

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision [2024] NZEnvC 091**

IN THE MATTER OF

an appeal under s 120 of the Resource  
Management Act 1991 (**RMA**)

BETWEEN

ALLAN JOHN CRAFAR

(ENV-2022-AKL-236)

Appellant

AND

TAUPŌ DISTRICT COUNCIL

Respondent

AND

TODD GENERATION LIMITED

Applicant

Court: Environment Judge S M Tepania  
Environment Commissioner M Mabin  
Environment Commissioner A Gysberts

Hearing: 4 July 2023, at Taupō

Appearances: E Smith for the Appellant  
S Quinn and E Manohar for the Applicant  
J Winchester for the Respondent

Date of Decision: 26 April 2024

Date of Issue: 26 April 2024

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**DECISION OF THE ENVIRONMENT COURT**

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A: The appeal is declined.

B: Costs are reserved.



## REASONS

### Introduction

[1] This appeal concerns a decision of the Taupō District Council (**Council**) to grant an application by Todd Generation Limited (**TGL**) for a discretionary activity to construct and operate a renewable energy solar farm (**Project**) on a property located at 3723 State Highway 5 Rangitāiki, Taupō (**Site**).

### Summary of the Project, Site and surrounds

[2] A detailed summary of the Project, and the Site and surrounds can be found in the Commissioner’s Decision, the s 42A Hearing Report, the evidence of Aaron Edwards before the Commissioner, and the evidence of David Collins.<sup>1</sup> In short:<sup>2</sup>

The proposal is to obtain land use consents for the installation and operation of a renewable energy solar project on the existing 1022ha dairy farm application site. The project comprises the construction, commissioning, and operation of the solar generation plants, associated infrastructure and connection to the national grid.

The proposal is an integrated project with components to be carried out by the applicant’s Todd Generation Ltd (Todd) with future transfer of grid connection assets to Transpower New Zealand Limited (Transpower) for operations and maintenance activities. The assets on the new substation will be delineated separately between Todd and Transpower to reflect future operational and maintenance activities of the solar project (Todd) and grid connection (Transpower), with Todd transferring their consent for grid operations and maintenance to Transpower in the future. The proposal for the substation and the transmission line connections are considered to be inseparable as the substation will transform power produced by the solar project ready for transmission to the national grid.

[3] The Site and its surroundings lie within an area of modified frost flats at the southern end of the Kaingaroa Plains in the North Island Volcanic Plateau. The topography of the Site is open, flat to undulating pastoral land bisected by the Otamatea River and a number of watercourses.

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<sup>1</sup> The decision, at sections 1.1, 1.2 and 3. The section 42A Report is Attachment A to the Evidence-in-chief (**EIC**) of Louise Wood, Aaron Edwards’ evidence before the Commissioner is Attachment 1 to his EIC; EIC of David Collins at [15]-[19], [32]-[41], [44]-[52] for background to the Project.

<sup>2</sup> The decision, at section 1.1.

[4] The Site currently operates as a dairy farm with approximately 2600 head of cattle. The Site also has farming infrastructure which includes milking sheds and effluent management systems. There are nine existing dwellings used for farm worker accommodation.

### Site Visit

[5] We conducted a site visit, unaccompanied, immediately after the hearing on 5 July 2023. We drove to the Site and surrounds noting various features as they related to the Site and application. None of the parties were in attendance.

### The Council's decision

[6] Commissioner William Wasley granted the application subject to conditions (**decision**). The reasons for the decision were as follows:

- a. The proposal is considered to be consistent with the purpose and principles of the Resource Management Act 1991 and is consistent with the relevant regional and national planning instruments. In particular, the proposal is giving effect to the National Policy Statement on Renewable Energy Generation which regards the provision of such generation as being nationally significant.
- b. Overall, the proposal is not considered to be contrary to the relevant objectives and policies of the Taupō District Plan. While it will result in a change of rural character and have visual impacts in the locality, such changes are envisaged by the District Plan through its recognition and provision for network utilities.
- c. Any adverse effects of the proposal upon the environment are capable of being remedied or satisfactorily mitigated as far as practicable.

[7] The decision made the following specific findings on potential adverse effects on rural land productivity.<sup>3</sup>

... I consider that the effects of the loss of rural production land are minimal. This is due to the positive effects of the proposal in terms of renewable energy electricity generation which there is very clear government policy direction supporting renewable energy generation; that the reduction in dairying in the New Zealand is minimal; there are alternative rural land use activities proposed in conjunction with the solar generation activities, and provision of employment opportunities both in construction and operation of the proposal.

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<sup>3</sup> The decision, at section 7.4, p. 22.

[8] It acknowledged that there will be moderate adverse effects regarding rural character and visual impact of the Project, but these are acceptable given the policy and objective framework of the District Plan which recognises and provides for network utilities in the rural environment.<sup>4</sup>

[9] The decision also addressed the economic and financial effects of converting the land to solar farming from dairy use, and concluded that:<sup>5</sup>

While there will be a reduction in revenue from dairying due the conversion of the subject site to a solar farm, there are economic benefits accruing from such an activity with over \$100 million invested domestically and annual revenue of approximately \$48 million.

Having considered the evidence of Mr Allen, which is essentially a quantification of the adverse effects through the loss of dairying on the site, the scale in reduction of dairy revenue is relatively small in the local and national context.

I have considered the evidence of Mr Findlay on this matter and he does not disagree with Mr Allen's calculations in terms of the quantifiable impact of the land use change from dairying in respect of the subject site.

Furthermore, there is clear policy direction from government that encourages electrification as a means to decarbonise and the proposal enables and supports that direction. This will mean from time to time, decisions are to be made exercising judgment on what particular land-use may occur on a site including a potential change in land-use.

[10] The Commissioner considered that overall, the project will have significant positive effects. As a renewable energy development, it will maximise low-emissions electricity generation and support the national economy during periods when power from other renewable energy sources is not sufficient to meet demand. There are benefits derived from the restoration and revegetation of riparian habitats including improved water quality. As the decision relevantly stated:<sup>6</sup>

... the proposal will contribute to the social and economic wellbeing of the general community through the provision of renewable energy and create economic and employment activity during both construction and operation, to support general growth locally and from a national perspective.

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<sup>4</sup> The decision, at section 7.2 and 7.3.

<sup>5</sup> The decision, at section 7.4.

<sup>6</sup> The decision, at section 7.11 and Applicant's Legal Submissions, 4 July 2023, at [11.3].

[11] Section 290A of the RMA requires the Court to have regard to the first instance decision. The requirement does not mean that the decision under appeal is presumed to be correct, or that a party disputing it must establish that it is demonstrably wrong. It means simply that the appellate Court must give the decision genuine and openminded consideration.

### **The appeal**

[12] Allan Crafar's appeal was filed on 28 November 2022. His appeal opposed the Project and sought that the Council's decision be overturned.

[13] On 24 February 2023, the Court issued an interim decision on the matter of security for costs.<sup>7</sup> In that decision Mr Crafar was directed to consider whether the grounds of his appeal could be narrowed by identifying the issues he intended to raise at the hearing. To avoid the award of security for costs, Mr Crafar agreed to limit the scope of the appeal and subsequently confirmed, on 31 March 2023, that the issue to be determined by the Court is:

**The economic and financial effects and implications, to New Zealand, of dairying versus solar panels, on flat productive land, that this project is proposing to use.**

[14] However, in her written revised opening submissions, Ms Smith on behalf of Mr Crafar made the following submissions:

Mr Crafar also raised concerns regarding the environmental impact of the solar panels but acknowledges that scope of this appeal, as directed, does not include those effects.

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In this appeal Mr Crafar has been limited to the question of the economic and financial effects arising from the use of flat productive land from two different activities.

[15] Upon questioning by the Court, Ms Smith agreed to strike out the words "as directed".<sup>8</sup> Ms Smith was reminded that contrary to the implication of her written opening submissions, the single issue was confirmed by Mr Crafar as a means to avoid

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<sup>7</sup> *Crafar v Taupō District Council* [2023] NZEnvC 032

<sup>8</sup> Notes of Evidence (**NoE**) page 106, lines 1-7.

the imposition of security for costs<sup>9</sup> and was not a direction of this Court or a matter determined by this Court. The appeal was accordingly self-limiting by Mr Crafar in that regard,<sup>10</sup> and the hearing proceeded on that basis.

[16] As Mr Quinn submitted, the focus of the single issue under appeal is the effect of the conversion of land use on the land the Project is proposing to use. This is consistent with the appeal being limited to this application on the Site. The appeal has no jurisdiction over other sites or projects. This is important because the scope of this single issue is not about the Project being hypothetically undertaken more broadly across New Zealand, as referred to by Mr Crafar's evidence.<sup>11</sup> Any assertions about the hypothetical conversion of other land beyond the application Site would be out of the scope of valid RMA considerations as a matter of law,<sup>12</sup> as well as outside the scope of the appeal.

### **Procedural Matters**

[17] A pre-trial ruling was made by the Court on 7 June 2023 that some of the evidence filed on behalf of Mr Crafar is outside the scope of the appeal and that matters of evidence outside the scope of the appeal will not be admitted into evidence.<sup>13</sup>

[18] While those matters of evidence are disputed by TGL, no evidence was called to address any 'out of scope' matters raised by Mr Crafar or the witnesses providing evidence on his behalf because of the agreed single issue on appeal.

[19] Counsel for Mr Crafar did not address the statutory and regulatory planning framework in any detail. There was little factual foundation for those submissions and some references to the evidence were not accurate. As a result, those submissions

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<sup>9</sup> This was agreed by counsel for the appellant through questions from the Court, NOE page 106, line 25.

<sup>10</sup> NoE page 106, lines 10-25.

<sup>11</sup> EIC of Allan Crafar at page 3 for example: "there is a tsunami of these projects being proposed, which will be a complete disaster for this country, if allowed to go ahead".

<sup>12</sup> Section 104(1)(a) of the RMA requires the consent authority to assess the application, by assessing the effects "of allowing the activity". See *Marr v Bay of Plenty RC* [2010] NZEnvC 347, following *Queenstown Lakes DC v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA); *Clutha District Council v Otago Regional Council* [2022] NZHC 510, at [43]-[50].

<sup>13</sup> Minute of the Environment Court, 7 June 2023, at [10]-[11].

have been given little weight and we have only referred to them in this decision where they may have been relevant to what we consider are the key issues before the Court.

### **Legal Framework**

[20] In reaching our decision on this appeal against the grant of consent, the Court must have regard to the same considerations as a consent authority when making a decision under s 104 RMA. Section 104(1) and (2) relevantly provides:

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to-
  - (a) any actual and potential effects on the environment of allowing the activity; and
  - (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and
  - (b) any relevant provisions of-
    - (i) a national environmental standard:
    - (ii) other regulations:
    - (iii) a national policy statement:
    - (iv) a New Zealand coastal policy statement:
    - (v) a regional policy statement or proposed regional policy statement:
    - (vi) a plan or proposed plan; and
  - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
- (2) When forming an opinion for the purposes of subsection (1) (a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

[21] In this case the analysis under s 104 is confined to the single issue before the Court, which is as confirmed by Mr Crafar and set out above at paragraph [13].

## **The economic and financial effects of the Project (s 104(1)(a))**

### ***Mr Crafar's position***

[22] Mr Crafar objects to the Project on the grounds it has taken a large amount of time and effort to develop the Site into a productive dairy farm, and that the land and the infrastructure on the land associated with dairy farming will go to waste if this Project is approved.

[23] His position is that taking productive land for the use of imported solar panels is costly and unnecessary and will result in a loss of export income from the Site. He maintains that allowing the Project will deprive New Zealand of millions of export dollars annually: around \$600,000,000 initially, followed by opportunity and maintenance costs amounting to at least \$60,000,000 per annum. Mr Crafar set out the following equation in support of his position:

Loss of export dollar effect = \$55,000,000

Loss of owning and maintaining solar panels = \$60,000,000

Overall cost to New Zealand economy = \$115,000,000

[24] Mr Crafar's evidence also stated that:

- (a) allowing this Project on food producing land is contrary to The Paris Agreement<sup>14</sup> on climate change which, he argued, states that no climate change mitigation project should be allowed if it reduces food production.
- (b) the primary sector produces 85% of New Zealand's export income and directly employs 400,000 people and their families. The flow on effect is that most New Zealanders are dependent on the primary sector for their livelihood.
- (c) no country that has used solar and/or wind to supply base load power has been successful in doing so. All who have tried have increased the cost of

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<sup>14</sup> The Paris Agreement is a legally binding international treaty on climate change. It was adopted by 196 Parties at the UN Climate Change Conference (COP21) in Paris, France, on 12 December 2015. It entered into force on 4 November 2016.



power and suffered power blackouts.

[25] James Findlay and Bryan Leyland also gave evidence on behalf of Mr Crafar. Mr Findlay's evidence was that the Project will have a major impact on rural land use and the rural economy. His evidence was that:

- (a) granting the resource consent will open the flood gates for similar developments with the move to solar generation removing all the productive land in New Zealand to meet the stated targets.
- (b) the greater impact to the economy must be considered. It is a widely held belief that agricultural returns have six-times multiplier (ripple) effect, that is for every \$1,000,000 earned by the rural sector there is a \$6,000,000 effect in the economy.

[26] Mr Leyland's evidence focused on the high risk, short life and uncertain earnings of the solar farm. His evidence was that solar and wind farms are uneconomic because large amounts of storage capacity are required to store the energy generated, and this storage technology is not currently available or likely to be available in the immediate future. His position is that a solar farm is a risky investment for TGL unless it can back up the solar farm from its own energy resources and meet the expense of doing so for the life of the solar farm.

[27] Mr Leyland's evidence also addressed other options available for the generation of power such as hydro, geothermal and nuclear power. His evidence was that nuclear power can solve the problem of emissions, is reliable and flexible and efficient to the extent that wind and solar power would not be needed. He stated that, "all that wind and solar power would do is steal income from the nuclear power stations and force them to operate in a rapidly fluctuating mode that is seriously uneconomic".

### ***TGL's position***

[28] Mr Quinn submitted on behalf of TGL, that the Court is not required to determine why an applicant seeks resource consent or matters of economic

motivation to give effect to that consent. He pointed to caselaw<sup>15</sup> that has been upheld and has not changed over the last 30 years, which has established that issues of the profit to be made from a proposed activity are a matter for the boardroom rather than a key consideration for the Council or the Court under the RMA.

[29] Mr Quinn asserted that any adverse economic and financial effects associated with the change in land use from dairying to solar energy generation would be less than minor in the local and national context<sup>16</sup>, and the countervailing positive economic and financial effects of the project will be significant.<sup>17</sup>

[30] TGL's evidence is that the Project's installation and operation of solar panels on the Site will have positive economic and financial effects on the energy market in New Zealand and that any adverse effects of the Project can be appropriately avoided, remedied or mitigated.

*The economic benefits of the Project*

[31] Kieran Murray undertook a cost-benefit analysis for TGL. He also identified the cost of carbon emissions as an economic externality, finding the switch from a dairy farm to a solar farm would reduce carbon emissions by approximately 7,280 tonnes of CO<sub>2</sub>-e per annum. This reduction would equate to an additional economic benefit of Net Present Value (NPV) \$6 million over 35 years.<sup>18</sup>

[32] Mr Murray concluded that the total net economic benefit of the solar farm, after accounting for the reduction in carbon costs, would be (NPV \$266 million plus \$6 million) NPV \$272 million which is more than six times larger than that produced by the dairy farm (NPV \$43 million).<sup>19</sup>

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<sup>15</sup> *New Zealand Rail Ltd v Marlborough District Council* [1994] NZRMA 70 at para, cited with approval in *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council (No 2)* [2013] NZRMA 293 at [117].

<sup>16</sup> EIC of Aaron Edwards, at [37] and [85]; EIC of Louise Wood at [90] concludes that the adverse effects would be negligible.

<sup>17</sup> EIC of Aaron Edwards, at [38]-[39]; Applicant's Legal Submissions, at [21].

<sup>18</sup> EIC of Kieran Murray, at [42].

<sup>19</sup> EIC of Kieran Murray, at [32] and [43].

[33] The evidence of Mr Collins for TGL set out the economic and financial benefits of the Project which include:<sup>20</sup>

- (a) capital expenditure of \$660M by TGL (with approximately \$100M being domestic expenditure) and generation of revenues of \$78M per annum;
- (b) employment opportunities during construction;
- (c) approximately eight to ten permanent skilled solar jobs during operations for engineering, operations and maintenance staff;
- (d) on-going work for local contractors providing general and specialised maintenance and support services;
- (e) provision of renewable electricity for approximately 100,000 homes;
- (f) provision of low-cost energy to the New Zealand economy; and
- (g) enhancing New Zealand's proportion of renewable electricity generation capacity to support New Zealand's transition to a low emissions economy.

[34] The land is not proposed to be fully converted to a non-agricultural use. In addition to the solar energy generation use, economic and financial benefits arise from the continued use of the Site for agricultural production as TGL intends to undertake sheep farming activities at the Site at the same time.<sup>21</sup> James Allen provided a conservative net revenue estimate of approximately \$360,000 per annum and generation of approximately 2 FTE positions, noting also that there will be opportunity to install some apiaries in certain areas of the Site.<sup>22</sup>

[35] Mr Allen's evidence for TGL addressed the potential adverse economic and financial effects of removing the dairy farming use from the Site and replacing it with a different form of farming. Mr Allen's view is that:

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<sup>20</sup> EIC of David Collins, at [53]-[54] and [60].

<sup>21</sup> Confirmed by David Collins and James Allen in evidence.

<sup>22</sup> EIC of James Allen, at [26.4]; [27.2]; [30]-[35].

- (a) the reduction in livestock numbers will be negligible in a national and district context (0.057% of New Zealand's cow population and 2.025% for the Taupō District);<sup>23</sup>
- (b) the reduction in milk production will be minimal (0.046% of New Zealand's total milk production and 1.773% for the Taupō District).<sup>24</sup>
- (c) the loss of gross revenue as a result of stopping dairy farming on this Site is circa \$6.5m per annum, and the loss of operating profit is circa \$2.0m per annum. This analysis does not account for any residual livestock income.<sup>25</sup>
- (d) the cessation of the dairy farm use would result in the potential loss of 14 FTE positions but due to labour shortages in the dairy industry, the staff on this Site are likely to be able to find alternative positions within the industry.<sup>26</sup>

[36] Importantly, Mr Findlay for the appellant agreed with Mr Allen's calculations/opinions on these matters<sup>27</sup> and therefore the outstanding issues between the experts were relatively narrow.

[37] Mr Murray did not agree with Mr Findlay's assertion that there is a sixfold multiplier effect to the economy from agricultural returns.<sup>28</sup> Mr Murray referred to literature published by Treasury that multiplier effects do not exist<sup>29</sup> and explained that "an economic benefit measures the additional resources available to the economy, not the multiple rounds of spending associated with the same resource".<sup>30</sup> In response to questions, Mr Findlay acknowledged that in any event, a multiplier effect if applied to dairy farm activities should also be appropriately applied to the proposed solar farm

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<sup>23</sup> EIC of James Allen, at [23]-[24].

<sup>24</sup> EIC of James Allen, at [25].

<sup>25</sup> EIC of James Allen, at [26].

<sup>26</sup> EIC of James Allen, at [27.3].

<sup>27</sup> EIC of James Findlay at [15], and [17]; Expert Witness Conferencing Statement of Rural Land Use Experts, at [2]-[5].

<sup>28</sup> Rebuttal of Kieran Murray, at [17]-[21].

<sup>29</sup> Rebuttal of Kieran Murray, at [21].

<sup>30</sup> Rebuttal of Kieran Murray, at [19].

activity although he had not quantified this.<sup>31</sup>

[38] TGL submitted that while the appellant had attempted to challenge the economic evidence of TGL, and in particular the NPV assessed by Mr Murray, the inputs into that NPV calculation from Mr Collins, Mr Allen, and Mr Murray himself, and from other sources, are reliable and have been objectively assessed.

[39] Ms Smith claimed that TGL had over-estimated the potential agrivoltaics use at the site, however TGL's assessment was based on its experience with agrivoltaics at the Kapuni solar farm site, the work that it has commissioned by Massey University and its understanding of the proposed future use of this site. TGL submitted that the numbers used are conservative as confirmed by Mr Allen through cross examination and that the contribution from the sheep farm operation is not economically significant when compared to the return from the solar farm operation but has however been factored into the analysis by Mr Murray for completeness.<sup>32</sup> TGL emphasised that there is no expert economic evidence called by the appellant to challenge Mr Murray's analysis.

[40] TGL strongly opposed the submission made by Ms Smith that the evidence of Mr Murray, Mr Allen, Mr Edwards and Mr Collins is speculative or lacks credible evidentiary support, instead Mr Quinn asserting that the contrary is true, TGL's evidence and the figures used are fully explained, are conservative and supported by independent sources.

*Alleged issue with capacity factor*

[41] Mr Leyland's evidence for Mr Crafar was that an optimistic capacity factor for the solar farm would be 20%.<sup>33</sup> A capacity factor is a measure of how much energy is produced by a plant compared to its maximum output.<sup>34</sup> TGL expects an annual output of 780,000 MWh from the Rangitāiki Solar Farm, equating to a capacity factor

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<sup>31</sup> NoE page 125, lines 30-33.

<sup>32</sup> NoE page 54; Mr Collins confirmed the intention to proceed with agrivoltaics under cross examination, NoE page 46, line 25.

<sup>33</sup> In his EIC, Mr Leyland referred to a capacity factor of 16.3% (EIC of Bryan Leyland, page 5) but amended this to 20% at the hearing (NoE, page 135, line 20).

<sup>34</sup> Rebuttal of Kieran Murray, at [12].

of 22.3%.<sup>35</sup>

[42] Mr Collins explained that the annual generation and capacity factor is based on current optimised designs provided by potential engineering and construction providers.<sup>36</sup> It reflects the level of sunshine resource available (3.9 kWh/m<sup>2</sup>/day GHI at Rangitāiki), and a number of technological features of the Project including the bifacial solar panels, tracking solar arrays, and individual row controls.<sup>37</sup>

[43] In support of this position, the 22.3% capacity factor figure can be compared to:

- (a) the April 2023 study by the Electricity Authority which found an expected average capacity factor in New Zealand of 18% for wind and solar in 2021.<sup>38</sup>
- (b) the 20% capacity factor that TGL is currently achieving at its Kapuni solar plant.<sup>39</sup>
- (c) the initial assessment of the capacity factor of 21.9% given by Aurecon for Stage 1 of the Rangitāiki Solar Farm.<sup>40</sup>
- (d) by way of comparison to other projects, the capacity factor estimated by the Contact Energy and Lightsource BP partnership that is developing the Kōwhai Park solar farm of 22%.<sup>41</sup>
- (e) the data from solar power plants that have been developed and are in operation in the United States, which shows that a solar power plant with a GHI of 3.9 kWh/m<sup>2</sup>/day and using tracking solar arrays generates a capacity factor of more than 20% on average.<sup>42</sup>

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<sup>35</sup> Applicant's Legal Submissions, at [38].

<sup>36</sup> Rebuttal of David Collins, at [7.4].

<sup>37</sup> Rebuttal of David Collins, at [7.8].

<sup>38</sup> Rebuttal of Kieran Murray, at [14].

<sup>39</sup> Rebuttal of David Collins, at [7.7] and Appendix C.

<sup>40</sup> Rebuttal of David Collins, at [7.5] and Appendix A.

<sup>41</sup> Rebuttal of David Collins, at [7.6].

<sup>42</sup> Rebuttal of David Collins, at [7.9]- [7.11.5].

[44] Even if the capacity factor TGL expects to achieve at the project is too high, Mr Murray's sensitivity testing<sup>43</sup> shows that if a lower capacity factor was adopted, the economic benefits of the project still outweigh the benefits of the use of the Site for dairy (for example, even at 18% the CBA result would be \$63 million v \$43 million).

[45] As regards Mr Leyland's claim that the project would have a significantly lower capacity factor, Mr Quinn noted that his evidence was based on a time when no solar generation existed in New Zealand, that this is not a reliable source of information about the likely capacity factor for the Project, that it is poor quality and is now clearly out of date.<sup>44</sup> We note too that that claim seems inconsistent with Mr Leyland's amendment at the hearing to an estimated capacity factor for the solar farm of 20%, from his earlier estimate of 16.3% as noted above.<sup>45</sup>

*Alleged need to include the cost of energy storage and impact on energy market*

[46] Mr Leyland's evidence for Mr Crafar considered the Project would be unaffordable if solar farms were required to provide their own backup or to pay for another entity to provide electricity when the sun is not shining.<sup>46</sup> Further, it is Mr Leyland's view that if more solar farms are built without storage, wholesale electricity prices will be more volatile and this volatility would be unacceptable to the public.<sup>47</sup>

[47] Mr Leyland's proposition is that TGL should provide backup for this Project from its own resources, for the life of the project, or set aside money as cover for his view on the high-risk investment.<sup>48</sup>

[48] TGL's position is that requiring an applicant to set aside money to cover an investment risk has no basis under the RMA, and is outside the scope of this appeal.<sup>49</sup> There is also no current requirement for a solar farm to provide its own backup energy

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<sup>43</sup> Rebuttal of Kieran Murray, at [15] – Table 1.

<sup>44</sup> Rebuttal of Kieran Murray, at [13]; Rebuttal of David Collins, at [7]. Applicant's Legal Submissions, at [39]

<sup>45</sup> See fn. 33.

<sup>46</sup> EIC of Bryan Leyland, pp. 2-3.

<sup>47</sup> EIC of Bryan Leyland, pp. 4.

<sup>48</sup> Applicant's Legal Submissions, at [47].

<sup>49</sup> Applicant's Legal Submissions, at [47.3].

storage as part of the present energy system in New Zealand.<sup>50</sup> Despite this, TGL does provide for backup power in periods of low generation through its gas peaker plant operations.

*Suggested alternatives to solar energy*

[49] Mr Leyland's evidence suggested that nuclear power should be preferred to wind or solar power. TGL does not address this in its evidence on the grounds that nuclear power is not a political or practical reality in New Zealand. Nor is this an appeal about choosing between a solar farm, wind farm or nuclear power plant option.

[50] In his reply Mr Quinn submitted:<sup>51</sup>

It is trite to note that the Court must assess this application based on the law as it exists, and not on a guess as to how the law may change. The appellant's failure to address this fundamental problem with Mr Leyland's evidence highlights why no weight can be given to his expert conclusion as to why this solar farm use of the site is inappropriate. Mr Leyland has expressed a preference for nuclear power that is based on a fictitious restructure of the current statutory settings and electricity market.

***The Council's position***

[51] The Council's position is that this appeal involves a question of personal preference about use of resources and the choices of private investors. It considers that these matters of preference are outside the scope of the RMA<sup>52</sup> and that the central question for the Court should be whether the relevant planning documents express a clear economic preference for the use of the appeal Site for productive farming activities over its use for renewable electricity generation (or require a comparative economic benefit analysis of competing uses to be undertaken). Mr Winchester submitted given that they do not, then the appeal should be dismissed.

[52] The Council considers that based on the evidence provided by the applicant, any adverse economic and financial effects associated with the change in land use

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<sup>50</sup> Rebuttal of Kieran Murray, at [6]-[11].

<sup>51</sup> Applicant's Legal Submissions in Reply, at [22].

<sup>52</sup> With regard to a proposed Chinese Garden on Wellington's waterfront in *Waterfront Watch Inc v Wellington City Council* [2018] NZEnvC 39 at [31].



from dairying to solar will be negligible from both a local and national context.

[53] Mr Winchester submitted further that the Project is likely to make a positive contribution to the functioning and wellbeing of the community in generating renewable electricity to supply demand, improve energy resilience, support the transition toward a low emissions economy and provide for employment and economic activity and that these positive effects inherently include associated economic benefits.

### **Court's findings regarding s 104(1)(a) RMA**

[54] In terms of s 104(1)(a) RMA and the key issue before the Court, we must, subject to Part 2, have regard to what the economic and financial effects to New Zealand are from the conversion of the use of this Site as a dairy farm to a solar farm.

[55] We agree with the Commissioner's conclusion that the effects of the loss of rural production land will be minimal, particularly in light of the positive effects of the Project (including economic effects) while also noting that alternative rural land use activities are proposed in conjunction with the solar generation activities.

[56] In terms of rural use, both Mr Findlay and Mr Allen have agreed on all matters, except in respect of the multiplier effect and the quantification of the economic and financial impact of the dairy farm use. On this point we find Mr Allen's evidence more persuasive.

[57] The evidence of Mr Collins regarding the capacity factor for the Project of 22.3% is reliable and preferred to the capacity factor espoused by Mr Leyland. We also accept that there is no requirement for a solar farm to provide its own backup energy storage as part of the present energy system in New Zealand. The appellant's preference for nuclear power is well beyond the scope of our jurisdiction. We reiterate Mr Quinn's submission that the Court must assess this application based on the law as it exists, and not on a guess as to how the law may change.

[58] We prefer the evidence of Mr Murray who is a qualified and experienced economist. None of the witnesses called by Mr Crafar have qualifications in economics. Their evidence provides no proper foundation for any alternative conclusion.

[59] Mr Crafar's evidence was contrary to the evidence of Mr Murray, Mr Allen and his own witness Mr Findlay. Ms Smith relied primarily on the evidence of Mr Crafar to support submissions as to the level of economic and financial effects of the proposal both in terms of the positive effects of the solar farm and the anticipated losses from dairy farm conversion associated with that use despite the fact that as an appellant Mr Crafar is not an independent expert.<sup>53</sup> We therefore accept his evidence on that basis but can give it little weight.

[60] Quite correctly, Mr Quinn submitted<sup>54</sup> that much of the evidence for the appellant focused on issues of profit to be made from the proposed activity, specific to TGL as an applicant rather than the more relevant issue of economic effects of the Project generally and what was relevant in terms of an assessment of the economic effects.

[61] Accordingly, in determining the relevant economic and financial effects we prefer the expert evidence of TGL (and the agreement between the rural experts). We find that there is an insufficient evidential basis and insufficient expert conclusion in terms of the proposition that was put forward by the appeal.

[62] We consider Mr Edwards' conclusions regarding effects are entirely accurate:<sup>55</sup>

I conclude that any adverse economic and financial effects associated with the change in land use from dairying to solar (noting the integration of alternative rural land use activities) would be less than minor in the local and national context.

I conclude the Project will have significant and direct positive effects in providing for the development of renewable energy resources at scale, increasing low emissions energy supply to support energy resilience consistent with national policy direction, improving freshwater and terrestrial ecological values, and creating economic and employment activity. These positive effects

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<sup>53</sup> Appellant's legal submissions, from [13].

<sup>54</sup> NoE page 13, lines 32-34 and page 14, lines 1-4.

<sup>55</sup> EIC of Aaron Edwards, at [85]-[86].

inherently include associated economic benefits.

### **Relevant planning instruments and other matters (s 104(1)(b) and (c) RMA)**

[63] While, in legal submissions for Mr Crafar, Ms Smith placed some reliance on Part 2 of the RMA as a basis on which the appeal could be successful, no planning evidence or analysis by reference to any caselaw was provided in support of that submission.

[64] As Mr Winchester submitted, there is now a well-settled line of case law that identifies the need for lower-order planning documents to give effect to higher order planning documents, and for there to (generally) be no need for separate recourse to Part 2 in resource consent decision-making. In effect, the planning documents can be taken to be a reflection or embodiment of Part 2.

[65] Mr Winchester referred the Court to the Supreme Court's decision in *King Salmon*<sup>56</sup> where it was held that the requirement to "give effect to" higher level plan provisions (in that case the NZCPS) is intended to constrain decisions makers, with the Supreme Court indicating three "caveats" which would allow resort to Part 2.

[66] He also referenced the Court of Appeal's recognition in the *RJ Davidson Trust*<sup>57</sup> case that recourse can, and in some circumstances must, be had to Part 2. On the other hand, as Mr Winchester submitted, if a proposed activity was demonstrably in breach of a higher order policy, separate resort to Part 2 may not be required because it would not provide any additional guidance. Resort to Part 2 could not justify an outcome that is contrary to the thrust of coherent policies that are designed to achieve clear environmental outcomes and have been prepared with regard to Part 2. To refer to Part 2 for the purpose of subverting a clear higher order restriction would be contrary to *King Salmon*.

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<sup>56</sup> *Environmental Defence Society Incorporated v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 (at [88]– [91]).

<sup>57</sup> *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, [2018] 3 NZLR 283.

[67] Mr Winchester noted that the Court of Appeal’s approach in *RJ Davidson Family Trust* was applied in a subsequent case<sup>58</sup>, with the High Court interpreting that decision as permitting reference to Part 2. This should not however occur at the expense of giving proper consideration to the relevant provisions of the hierarchy of applicable planning documents. If policies in those documents overlap or “pull in different directions”, they must be carefully considered in an attempt to reconcile the policies.<sup>59</sup>

[68] The Section 42A Planning Report and the evidence of Ms Wood and Mr Edwards analysed all of the relevant planning documents, which include:

- (a) the National Policy Statement on Highly Productive Land (**NPS-HPL**);
- (b) the National Policy Statement for Renewable Electricity Generation (**NPS-REG**);
- (c) the National Policy Statement for Electricity Transmission (**NPS-ET**);
- (d) the National Policy Statement for Freshwater Management (**NPS-FM**).
- (e) the Regional Policy Statement (**RPS**);
- (f) the Taupō District Plan (**TDP**);
- (g) Te Ara Whānui o Rangitāiki - Pathways of the Rangitāiki;
- (h) the Tūwharetoa Environmental Management Plan;
- (i) the Ngāti Manawa Environmental Scoping Report;
- (j) the Ngāti Whare Environmental Management Plan; and
- (k) the Ngāti Hineuru Iwi Environmental Management Plan.

[69] Not all of these planning instruments are relevant to the central issue of this case which relates to the economic and financial effects associated with the proposed solar farm.

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<sup>58</sup> *Tauranga Environmental Protection Soc Inc v Tauranga City Council* [2021] NZHC 1201, (2021) 22 ELRNZ 669.

<sup>59</sup> Council’s Legal Submissions, at [15].

[70] There was no material difference expressed in the planning evidence of TGL and the Council as to the interpretation and application of the relevant planning documents. Both TGL and the Council submitted that all of the relevant planning documents have been competently prepared in accordance with Part 2 of the RMA and none of the *King Salmon* caveats would appear to apply. Indeed, there is no suggestion to the contrary. As such, in terms of the *RJ Davidson Trust* approach, it was submitted that they are deserving of significant weight and respect.

[71] Due to the narrowed issue before the Court, it is the position of both TGL and the Council that there is no clear economic preference in the planning instruments for the use of the Site as a dairy farm over its use for solar electricity generation. In addition, the Council submitted that there is no direction in the planning documents which requires a comparative analysis of economic benefit of one land use over another.

[72] Ms Smith also acknowledged that in the absence of any NPS support, the planning regime, District Plan policies and objectives and RMA framework, do not provide a regime of prioritisation of land use at the Site for primary production activities.<sup>60</sup>

[73] The evidence of both TGL and the Council is that the planning framework supports the application for a solar farm being granted, and the appeal should be dismissed.

[74] Further, as Mr Winchester observed, even if there was such a preference, it would be very difficult for RMA decision-makers to effectively direct one form of pastoral farming over another (i.e., it is not the role of the RMA to direct investment into dairying or require that land be reserved solely for that purpose). For example, if the overall interpretation of the planning documents was that the relevant land should be used for pastoral farming, then there would be choices available to landowners within that category of activities and there would be no obligation for the land to be used for dairying.

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<sup>60</sup> Applicant's Legal Submissions, at [10].

[75] No planning evidence was brought on behalf of Mr Crafar. As Ms Smith acknowledged, there was no evidentiary basis to challenge or contradict the planning evidence called on behalf of TGL and the Council.<sup>61</sup>

### ***National Policy Statements***

[76] The National Policy Statements relevant to this Project are those on highly productive land, freshwater management, renewable electricity generation and electricity transmission.

### ***NPS-HPL***

[77] The NPS-HPL seeks to ensure that highly productive land is protected for use in land-based primary production, both now and for future generations, and applies to all land within a rural zone and that is identified as being Land Use Capability (**LUC**) Classes 1 to 3.

[78] The Council submitted that if there was to be a direction “reserving” relevant land for productive rural uses (such as dairying) because of the quality of the soils, it would be in the NPS-HPL and that in essence, the NPS-HPL has determined that soils in LUC 1 to 3 have such economic and strategic value that they should be reserved for highly productive rural uses.<sup>62</sup>

[79] The evidence of Mr Edwards and Ms Wood is that the Project Site is not identified as highly productive land under the NPS-HPL framework, and therefore its directions do not apply.<sup>63</sup>

[80] In respect of the productivity of this Site, Ms Smith also acknowledged that the NPS-HPL does not apply to this Site.<sup>64</sup>

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<sup>61</sup> NoE page 109, lines 11-17.

<sup>62</sup> Council’s Legal Submissions, at [24].

<sup>63</sup> EIC of Louise Wood, at [47]; EIC of Aaron Edwards, at [18] & [24].

<sup>64</sup> Appellant’s Legal Submissions, at [10] and footnote 9; Mr Findlay accepted this position under cross examination, NoE, page 132, line 27.

NPS-FM

[81] The objective of the NPS-FM is to ensure that natural and physical resources are managed to ensure the health and wellbeing of water bodies, the health needs of people and the ability of people and communities to provide for their social, economic and cultural wellbeing.

[82] Both the s 42A Planning Report and Mr Edwards concluded that the Project is consistent with the NPS-FM and will result in net positive effects on freshwater ecological values.<sup>65</sup>

NPS-REG

[83] The NPS-REG identifies the need to develop, operate, maintain and upgrade renewable electricity generation activities throughout New Zealand, and the benefits of renewable electricity generation, as matters of national significance.

[84] The s 42A Planning Report concluded that the Project directly supports the overall objective by being a renewable energy project and its benefits directly align with the benefits outlined in the NPS-REG. Overall, the Project is wholly consistent with the objective of the NPS-REG to increase renewable energy generation as a matter of national significance.<sup>66</sup>

[85] Mr Edwards also considered the Project is entirely consistent with the NPS-REG and directly supports the overall objective to increase renewable electricity generation as a matter of national significance.<sup>67</sup>

[86] Ms Smith's submissions did not address how this Project fits within the statutory and plan/policy regime for renewable electricity generation or, as Mr Quinn submitted, the illogicality that Mr Leyland's concerns with the volatility of different forms of renewable electricity generation in the electricity market and challenges to the electricity sector, requires statutory change; a matter he accepted in cross

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<sup>65</sup> Section 42A Planning Report at [13.5]; EIC Aaron Edwards, at [77].

<sup>66</sup> Section 42A Planning Report at [13.7].

<sup>67</sup> EIC of Aaron Edwards, at [76].

examination.<sup>68</sup>

NPS-ET

[87] The NPS-ET relates to, and recognises, the national significance of the electricity transmission network.

[88] The s 42A Planning Report found the Project to be consistent with the objective of the NPS-ET and noted that any buildings associated with the Project will comply with the setback requirements and will not interfere or have any adverse effects on the existing transmission network.<sup>69</sup>

[89] In his evidence Mr Edwards considered the Project is in direct support of the overall NPS-ET 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.<sup>70</sup>

***Bay of Plenty Regional Policy Statement***

[90] Mr Edwards provided a detailed assessment of the RPS and its relevance to the project. His evidence is that the RPS provides specific support for the project and its economic benefits as regionally and nationally significant infrastructure.<sup>71</sup> The outcome of his assessment is that the Project is consistent with the RPS and highly consistent with the relevant energy and infrastructure RPS objectives and policies.<sup>72</sup>

[91] His analysis of the RPS also identified the objectives and policies that relate to the financial and economic effects and implications of the Project. In terms of electricity and generation matters he referred to Objective 6 (Section 2.3 Energy and infrastructure)<sup>73</sup> and noted that the project provides for the development of renewable energy sources, generating electricity to be supplied directly to the National Grid at

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<sup>68</sup> NOE page 146.

<sup>69</sup> Section 42A Planning Report at [13.9].

<sup>70</sup> EIC of Aaron Edwards, at [76].

<sup>71</sup> EIC of Aaron Edwards, at [73].

<sup>72</sup> EIC of Aaron Edwards, at [56].

<sup>73</sup> EIC of Aaron Edwards, at [58].



scale and is of national and regional significance, noting the definition of regionally significant infrastructure in the RPS.<sup>74</sup>

[92] With regard to rural land use, Mr Edwards specifically referred to:

- (a) Objective 26 (Section 2.8 Urban and rural growth management) which seeks that:<sup>75</sup>

... The productive potential of the region's rural land resource is sustained and the growth and efficient operation of rural production activities are provided for.

- (b) Supporting Policy UG 18B (Managing rural development and protecting versatile land) which seeks to protect versatile land:<sup>76</sup>

The productive rural land resource shall be protected for rural production activities by ensuring that to the extent practicable subdivision, use and development in rural areas does not result in versatile land being used for non-productive purposes outside existing and planned urban-zoned areas, or outside the urban limits for the western Bay of Plenty shown in Appendix E, unless it is for regionally significant infrastructure which has a functional, technical or locational need to be located there

- (c) Policy UG 18B which directs that:<sup>77</sup>

Particular regard shall be given to whether the proposal will result in a loss of productivity of the rural area, including loss of versatile land, and cumulative impacts that would reduce the potential for food or other primary production.

[93] He noted that the Project is considered to be regionally significant and there is a need for the Project to be located where proposed (notably in terms of proximity to the National Grid and availability of solar resource). As it stands, his evidence is that the Site does not meet the RPS definition of versatile land as the Site consists of LUC 4, 6, and 8 soils and therefore Policy UG 18B is not relevant to the Project in terms of the direction to protect versatile land. When considering the policy in a more general sense, Mr Edwards noted that alternative rural land use activities will also be undertaken such that the Project does not result in the complete loss of rural

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<sup>74</sup> EIC of Aaron Edwards at [59].

<sup>75</sup> EIC of Aaron Edwards, at [61].

<sup>76</sup> EIC of Aaron Edwards, at [62].

<sup>77</sup> EIC of Aaron Edwards, at [65].

productive land use.

[94] Ms Wood expressed her agreement with that evidence.<sup>78</sup>

***TDP (operative and plan changes)***

[95] Mr Edwards' and Ms Wood's evidence provided the Court with an analysis of the Project against the provisions of the TDP and the recently notified plan changes. They note that the relevant TDP objectives and policies in terms of the appeal issue are those regarding the Rural Environment (Section 3b) and Network Utilities (Section 3n). However, none of these objectives or policies in the Rural Environment and Network Utilities sections directly refer to economic and financial matters and therefore, these matters must be considered in a more general sense when assessing the TDP objective and policy framework.<sup>79</sup>

[96] Mr Edwards concluded that the TDP inherently recognises the economic and financial benefits associated with network utility activities, specifically providing for their establishment where adverse effects can be avoided, remedied or mitigated. In terms of economic and financial considerations associated with productive land use, Policy 3b.2.1(iv) seeks to provide for a range of rural activities but there is no explicit direction to avoid non-rural activities (except for urban type development) or prioritise certain types of rural land use. He considered the Project to be consistent with TDP objectives and policies concerning economic and financial matters.<sup>80</sup>

[97] Ms Wood concurred with Mr Edwards and noted that there is no explicit direction in the objectives and policies that requires avoidance of non-rural activities (with the exception of urban development – which does not apply to the Project) and that the economic and financial benefits of network utilities are recognised and provided for, given that they are commonly found in the Rural Environment due to locational requirements, and the Project has requirements to locate in this area for access to the solar resource and to the national grid transmission lines.

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<sup>78</sup> EIC of Louise Wood, at [41].

<sup>79</sup> EIC of Louise Wood, at [48]-[63]; EIC of Aaron Edwards, at [44]-[54].

<sup>80</sup> EIC of Aaron Edwards, at [53]-[54].

[98] It is also Ms Wood's evidence that the Project is consistent with the relevant policy and objective framework of the TDP, with use of the land for dairying likely to be similarly consistent with the same provisions - but there is no preference or direction for that activity in the TDP.

Plan Changes 38 and 42

[99] The plan changes of particular relevance to this matter are Plan Change 38 Strategic Directions (**PC38**) and Plan Change 42 General Rural and Rural Lifestyle Environments (**PC42**). Both Ms Wood and Mr Edwards concluded that the Project is consistent with the relevant objectives and policies of PC38 and PC42.<sup>81</sup>

**Other matters (s 104(1)(c))**

[100] The s 42A Planning Report included an analysis of other relevant planning documents. The position of TGL and the Council is that none of these have strong objective and policy direction in relation to economic and financial matters.<sup>82</sup> We accept this position.

**Part 2**

[101] We accept that there is no ability or need to revert to Part 2 in this case and that none of the *New Zealand King Salmon* caveats apply. We note that the assessment and conclusion of the planners on this matter was not challenged in cross examination by Ms Smith.

[102] In his reply, Mr Quinn submitted that there is no credible basis or analysis to conclude that Part 2 supports the proposition that resource consent should be declined when assessing this land use consent application under the single issue before the Court.

[103] When considered in the wider context of the Part 2 sustainable management purpose of the RMA and the functions of regional and territorial authorities, we are

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<sup>81</sup> Rebuttal of Aaron Edwards, at [12]-[14]; EIC of Louise Wood, at [64]-[89].

<sup>82</sup> NoE, page 20; EIC of Aaron Edwards, at [81].

satisfied that, with the conditions imposed, the application meets the sustainable management purpose of the RMA, will not adversely affect the health and safety and/or wellbeing of neighbours, and will enable the land to continue to be used for an appropriate purpose.

## **Conclusion**

[104] Having considered the relevant planning framework we find that there is no clear policy preference for the use of the Site as a dairy farm over its use for solar electricity generation. Further, there is also no direction in the planning documents which requires a comparative analysis of economic benefit of one form of land use over another.

[105] Mr Edwards' summary of his findings concerning the economic and financial objectives and policies was particularly apt:<sup>83</sup>

[82] ...I find there to be limited consideration of economic and financial matters within the relevant policy documents. There is clear direction to recognise the benefits of the Project as a network utility activity of regional and national significance and the role of the Project in supporting the transition to a low-emissions economy. The recognised Project benefits inherently include associated economic benefits.

[83] ...Accordingly, there is no strong policy direction seeking to maintain rural productive activity on the site (noting the Project will integrate alternative rural land use activities) and no direction to avoid the proposed land use (provided adverse effects are avoided, remedied or mitigated as far as practicable, which I consider to be the case).

[84] Overall, I find the Project to be consistent with the objective and policy framework concerning economic and financial matters. This further supports my overall conclusion that the Project is consistent with the regulatory framework. I note there is no planning basis for a focus solely on economic or financial issues in determining the application.

[106] We accept TGL's submission that the appellant has failed to outline how the single issue before the Court is relevant to an assessment of this resource consent application within the District Plan framework.

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<sup>83</sup> EIC, Aaron Edwards, at [81]-[84].

[107] The evidence explains that the planning framework, from higher order documents through to the TDP is well-aligned and generally consistent from a policy perspective. As no planning assessment was provided to the Court by Mr Crafar to respond to the evidence put forward by the Council and TGL, we accept that the Project is supported by the relevant planning instruments.

[108] Regarding the economic and financial effects of the Project, we agree with TGL and Council that the Court is not able to decide whether TGL should take on the risk of establishing a solar farm. The Court's role is to assess whether there are adverse effects associated with the Project that cannot be mitigated or otherwise addressed.

[109] In the context of the narrowed issue for determination before the Court, we are satisfied that the effects of the loss of rural production land will be minimal and that there are no negative economic or financial effects associated with the Project that warrant the application for consent being declined. In addition, the Court accepts the evidence of TGL and the Council that there are positive economic effects associated with the Project and significant and direct positive effects in providing for the development of renewable energy resources.

[110] We agree with Mr Quinn that even if it were established to this Court's satisfaction that there was a net economic and financial adverse effect arising from the Project, which we have determined is not the case, when assessing the application against all relevant considerations under s 104 RMA and having regard to the Commissioner's decision under s 290A, and this appeal having been advanced on a materially narrower issue than was addressed by the Commissioner's decision, it would remain appropriate for land use consent to be granted, subject to conditions.<sup>84</sup>

[111] We reiterate our finding that there is an insufficient evidential basis for the proposition that the continued use of this land for dairying should be preferred to solar power generation.

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<sup>84</sup> Applicant's Legal Submissions in Reply, at [3].

[112] For these reasons we conclude that the Commissioner's decision should be upheld.

**Outcome**

[113] The appeal is dismissed.

For the Court:



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**S M Tepania**  
**Environment Judge**

