

In the High Court of New Zealand
Auckland Registry
I Te Kōti Matua o Aotearoa
Tāmaki Makaurau Rohe

CIV 2024-404-3156

Under Part 19 of the High Court Rules

In the matter of a scheme of arrangement under Part 15 of the Companies Act 1993

And in the matter of:

Manawa Energy Limited, a duly incorporated company, having its registered office at
93 Cameron Road, Tauranga, New Zealand

Applicant

**Initial orders under section 236 of the Companies Act 1993
relating to an amended originating application for orders
approving a scheme of arrangement under Part 15 of the
Companies Act 1993**

13 February 2025



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BEFORE THE HONOURABLE JUSTICE PETERS

- To:** the Registrar of the High Court at Auckland
- And to:** Contact Energy Limited
- And to:** The Takeovers Panel
- And to:** any person the Court directs to be served

The interlocutory application by Manawa Energy Limited (“**Manawa**”) for initial orders relating to an amended originating application for approval of a scheme of arrangement under Part 15 of the Companies Act 1993, dated 5 February 2025, was determined by the Honourable Justice Peters on 13 February 2025 following a hearing (by telephone conference) held on 13 February 2025 at which D J Cooper KC appeared as counsel for the applicant.

The following orders were made:

Service and representation

1. Directing that formal service of the amended originating application for orders approving a scheme of arrangement under Part 15 of the Companies Act 1993 (the “**Act**”) (the “**Application for Final Orders**”) and this application without notice for initial orders (the “**Application for Initial Orders**”) be dispensed with.
2. Directing Manawa to serve all documents filed in this proceeding on:
 - (a) the Takeovers Panel (the “**Panel**”); and
 - (b) Contact Energy Limited (the “**Bidder**”).
3. Directing that, except as provided in these orders or required by s 236A of the Act:
 - (a) Manawa is not required to serve any other documents, including any sealed order in this proceeding, on the persons specified in these orders; and
 - (b) if the hearing of the Application for Final Orders is adjourned for any reason, Manawa is required to serve only those persons who are entitled to appear and be heard under paragraph 24 below with notice of the new hearing date.



Confidentiality and orders that the Court File not be searched

4. That the amended originating application, all interlocutory applications, affidavits, and all other documents related to approval of the proposed scheme of arrangement (the “**Scheme**”) on the Court File shall not be searched, inspected or copied without the leave of the Court.

Scheme Meeting

5. Directing that:
 - (a) all shareholders are in the same interest class for the purpose of voting at the Scheme Meeting (as defined in paragraph 6(a) below); and
 - (b) notwithstanding subparagraph (a) above, if the Bidder or any of its related companies are shareholders of Manawa on the Shareholder Voting Record Date (as defined in paragraph 9(b) below) then the two interest classes of shareholders for the purpose of voting at the Scheme Meeting are:
 - (i) the Bidder and/or any of their related companies; and
 - (ii) all other shareholders.
6. Directing Manawa to:
 - (a) hold a special meeting of Manawa shareholders (the “**Scheme Meeting**”) on a date to be determined by the Manawa board of directors as soon as reasonably practicable following the satisfaction of the condition in clause 3.1(a) of the scheme implementation agreement dated 11 September 2024 between Manawa and Bidder (which clause provides that the Scheme is conditional on the New Zealand Commerce Commission granting clearance under the Commerce Act 1986 in respect of the Scheme) or, if Manawa considers that it has become necessary or appropriate to adjourn or reschedule the Scheme Meeting, on the first practicable date thereafter:
 - (i) online, at: <https://meetnow.global/nz>; and
 - (ii) concurrently, at: a suitable physical location as determined by the Manawa board of directors.
 - (b) if there is more than one interest class, conduct the special meetings comprising the Scheme Meeting contemporaneously; and



- (c) at the Scheme Meeting, put the Scheme to the Manawa shareholders for consideration and approval in the manner specified in these orders (the “**Resolution**”).
7. Except as otherwise provided in these orders, directing that the Scheme Meeting be conducted in accordance with Manawa’s constitution and ss 121 - 125 and Schedule 1 of the Act (including in respect of the chair’s power to adjourn the Scheme Meeting).
8. Directing that the chair of the board of Manawa, Deion Mark Campbell, or his nominee, act as the chair of the Scheme Meeting.
9. Directing that only holders of Manawa shares whose names appear in the register of shareholders as at:
- (a) a time and date to be determined by the Manawa board of directors (which must not be more than 30 working days, nor less than 10 working days, before the date on which the Scheme Meeting is to be held) (“**Scheme Booklet Record Date**”) are entitled to receive a Scheme Booklet (as defined at paragraph 13 below); and
- (b) a time and date to be determined by the Manawa board of directors (which must not be later than 48 hours prior to the Scheme Meeting) (“**Shareholder Voting Record Date**”) are entitled to be represented and vote at the Scheme Meeting or any adjournment or postponement thereof,

and, if Manawa adjourns or reschedules the Scheme Meeting as contemplated by paragraph 6(a), then the Manawa board of directors may determine a new Scheme Booklet Record Date and Shareholder Voting Record Date in accordance with this paragraph 9.

10. Directing that:
- (a) to be valid, all completed proxy votes must be received by Computershare Investor Services Limited (“**Computershare**”), Manawa’s share registrar, by no later than 48 hours prior to the Scheme Meeting (“**Proxy Deadline**”) and can be submitted:
- (i) online: at Computershare’s website;
- (ii) by email: corporateactions@computershare.co.nz;
- (iii) by mail: by sending to Computershare at: Private Bag 92119, Victoria Street West, Auckland, 1142; and



- (iv) in person: by delivering to Computershare at: Level 2, 159 Hurstmere Road, Takapuna, Auckland, 0622;
 - (b) Manawa is entitled to disregard any proxy votes received after the Proxy Deadline; but
 - (c) Manawa may waive, in its discretion, the Proxy Deadline if it considers such waiver to be in its best interests and in the best interests of Manawa shareholders as a whole.
11. Directing that voting at the Scheme Meeting is to be by way of a poll.
12. Directing that the Resolution shall be approved if it is passed:
- (a) by a majority of 75% of the votes of the shareholders in each interest class entitled to vote and voting; and
 - (b) a simple majority of the votes of those shareholders entitled to vote.

Notice of Scheme Meeting and information for shareholders

Scheme Booklet

13. Directing Manawa to give notice of the Scheme, Scheme Meeting, and Application for Final Orders by distributing a booklet including the following sections, together with a proxy form for use by shareholders for appointment of a proxy to vote at the Scheme Meeting, drafts of which are at pages 300 and 512 of the Bundle of Documents attached to the affidavit of Clayton Delmarter (the “**Scheme Booklet**”), which collectively will constitute part (though not necessarily all) of the materials to be sent to Manawa shareholders, in accordance with paragraph 14 below:
- (a) a letter from Deion Campbell as Chair of Manawa’s board of directors addressed to Manawa shareholders;
 - (b) a section highlighting the action required by shareholders in respect of the Scheme;
 - (c) a summary of the key times and dates relevant to the Scheme;
 - (d) a notice of meeting including or accompanied by:
 - (i) the formal notice of meeting;
 - (ii) explanatory notes providing procedural details; and
 - (e) a section setting out key considerations relating to shareholders’ votes;



- (i) a more detailed explanation of how the Scheme will be implemented (including a statement to the effect that Manawa has applied for, and has been granted, initial orders);
- (f) information about the Bidder;
- (g) information about the Bidder group including the Manawa group following implementation of the Scheme (the “**Merged Group**”);
- (h) information about the key risks associated with shareholders’ investment in the Merged Group once implementation has occurred;
- (i) further information about the Bidder. This is intended to be equivalent to the information shareholders would receive under Schedule 1 of the Takeovers Code had the Bidder made a takeover offer under the Takeovers Code instead of proceeding by a scheme of arrangement;
- (j) further information about Manawa. This is intended to be equivalent to the information shareholders would receive under Schedule 2 of the Takeovers Code, if the Bidder had made a takeover offer under the Takeovers Code instead of proceeding by a scheme of arrangement;
- (k) a summary of the scheme implementation agreement entered into by the Bidder and Manawa on 11 September 2024 (the “**SIA**”);
- (l) a glossary;
- (m) an independent adviser’s report prepared by Grant Samuel & Associates Limited (“**Grant Samuel**”) on the merits of the Scheme and addressed to the Court for the purposes of s 236(2)(c) of the Act and to Manawa shareholders (“**IAR**”);
- (n) a copy of the proposed Scheme Plan;
- (o) a copy of the executed Deed Poll;
- (p) notice that copies of the orders made by the Court following the hearing of this interlocutory application for initial orders will be available for inspection on the NZX market announcement platform; and
- (q) notice that copies of the documents filed in support of the amended originating application will be provided to shareholders that have filed a notice of appearance or a notice of opposition with the Court.



Distribution of Scheme Booklet

14. Directing Manawa to:
- (a) at least 20 working days before the Scheme meeting, lodge an electronic copy of the Scheme Booklet on the NZX market announcement platform.
 - (b) as soon as practicable thereafter send the Scheme Booklet to:
 - (i) all Manawa directors;
 - (ii) Manawa's auditors; and
 - (iii) all Manawa shareholders listed on Manawa's share register as at the Scheme Booklet Record Date, except that Manawa is not required to send the Scheme Booklet to shareholders for whom Manawa does not have a known address on the Scheme Booklet Record Date. If any such shareholder contacts Manawa to provide updated address details not less than five working days before the Scheme Meeting, Manawa must send the Scheme Booklet to that shareholder;
 - (c) send the Scheme Booklet to Manawa shareholders in terms of the preceding paragraph by sending it to the shareholders' addresses as recorded on Manawa's share register on the Scheme Booklet Record Date in:
 - (i) electronic format to all shareholders who have elected to receive documents from Manawa in electronic form, by way of an email providing a link to the approved Scheme Booklet; and
 - (ii) by ordinary mail in hardcopy format to all other shareholders;
 - (d) from the date after the date on which the Scheme Booklet is lodged on the NZX market announcement platform up to the date of the Scheme Meeting, provide, on request, a copy of the Scheme Booklet to any other person who becomes a Manawa shareholder after the Scheme Booklet Record Date and before the Shareholder Voting Record Date;
 - (e) from the date after the date on which the Scheme Booklet is lodged on the NZX market announcement platform up to the date of the Scheme Meeting, make hard copies of the Scheme Booklet available during normal business hours for inspection and removal from Manawa's offices at 93 Cameron Road, Tauranga, New Zealand; and



- (f) from the date after the date on which the Scheme Booklet is lodged on the NZX market announcement platform up to the date on which the Scheme is implemented, make electronic copies of the Scheme Booklet available for inspection and download from Manawa's website.
15. Directing that the Scheme Booklet be deemed to have been received by all those to whom it was sent in accordance with paragraph 14(c) above.
16. Granting leave to Manawa to effect service outside New Zealand in the manner referred to in paragraph 14(c) above.
17. Directing that if Manawa accidentally fails or omits to send a Scheme Booklet to any person specified in paragraph 14(b) above or the Scheme Booklet is not received by any such person:
- (a) any such failure or omission does not constitute a breach of the orders made in relation to the Scheme or invalidate any Resolution passed or proceedings taken at the Scheme Meeting; but
- (b) where any such failure or omission is brought to Manawa's attention, Manawa shall endeavour to rectify it by the method and in the time most reasonably practicable in the circumstances.

Amendment of Scheme Booklet

18. Directing that:
- (a) Manawa may, before or after the Scheme Booklet is distributed to shareholders, make such amendments to materials contained in, or accompanying, the Scheme Booklet which Manawa considers are necessary or appropriate to complete and finalise the draft Scheme Booklet contained in the Bundle of Documents attached to the affidavit of Clayton Delmarter or as Manawa may otherwise determine to be in its best interests or the best interests of Manawa's shareholders as a whole, including as provided for by the Scheme Plan; and
- (b) Grant Samuel may, before or after the Scheme Booklet is distributed to shareholders, make such amendments to the IAR which Grant Samuel considers are necessary or appropriate to complete and finalise the draft IAR contained in the Bundle of Documents attached to the affidavit of Clayton Delmarter or as Grant Samuel may otherwise determine are necessary or appropriate to reflect any change in circumstances before the date of the Scheme Meeting.



19. Directing that:
- (a) where possible, any amendments to materials in, or accompanying, the Scheme Booklet (including the IAR) contemplated by the preceding paragraph are to be made before Manawa distributes the Scheme Booklet to shareholders and any other person identified in paragraph 14(b) or directed to be served with this application.
 - (b) if any amendment to materials contained in, or accompanying, the Scheme Booklet (including the IAR) is made after the Scheme Booklet is distributed to Manawa shareholders and any other person directed to be served with this application:
 - (i) Manawa will notify those persons of such amendment by lodging a notice on the NZX market announcement platform as soon as reasonably practicable, or by other means that it considers will ensure timely notification and receipt; and
 - (ii) Manawa will not otherwise be obliged to give further notice to any person.

Reporting of the results of the Scheme Meeting

20. Directing Manawa to notify the outcome of the Scheme Meeting by:
- (a) announcing the results of shareholder voting on the Resolution through the NZX market announcement platform as soon as practicable after voting at the Scheme Meeting is complete; and
 - (b) serving written notice on persons entitled under paragraph 24 below to appear and be heard at the hearing of the Application for Final Orders. Such notice is to be served as soon as is practicable after voting at the Scheme Meeting is complete.
21. Requiring Manawa, prior to the Court's consideration of the Application for Final Orders, to file with the Court, and serve on any party who has filed a notice or an application for leave under the orders at paragraphs 22 or 23 (as applicable) at the relevant address for service, an affidavit or affidavits:
- (a) verifying compliance with the requirements of the orders made following hearing of this Application for Initial Orders;
 - (b) including confirmation of:
 - (i) the Resolution voted on at the Scheme Meeting;



- (ii) in respect of each interest class of shareholders, the number of votes cast for and against the Resolution;
- (iii) the number of shareholders voting in favour of the Resolution; and
- (iv) the proportion of the total number of voting rights that were voted in favour of the Resolution.

Rights of opposition and appearance

22. Directing that any shareholder who wishes to appear and be heard on the Application for Final Orders must, by 5.00pm on the date that is three working days before the date which will be set by the Court for the hearing of the Application for Final Orders (such date being, the “**Final Orders Hearing Date**”), file and serve on Manawa at C/- Harmos Horton Lusk Limited, Level 33, Vero Centre, 48 Shortland Street, Auckland 1010, or by email at nathanael.starrenburg@hhl.co.nz:
- (a) a notice of appearance (containing an address for service within New Zealand); or
 - (b) if they oppose the Application for Final Orders:
 - (i) a notice of opposition (containing an address for service within New Zealand);
 - (ii) any affidavit(s) on which they wish to rely; and
 - (iii) a memorandum of submissions on which they intend to rely.

23. Directing that any other person who considers that they have a proper interest in the Scheme and who wishes to appear and be heard on the Application for Final Orders to file and serve on Manawa at C/- Harmos Horton Lusk Limited, Level 33, Vero Centre, 48 Shortland Street, Auckland 1010, or by email at nathanael.starrenburg@hhl.co.nz by 5.00pm on the date that is three working days before the Final Orders Hearing Date an application for leave to be heard on the Application for Final Orders (containing an address for service in New Zealand), a notice of opposition, any affidavit(s) and a memorandum of submissions.



24. Directing that the only persons entitled to appear and be heard at the Application for Final Orders are:

- (a) Manawa;
- (b) the Panel;

- (c) those persons who file a notice of appearance or opposition in accordance with paragraph 22 above;
 - (d) those persons who are granted leave pursuant to an application made in accordance with paragraph 23 above; and
 - (e) the Bidder.
25. Requiring Manawa by 5.00pm on the date that is three working days before the Final Orders Hearing Date to serve (at the stated address for service) a copy of all documents filed in support of the Application for Final Orders upon any person entitled under paragraphs 22 or 23 to appear and be heard at the Application for Final Orders and to file and serve any papers in reply.
- Leave to return to Court at short notice*
26. Granting leave to Manawa or any other person entitled under paragraph 24 above to appear and be heard at the Application for Final Orders to apply for further orders on 24 hours' notice.

Dated: 13 February 2025



Registrar/Deputy Registrar

R KUMAR
DEPUTY REGISTRAR