<sup>18</sup> Opening legal submissions, paragraph 18.

<sup>19</sup> Associate Consultant with SLR Consulting Australia Limited.

<sup>20</sup> The modelling used Solar Glare Hazard Analysis Tool which was originally developed to quantify glare impacts on landing aircraft.

<sup>21</sup> 3 Fouhys Road, 223 Tutaekara Road, 154 Tutaekara Road, 129 Tutaekara Road and 391 Mangamaire Road.

[025] Submitter Amy Blackwell (192 Tutaekara Road) plans to build a house on her land in the future, probably commencing around 2025 when she completes her studies. Her submission expressed concern about noise and glare. I address Noise in section 5.1.4 that follows. Regarding glare, I firstly note that Ms Blackwell's currently vacant lot has a large hedge fronting Tutaekara Road. At the hearing Ms Balckwell advised that hedge would be retained. I note that will block views of the site from the majority of her property. Regarding the portion of her lot with no boundary hedge (on the corner of Mangamaire and Tutaekara Roads), Mr Langbridge advised that once the proposed landscape planting was established, direct views from Ms Balckwell's property to the subject site would not be possible. In answer to a question from me, Ms Balckwell helpfully confirmed that the proposed landscape boundary planting would help to ease her concerns.

[026] I find that the effect of glare on Ms Balckwell's vacant lot will be no more than minor once the solar farm's shelterbelts are established and prior to that the risk of glare causing and adverse effect is negligible. Regarding the wider area, on the evidence I am satisfied that the effects of glare will be no more than minor. In that regard I agree with Mr Maassen<sup>22</sup> that it would be unduly onerous and unreasonable to delay the construction of the solar farm until such time as the boundary *Cryptomeria japonica* 'Egmont' shelterbelts are established and reach a 3 to 5 metre height.

### 5.1.3 Landscape and visual

[027] The 'physical', 'perceptual' and 'associative' nature of the landscape was described in the evidence of Rory Langbridge and I adopt that description without repeating it here.<sup>23</sup> Mr Langbridge provided a landscape and visual assessment<sup>24</sup> that formed part of the AEE and that was peer reviewed for the TDC by Shannon Bray<sup>25</sup>. From those assessments I find:

- While the solar farm will introduce a different and unique 'rural industrial' component to the landscape, the essential components of that rural landscape will not be adversely affected. The solar farm is located in an expansive, generally flat rural landscape that has been highly modified to achieve optimised production. Adverse landscape effects (after full establishment of the proposed *Cryptomeria japonica* 'Egmont' shelterbelts) will be low to moderate;
- The proposal is situated in an area that is not heavily populated or widely traversed. The low height of the solar panels means that the solar farm is only likely to be visible from the road corridors and properties opposite or immediately adjacent;
- The use of perimeter screening is appropriate and fits in with the existing environment. After a short period of time (3 - 5 years) the solar panels will not be easily visible once the perimeter landscape mitigation planting has established;
- The setback strips that will separate Sites A and B from the two roads will retain rural character values, both in terms of the grazing required to manage these areas as well as the use and familiarity of the shelterbelt planting;
- In a rural environment such as occurs here, more emphasis is placed on views from dwellings rather than paddocks. That is because they are frequented daily whereas some parts of rural properties are infrequently used. Mr Langbridge undertook a detailed assessment of seventeen neighbouring properties (including within the Mangamaire Settlement) and the potential visual effect on those properties, including from 'glint and glare'. In all cases, having regard to the proposed screen planting, the scale of adverse effect was assessed as being low to very low; and
- The site will be prominent as a viewer passes by on the public roads, particularly along the section of Mangamaire Road where the solar farm will be on both sides of the road. However, those visual effects will be moderate, particularly along Mangamaire Road, reducing to low-moderate once the landscape mitigation planting is established.

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<sup>22</sup> Opening legal submissions, paragraph 59.

<sup>23</sup> Mr Maassen's legal submissions included a corrected version of Mr Langbridge's evidence, rectifying misreported glint and glare results. That did not alter Mr Langbridge's his conclusions.

<sup>24</sup> Rough Milne Mitchell Ltd.

<sup>25</sup> Section 42A Report, Appendix D.

- [028] I find that in general terms, the low-moderate landscape and visual effects are not of sufficient significance to weigh against a grant of consent.
- [029] Submitter Norman (5) owns farm land on Dougherty's Road and they were concerned that any future dwelling they might wish to build would be subject to views of the solar farm. Regarding that concern I note that no dwellings exist on that land and no building consent application for a dwelling has been lodged with TDC. I agree with Mr Bashford that if the solar farm proceeds, any future dwelling on the submitter's land could be designed to take the solar farm and the vista it provides into account. In that regard Mr Bray noted that those properties were on the opposite side of the railway corridor and were partially screened by intervening vegetation. I find that supports Mr Bashford's conclusion.
- [030] As noted earlier, these submitters subsequently (post-hearing) provided written approvals and so there is no need to consider effects on them.
- [031] I find that a consideration of landscape and visual effects does not weigh against a grant of consent.
- [032] Having said that I note that at the Hearing Mr Bray suggested that the recommended condition relating to the Site Management Plan (SMP) should be expanded to address the maintenance of the proposed shelter belts (such as replacing plants that die and what the final minimum 'trimmed' height of the shelter belts should be) and what would happen when the the row of *Macrocarpa* trees on Mangamaire Road in the north western corner of Site B. I agreed with those suggestions and asked Mr Bashford and Ms Boulton to include them in the revised condition suite.

#### 5.1.4 Noise

- [033] Noise effects were assessed for EBL by Marshal Day Acoustics (MDA) and reviewed for TDC by Stephen Chiles<sup>26</sup>. Mary Hamilton (the author of the MDA Report) provided acoustic evidence for the Hearing.
- [034] From those technical assessments and Mr Bashford's commentary I find:
- Ms Hamilton advised<sup>27</sup> that the construction of the solar farm may not be able to comply with sound criteria set out in NZS 6803: 1999 Acoustics - Construction Noise due to the need for piling, however any exceedances were likely to be brief and could be mitigated through careful planning and implementation of a Construction Noise and Vibration Management Plan (CNVMP);
  - At the Hearing I asked whether the CNVMP could instead form part of the Site Management Plan (SMP). Mr Chiles advised that he thought that would be sensible given the minor nature of any likely breach of the Construction Noise standards;
  - Based on a worst-case directivity scenario for all thirteen inverters<sup>28</sup>, noise modelling demonstrated that operational noise expected to be generated from the solar farm would comply with the TDC daytime and night-time permitted activity standards (55 dB LAeq(15-min) from 0700 to 1900 hours and 45 dB LAeq(15-min) and 70dB LAFmax from 1900 to 0700 hours respectively) at all potentially affected dwellings;
  - However, the solar farm could generate electro-mechanical noise at levels that appreciably exceeded the existing night-time (evening/early morning) ambient and background noise levels at nearby dwellings. To mitigate that potential effect EBL have agreed to a condition of consent recommended by Ms Hamilton requiring attenuation of the inverters (through methods such as selection, positioning for directivity, and partial or full enclosure) to be undertaken as part of detailed design to reduce the intrusiveness of that electro-mechanical noise;
  - Traffic associated with the solar farm would comply with day time noise limits, and there will be few if any routine vehicle movements to operational solar farm at night<sup>29</sup>;

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<sup>26</sup> Section 42A Report, Appendix E.

<sup>27</sup> EIC Hamilton, paragraphs 4.7 to 4.9.

<sup>28</sup> The inverters and associated transformers are the primary operational noise source. EIC Hamilton, para 3.1.

<sup>29</sup> EIC Hamilton, paragraph 4.4.1.



- Construction vibration is only likely to be perceptible fairly close to the high frequency, short-throw hammer pile rig and construction vibration can also be effectively managed through a Construction Noise and Vibration Management Plan (CNVMP)<sup>30</sup>, and
- Operational vibration is expected to be negligible beyond the site boundary.

[035] Mr Chiles noted that sound from solar farm equipment could cause an appreciable change in the existing environment and may be particularly intrusive due to potential tonality of the inverters. I find that issue is addressed by the inverter design condition and associated post-construction monitoring recommended by Ms Hamilton.

[036] In his Section 42A Report Mr Bashford also recommended conditions<sup>31</sup> imposing the TDC noise standards referred to above, along with monitoring to ensure compliance with those standards. At the conclusion of her evidence Ms Hamilton recommended a suite of conditions to address noise and vibration issues. EBL has accepted those conditions<sup>32</sup>.

[037] Regarding post-construction monitoring for inverter noise, Mr Chiles queried Ms Hamilton's suggestion that it first occur during the first post-construction daylight saving period when it was more likely that the solar farm would be operating when the TDP night time noise standards were in place (namely after 7pm). Mr Chiles was concerned that could mean no monitoring occurred for up to a year. I suggested that the monitoring should occur both within one month and in the first daylight savings period of any stage of the solar farm becoming operational. Mr Chiles agreed with that suggestion and I note the revised conditions have adopted that approach.

[038] On the evidence I find that the effects of both construction and operational noise and vibration will be either no more than minor or will otherwise be suitably addressed through the imposition of consent conditions.

#### **5.1.5 Rooding network**

[039] Mr Bashford advised that that both Tutaekara and Mangamaire roads are sealed and have long straight sections of road affording good sightlines. Access to the site is from existing formed accessways to Mangamaire Road which is a low traffic volume environment. He considered that given the road layout and low traffic volumes expected to be generated by the proposal, the rooding network would cope with that traffic with little effect on the safe operation of the network.

[040] I agree with Mr Bashford that effects on the rooding network and surrounding neighbours can be mitigated to the extent that they are less than minor. In that regard I note he recommended conditions relating to upgrading the vehicle crossing to the site<sup>33</sup>; keeping the roads clear of dirt, mud, debris or other materials<sup>34</sup>; hours of construction operation<sup>35</sup>; and construction traffic accessing the site from Mangamaire Road<sup>36</sup>. I find all of those conditions to be appropriate.

#### **5.1.6 Neighbouring quarry**

[041] Submitter HiRock Limited has a quarry to the south of site A. They were concerned about reverse sensitivity effects on their quarry operation, namely that the development of the solar farm might lead to constraints on the quarry operation due to matters such as dust emanating from the quarry site. HiRock did not wish to be heard, however Mr Bashford noted that EBL had advised that dust was not of concern and the solar panels are regularly maintained to mitigate dust annoyances.

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<sup>30</sup> Ibid, paragraphs 4.5.2. and 4.5.3.

<sup>31</sup> Recommended conditions 29 to 32.

<sup>32</sup> EIC Catherine Boulton, paragraph 14.1.

<sup>33</sup> Recommended condition 7.

<sup>34</sup> Recommended conditions 10(d) and 27.

<sup>35</sup> Recommended condition 19.

<sup>36</sup> Recommended condition 26.

[042] Ms Boulton offered a condition to address HiRock's concern. This was a typical 'no complaints covenant' condition. I asked Ms Boulton if she had discussed the proffered condition with HiRock. She said that she had and HiRock wished it to be imposed. While I am not convinced on the evidence<sup>37</sup> that such a condition is necessary, because EBL have requested that it be imposed, I have done so.

### 5.1.7 Highly productive land

[043] Mr Bashford noted that the site is predominantly LUC 2 land and such is subject to the provisions of the National Policy Statement for Highly Productive Land 2022 (NPS-HPL). He noted the solar farm will continue to be used for primary productive purposes (sheep will be grazed under the solar panels) and in any case, the proposal comprises the "*maintenance, operation, upgrade, or expansion of specified infrastructure*"<sup>38</sup> which has a functional need to locate at Mangamaire (due to proximity to the PowerCo substation) and so under section 3.9(2)(j) of the NPS-HPL the solar farm proposal is not to be considered an "inappropriate" use of highly productive land.

[044] Ms Boulton agreed<sup>39</sup> that section 3.9(2)(j) of the NPS-HPL applied to the proposal. Ms Maassen agreed<sup>40</sup> with the conclusions reached by Mr Bashford and Ms Boulton.

[045] I find that the proposed solar farm is not an 'inappropriate' use of the LUC 2 land.

### 5.1.8 Transpower

[046] Mr Bashford advised that Transpower have made contact with TDC regarding potential effects on its infrastructure, specifically the 110kV transmission lines that run along the Mangamaire Road corridor. Transpower have negotiated a set of conditions with EBL and Mr Bashford recommended they be imposed<sup>41</sup>. I take no issue with that agreed position.

### 5.1.9 Overall finding on effects

[036] In overall terms I find that, subject to the imposition of appropriate conditions of consent, the actual and potential adverse effects of the proposed solar farm on the environment will be no more than minor.

## 5.2 National environment standards and other regulations

[047] Mr Bashford drew my attention to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NESCS) and the National Environmental Standards for Freshwater 2020 (NESF). Regarding the NESCS the site is not known to be a HAIL site. Regarding the NESF the applicant has proposed a 10m vegetated buffer from the wetland to the north of site A and as such the requirements of the NESF are met.

## 5.3 National policy statements

[037] Mr Bashford, Ms Boulton and Mr Maassen all drew my attention to the National Policy Statement on Renewable Electricity Generation 2011 (NPSREG) and Mr Bashford addressed the National Policy Statement on Electricity Transmission 2008 (NPSET). Needless to say, the NPSREG provides strong policy support for the proposed solar farm. The conditions agreed between Transpower and EBL address the requirements of the NPSET. I addressed the NPS-HPL in section 5.1.7 of this Decision.

## 5.4 Regional Policy Statement, Regional Plan and Tararua District Plan

[048] Mr Bashford addressed these statutory instruments in his Section 42A Report.

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<sup>37</sup> EBL's evidence was that they would regularly clean the solar panels which would remove any dust from the quarry operations and in that case the potential for complaints from EBL to result in a restriction on quarry operations is remote.

<sup>38</sup> The need to develop, operate, maintain and upgrade renewable energy generation activities throughout NZ is recognised as a matter of national significance in the NPS-REG. Similarly, renewable electricity generation is recognised in the Manawatu-Whanganui Regional Policy Statement as having regional significance.

<sup>39</sup> EIC Boulton, paragraphs 10.10 to 10.15.

<sup>40</sup> Opening legal submissions, paragraph 32.

<sup>41</sup> Recommended conditions 36 to 41.

[049] Regarding the regional instruments I agree with his assessment that:

- Objective 3-1 and the supporting Policy 3-1of the RPS lend support to the proposal;
- RPS Policy 3-3 provides guidance on managing any adverse effects that may arise from the establishment and operation of any infrastructure and other physical resources of regional or national importance. Clause (b) relates to the establishment of the infrastructure and seeks to allow minor adverse effects that arise. Relevantly here, I have found that (subject to the imposition of suitable conditions of consent) the adverse effects of the EBL proposal will be no more than minor;
- Regional Plan (Horizons One Plan) requirements will be dealt with by Horizons Regional Council should EBL seek earthworks resource consent from that council.

[050] Ms Boulton also addressed the RPS. She concluded the proposal was consistent with what she considered to be the relevant provisions<sup>42</sup>. I agree with her assessment.

[051] Turning to the TDP I agree with Mr Bashford that:

- The proposal is a sustainable rural land use and an efficient use of resources (Objective 2.3.2.1);
- The proposal requires a rural location (Objective 2.3.3.1 and supporting Policy (b));
- The landscape and visual effects of the proposal are not inconsistent with ensuring a high level of environmental quality and amenity in the rural area of the district (Objective 2.3.4.1);
- Natural hazards risks are not significant (Objective 2.5.2.1). In that regard Mr Bashford advised that feedback from Horizons Regional Council indicated that flooding in the vicinity was largely confined to the bed of the Mangatainoka River and on that basis he considered the proposal would not exacerbate flooding risk<sup>43</sup>; and
- The solar farm will be co-located with network utility equipment (the substation), consistent with Objective 2.8.21 and supporting Policy (c).

[052] For the applicant the TDP provisions were also assessed by Mr Langbridge, Ms Boulton and Mr Maassen. Mr Langbridge concluded<sup>44</sup> that “*what is proposed does not offend the identified objectives and policies of the plan*” and Ms Boulton concluded that the proposal was consistent with the relevant provisions.<sup>45</sup> I agree with their assessments. Mr Maassen submitted<sup>46</sup> that TDP Policy 2.8.4.2(b) had a deliberate reordering of the effects response from that in RMA, such that amenity effects for renewable energy generation are to be managed rather than avoided.

[053] In overall terms I find that the EBL proposal is not inconsistent with the regional and district statutory instruments.

## 5.5 Other matters

[054] No other relevant matters were brought to my attention.

## 6 Part 2 matters

[055] Following the Court of Appeal’s judgement on *RJ Davidson Family Trust v Marlborough District Council* I have not separately assessed Part 2 matters as I consider that the relevant plan provisions have clearly given effect to Part 2 and so assessing the Part 2 matters “*would not add anything to the evaluative exercise*”.

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<sup>42</sup> Objective 2-1 and associated policies, Objective 3-1 and associated policies.

<sup>43</sup> In addition, the AEE stated “ For Site A, the flooding overlay appears to be concentrated around the area that has been identified as a potential wetland. A setback is proposed to this area along with further wetland appropriate planting to act as a buffer. For Site B, the land where the solar tables are to be established is a river terrace approximately 4-5m above the Mangatainoka River and the development will be setback approximately 180-200m from the riverbed itself.”

<sup>44</sup> EIC Langbridge, paragraph 210.

<sup>45</sup> EIC Boulton, paragraphs 8.1 to 8.10.

<sup>46</sup> Paragraph 17(c).

## 7 Determination

[056] Pursuant to the powers delegated to me by the Tararua District Council under section 34A(1) of the Resource Management Act 1991, I record that having read Energy Bay Limited's application documents, evidence and legal submissions; the Section 42A Report; the submissions and submitter evidence, and having considered the various requirements of the RMA, I find that:

- a) Based on the evidence before me, the actual and potential adverse effects of the application are either no more than minor or can be suitably avoided, remedied or mitigated by readily enforceable consent conditions;
- b) The application if granted will have substantial positive effects; and
- c) The application is consistent with the provisions of the relevant existing statutory instruments.

[057] I therefore **grant** the application lodged by Energy Bay Limited for to establish and operate a solar farm on a property located at Tutaekara and Mangamaire Roads south of Pahiatua. My reasons are set out above and are expanded upon in the body of this Decision.

## 8 Consent conditions

[058] The AEE contained a suite of 15 'volunteered' conditions. Mr Bashford initially recommended a suite of 46 conditions which included those contained in the AEE.

[059] In her evidence Ms Boulton agreed with the conditions of consent recommend by Mr Bashford, but suggested amendments to conditions 1 (general arrangement plan), 8 (amending the boundary planting from flax to either totara or cypress hedgerow<sup>47</sup>), 17 and 24 (omitting the need for a pest control plan), a new condition to address HiRock's concerns, a new condition to address glare, and the conditions recommended by Ms Hamilton.

[060] As mentioned earlier, at the Hearing I asked Mr Bashford and Ms Boulton to jointly prepare a revised suite of condition that addressed the matters discussed at the Hearing. I received those on 6 September 2023 and I am grateful for their further assistance. I have reviewed the revised conditions and find them to be generally appropriate. However, I have made some further amendments including (the consent numbers below refer to the numbering now used in Appendix 1):

- Replacing the word 'shall' with 'must' where appropriate;
- Minor amendments to grammar;
- Referring consistently to the "Team Leader Compliance & Monitoring, Tararua District Council";
- Referring consistently to the Solar Farm site;
- Reformatting condition 6;
- Omitting the parts (a) and (b) of condition 15 and instead cross-referring to conditions 12 and 13;
- Separating condition 16 into conditions 16 and 17;
- Separating condition 19 into conditions 19 and 20;
- Separating condition 22 into conditions 12 and 23;
- Amending condition 26 to require the SQEP to determine whether any contaminated soil can be used on site or if it must instead be removed;
- Separating condition 35 into conditions 35 and 36;
- Slightly rewording the start of the no complaints covenant condition 33; and
- Numbering the Advice Notes in the body of the conditions.

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<sup>47</sup> This was later amended by the applicant to *Cryptomeria japonica* 'Egmont'.

[061] The amended suite conditions imposed are attached as Appendix 1 to this Decision.

[062] It is conceivable that the conditions may contain minor mistakes or defects. Accordingly, should the applicant or the Council identify any minor mistakes or defects in the attached conditions, then I am prepared to issue a revised schedule of amended conditions under s133A of the RMA correcting any such matters. Consequently, any minor mistakes or defects in the amended conditions should be brought to my attention prior to the end of the 20-working day period specified in section 133A of the RMA.

Signed by the commissioner:

A handwritten signature in black ink, appearing to read 'Rob van Voorthuysen', written over a faint, illegible stamp or background.

Rob van Voorthuysen (Chair)  
Dated: 7 September 2023