

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY
I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE

CIV-2021-404-941

UNDER

Part 15 of the Companies Act 1993

IN THE MATTER OF

an application for orders approving a scheme of arrangement under Part 15 of the Companies Act 1993

TILT RENEWABLES LIMITED a duly incorporated company with its registered address c/- Russell McVeagh, Level 30, Vero Centre, 48 Shortland Street, Auckland 1010, New Zealand, and carrying on business as a developer, owner and operator of renewable energy generation in Australia and New Zealand

Applicant

INITIAL ORDERS UNDER PART 15 OF THE COMPANIES ACT 1993
3 JUNE 2021

Judicial Officer: Justice Campbell



Russell
McVeagh

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Auckland

TO: The Registrar of the High Court at Auckland

AND TO: Any person the Court directs to be served

THIS DOCUMENT NOTIFIES YOU THAT:

- a. The without notice interlocutory application for initial orders under Part 15 of the Companies Act 1993 ("**the Act**") made by Tilt Renewables Limited ("**TLT**") on 24 May 2021 was determined by the Honourable Justice Campbell on 3 June 2021.
- b. The determination was made without a hearing.
- c. The following orders were made.

ORDERS

Timetable for Final Orders Application

1. Unless otherwise advised by the Court, the amended originating application for orders approving the proposed acquisition of the New Zealand assets of, and shareholding in, TLT by way of scheme of arrangement ("**Scheme**") under Part 15 of the Act ("**Final Orders Application**") will be heard at **10:00 am** on **23 July 2021**.

Service and representation

2. That:
 - (a) service of the without notice interlocutory application for initial orders relating to the Final Orders Application ("**Initial Orders Application**") be dispensed with;
 - (b) personal service of the Final Orders Application be dispensed with and, instead, the persons specified in these orders are to be served in accordance with these orders;
 - (c) TLT serves all documents filed in this proceeding on the Takeovers Panel, Pisa Obligor Co 1 Pty Ltd ("**PowAR**"), Mercury NZ Limited ("**Mercury**"), and Mercury Wind Limited (formerly called Mercury SPV 2021 Limited) ("**Mercury Wind**"); and



- (d) except as provided in these orders or required by section 236A of the Act:
- (i) TLT is not required to serve any other documents on the persons specified in these orders; and
 - (ii) if the hearing of the Final Orders Application is adjourned for any reason, only those persons who are entitled to appear and be heard under order 22 below need to be served with notice of the adjourned hearing date.

Court file not be searched

3. The Final Orders Application, all interlocutory applications, affidavits, memoranda, and all other documents related to the approval of the Scheme on the Court file shall not be searched, inspected or copied until after the Scheme Meeting Materials (as defined in order 9 below) have been distributed to TLT shareholders ("**Shareholders**") in accordance with order 10 below.

Scheme Meeting

4. TLT shall:
- (a) hold a special meeting of Shareholders ("**Scheme Meeting**") on or about 14 July 2021 during normal business hours in New Zealand:
 - (i) online through the web platform Lumi AGM; and
 - (ii) as a concurrent physical meeting, unless the COVID-19 Government Alert Levels or other COVID-19 related restrictions or directives do not permit such physical meeting;
 - (b) conduct the special meetings in respect of each interest class described in order 7 below contemporaneously;
 - (c) at the Scheme Meeting, in accordance with order 6 below, put the resolution for Shareholders' consideration to approve the Scheme described in the Scheme Meeting Materials (as that term is defined in order 9), subject to any amendment to the Scheme by TLT before the Scheme Meeting in a manner consistent with these orders ("**Resolution**"); and



- (d) except as otherwise provided in these orders, conduct the Scheme Meeting in accordance with the constitution of TLT and the provisions of the Act.
5. If TLT convenes the Scheme Meeting as a concurrent physical meeting in accordance with order 4(a)(ii), and without in any way limiting the function of the chairperson of the Scheme Meeting to conduct the Scheme Meeting in accordance with its rules and procedures and preserve its orderly conduct, TLT may, in its sole discretion, refuse to permit any shareholder, proxy, representative or other person to physically attend the Scheme Meeting if TLT considers such refusal to be necessary or desirable to comply with any applicable legal restrictions, or for health and safety reasons, associated with the COVID-19 pandemic.
6. The Resolution shall be approved if it is passed (whether in person or by proxy):
- (a) by at least 75% of the votes of the Shareholders in each interest class entitled to vote and voting on the resolution; and
- (b) by a simple majority of the votes of those Shareholders entitled to vote.
7. The Shareholders are in the following interest classes for the purpose of voting at the Scheme Meeting:
- (a) Mercury; and
- (b) all other Shareholders.
8. Only Shareholders whose names appear in the register of Shareholders as at:
- (a) 7:00pm on the date that is two working days before the date the Scheme Meeting Materials are sent ("**Scheme Materials Record Time**") are entitled to receive the Scheme Meeting Materials (as defined in order 9); and
- (b) 7:00 pm on the date that is two working days before the date of the Scheme Meeting ("**Shareholder Voting Record Time**") are entitled to be represented and vote at the Scheme Meeting or any adjournment or postponement thereof.



Notice of meeting and information for Shareholders

9. TLT shall, at least 10 working days before the Scheme Meeting, distribute to each of the persons set out in order 10 below, documents in substantially the same form as exhibit **BJH-1** to the affidavit of Dr Bruce James Harker affirmed 24 May 2021, together with any amendments, revisions or supplements included in accordance with order 16 ("**Scheme Meeting Materials**"). The Scheme Meeting Materials shall include:
- (a) a combined notice of meeting and scheme booklet which includes:
 - (i) a notice of meeting, including:
 - (aa) the formal notice of meeting, including the Resolution that Shareholders will be asked to vote on at the Scheme Meeting; and
 - (bb) explanatory notes, including of the procedure for the Scheme Meeting;
 - (ii) a proxy form for use by Shareholders for appointment of a proxy or corporate representative to vote on the Resolution at the Scheme Meeting;
 - (iii) explanatory notes giving Shareholders details of the Scheme;
 - (iv) a virtual meeting guide providing details of how to participate in the meeting via the "Lumi" app;
 - (b) a report from an independent adviser on the merits of the Scheme for Shareholders; and
 - (c) for Shareholders who receive the Scheme Meeting Materials electronically in accordance with the order sought at 10(b)(i), a cover email providing links to the documents referred to above.

Distribution of Scheme Meeting Materials

10. TLT shall:
- (a) at least 10 working days before the Scheme Meeting, distribute the Scheme Meeting Materials to:
 - (i) all of TLT's directors;



- (ii) PwC, as TLT's auditors and scrutineer of the Scheme Meeting; and
 - (iii) all Shareholders whose names appear in the register of Shareholders at the Scheme Materials Record Time;
- (b) provide the Scheme Meeting Materials to Shareholders in terms of orders 9 and 10(a)(iii) by sending it to the Shareholders' addresses as recorded on TLT's share register at the Scheme Materials Record Time:
- (i) in electronic format to all Shareholders who elect to receive documents from TLT in electronic form only; and
 - (ii) by ordinary mail in hardcopy format to all other Shareholders;
- (c) provide, in the manner referred to in order 10(b) and as soon as practicable, a copy of the Scheme Meeting Materials to any person not referred to in order 10(a)(iii) who becomes a Shareholder and entitled to vote on the Resolution after the Scheme Materials Record Time and before the Shareholder Voting Record Time;
- (d) from the first working day after the Scheme Meeting Materials are sent to Shareholders:
- (i) unless rendered impermissible or impracticable by reason of restrictions associated with the COVID-19 pandemic, make hard copies of the Scheme Meeting Materials available for inspection and removal at:
 - (aa) TLT's registered office (being Russell McVeagh's office at Level 30, Vero Centre, 48 Shortland Street, Auckland); and
 - (bb) Russell McVeagh's Wellington office at Level 24, NTT Tower, 157 Lambton Quay, Wellington; and
 - (ii) make electronic copies of the Scheme Meeting Materials available for inspection and download from TLT's website.



Prior to the distribution of the Scheme Meeting Materials in accordance with order 10, TLT shall lodge the Scheme Meeting Materials on NZX's and ASX's market announcement platforms.

12. The Scheme Meeting Materials shall be deemed to have been received by those to whom they were ordered to be sent 48 hours after being sent in accordance with order 10(b).
13. TLT shall be granted leave to effect service on Shareholders outside New Zealand in the manner referred to in order 10(b).
14. TLT shall:
- (a) at least 10 working days before the Scheme Meeting:
 - (i) publish and make available for download a copy of the sealed initial orders and the Final Orders Application on its website;
 - (ii) unless rendered impermissible or impracticable by reason of restrictions associated with the COVID-19 pandemic, make hard copies of the sealed initial orders and the Final Orders Application available for inspection and removal at:
 - (aa) TLT's registered office (being Russell McVeagh's office at Level 30, Vero Centre, 48 Shortland Street, Auckland); and
 - (bb) Russell McVeagh's Wellington office at Level 24, NTT Tower, 157 Lambton Quay, Wellington; and
 - (b) if practicable, send a copy of the sealed initial orders and the Final Orders Application to any Shareholder or other persons who will be bound by the Final Orders, who requests them (in hard or electronic copy as requested by that Shareholder or other person) within two working days of receiving the request (and such materials shall be deemed to have been received by the person who has requested them 48 hours after being sent).
15. If TLT accidentally fails or omits to provide the Scheme Meeting Materials, the sealed initial orders, or the Final Orders Application to any person in accordance with the orders sought at orders 10 and 14, or if the documents are 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 such failure or omission is brought to TLT's attention, TLT shall endeavour to rectify it by the method and in the time most reasonably practicable in the circumstances.

Powers of amendments and adjournment

16. Subject to order 16(b) below, TLT may make such amendments, revisions, or supplements to the Scheme Meeting Materials as it may determine are in its best interest, or the best interests of Shareholders or other affected or properly interested persons. If the Scheme Meeting Materials are amended, it will be the Scheme Meeting Materials as amended that will be distributed to the Shareholders in accordance with order 10. Where possible, any such amendments to the Scheme Meeting Materials will be:
- (a) made before TLT distributes the Scheme Meeting Materials in accordance with order 10 or as otherwise directed to be served with this application; but
- (b) if any material amendment to a document contained in the Scheme Meeting Materials is made after the Scheme Meeting Materials are distributed in accordance with order 10 and more than 72 hours before the Scheme Meeting (including any adjournment of the Scheme Meeting), TLT will notify these persons identified at order 10 of such amendment by lodging a notice on NZX's and ASX's market announcement platforms, or other means that it considers will ensure timely notification.

Reporting the results of the Scheme Meeting

17. TLT shall notify the outcome of the Scheme Meeting by:
- (a) lodging the results on NZX's and ASX's market announcement platforms as soon as practicable after voting at the Scheme Meeting is complete and the results are advised to the Chair of the Scheme Meeting by the scrutineer of the Scheme Meeting; and
- (b) serving written notice electronically on persons entitled under order 22 to appear and be heard at the hearing of the Final Orders Application. Such notice is to be served as soon as is practicable after voting at the Scheme Meeting is complete and the results are advised to the Chair of the Scheme Meeting by the scrutineer of the Scheme Meeting.



18. TLT shall, prior to the Court's consideration of the Final Orders Application, file with this Court an affidavit or affidavits:
- (a) verifying compliance with the requirements of these initial orders; and
 - (b) verifying the actions taken and the voting on the Resolution put to Shareholders.

Rights of opposition

19. For the purpose of the orders sought at 20 and 21, a "**Valid Service Address**" will be:
- (a) email addressed to marika.eastwick-field@russellmcveagh.com; or
 - (b) Russell McVeagh, Level 30, Vero Centre, 48 Shortland Street, Auckland 1010.
20. Any Shareholder who wishes to appear and be heard on the Final Orders Application must, by 5:00 pm on 19 July 2021, file in the High Court (Auckland Registry) and serve on TLT at the Valid Service Address:
- (a) a notice of appearance (containing an address for service within New Zealand, together with an electronic address at which documents can be served on that Shareholder if service at the Shareholder's physical address is not permitted or practicable by reason of restrictions associated with the COVID-19 pandemic); or
 - (b) if they oppose the Final Orders Application:
 - (i) a notice of opposition (containing an address for service within New Zealand, together with an electronic address at which documents can be served on that Shareholder if service at the Shareholder's physical address is not permitted or practicable by reason of restrictions associated with the COVID-19 pandemic);
 - (ii) any affidavit(s); and
 - (iii) a memorandum of submissions on which they intend to rely.



Any other person who considers they have a proper interest in the Scheme and who wishes to appear and be heard on the Final Orders Application must,

by 5:00 pm on 19 July 2021, file in the High Court (Auckland Registry) and serve on TLT at the Valid Service Address:

- (a) an application for leave to be heard on the Final Orders Application (containing an address for service within New Zealand, together with an electronic address at which documents can be served on that person if service at the person's physical address is not permitted or practicable by reason of restrictions associated with the COVID-19 pandemic);
- (b) a notice of opposition;
- (c) any affidavit(s); and
- (d) a memorandum of submissions upon which that person intends to rely.

22. The only persons entitled to appear and be heard on the Final Orders Application shall be:

- (a) TLT;
- (b) PowAR;
- (c) Mercury and Mercury Wind;
- (d) the Takeovers Panel;
- (e) those Shareholders who file a notice of appearance or opposition in accordance with order 20; and
- (f) those persons who claim to have an interest in the Scheme who file an application for leave to be heard and a notice of opposition to the Final Orders Application in accordance with order 21, and who are subsequently granted leave to appear and be heard at the hearing of the Final Orders Application.

23. TLT shall, by 5:00 pm on 21 July 2021, serve a copy of all documents filed in support of the Final Orders Application as well as file and serve any papers in reply upon any person who has filed, and served on TLT, the documents specified in orders 20 and 21.



TLT is granted leave to effect service at the electronic address provided pursuant to the orders sought at orders 20(b)(i) and 21(a) respectively, in the

event service at the person's physical address is not permitted or practicable by reason of restrictions associated with the COVID-19 pandemic.

Leave to apply

25. TLT is granted leave to apply to vary these interlocutory orders and to apply for such further interlocutory orders as may be necessary or appropriate at any time prior to the Court's determination of the Final Orders Application.

Date: 3 June 2021

(Deputy) Registrar
R KUMAR
DEPUTY REGISTRAR

