NZ RegCo
NZ'S LISTED MARKET REGULATOR

15 August 2024

NZ RegCo Decision

NZ Windfarms Limited (NWF)
Application for waiver from NZX Listing Rule 5.2.1

Background

1. The information on which this decision is based is set out in Appendix One to this decision. This waiver will not apply if that information is not, or ceases to be, full and accurate in all material respects.
2. The NZX Listing Rule (**Rule**) to which this decision relates is set out in Appendix Two.
3. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Waiver from Listing Rule 5.2.1

Decision

4. Subject to the conditions set out in paragraph 5 below, and on the basis that the information provided by NWF is complete and accurate in all material respects, NZ RegCo grants NWF a waiver from Rule 5.2.1 to the extent that this Rule requires that the Transaction be approved by Ordinary Resolution of NWF shareholders.
5. The waiver in paragraph 4 above is provided on the conditions that:
   a. each Director of NWF certifies that the terms of the Transaction have been entered into, and negotiated, on an arm's length commercial basis,
   b. each Director of NWF certifies that NWF was not influenced to enter into the Transaction by MEL,
   c. each Director of NWF certifies that the granting of the waiver is in the best interest of each of:
      i) NWF
      ii) NWF shareholders who are not precluded from voting under Rule 6.3,
   d. each Director of NWF certifies that the Transaction is in the best interests of:
      i) NWF,
      ii) all of NWF's shareholders, and
      iii) NWF shareholders who are not precluded from voting under Rule 6.3,
   e. NWF Directors include in the certificate a summary of the core grounds for the certification given under each limb of conditions (a), (b), (c), and (d), described above,
   f. the waiver and its conditions and implications are disclosed in NWF's next annual report.
6. NZ RegCo will publish the director certificate to market alongside publication of this waiver decision.

Reasons

7. In coming to the decision to provide the waiver set out above, NZ RegCo has considered that:
   a. The purpose of Rule 5.2.1 is to ensure that shareholders have an opportunity to consider, and vote on, Material Transactions where there is, or may be a perception of, the potential for undue influence by a Related Party on an Issuer's decision to enter into a transaction or agree to its terms. The granting of this waiver will not offend the policy behind Rule 5.2.1 because:
      i) NWF has submitted, and NZ RegCo has no reason not to accept that the MEL was not in a position to exercise undue influence over NWF's decision to enter into the Transaction. The Transaction aligns with NWF's Electricity Price Hedging Policy and

is considered standard practice within the electricity industry. NWF instructed Jarden to run a competitive RFP process in respect of Q4 2024 and Q1 2025 and the MEL offer for Q4 2024 and Q1 2025 was demonstrably the best offer as an outcome of the independently run Jarden RFP process. The NWF director certification which will be released to market alongside this waiver decision will certify that the entry into the Transaction is in the best interests of NWF and its shareholders.

ii) NWF has submitted, and NZ RegCo has no reason not to accept that NWF did not run a competitive process in respect of the Stub Period because that period is flexible, being based on timing of a FID decision, and therefore difficult for NWF to seek competitive RFP bids for. MEL's pricing for the Stub Period can be benchmarked by reference to the offers for the prior CFD periods. NWF Directors have disclosed that the transaction offer price is higher than the price MEL offered for prior periods, and they consider this offer price to be fair and reasonable.

iii) NWF is a merchant generator and typically seeks to enter into VVFPAs with counterparties in respect of a portion or all of its output to manage its market pricing risk in accordance with its Electricity Price Hedge Policy. The proposed VVFPA for the Stub Period varies from standard VVFPAs because of the flexible term through to FID. Apart from the flexible term, all the VVFPAs that form the Transaction are in the ordinary course of business for NWF and are not materially different from similar transactions entered into by NWF with non-related parties.

b. The certifications that will be provided by NWF's Directors as a condition of the waiver provide comfort that the Transaction is negotiated, and entered into, on an arm's length commercial basis, the Transaction will be in the best interest of NWF and its shareholders, and that NWF was not influenced to enter into the Transaction by MEL.

Confidentiality

8. NWF has requested this decision be kept confidential until NWF announces the waiver decision to the market.

9. In accordance with Rule 9.7.2(a), NZ RegCo grants NWF's request.

Appendix One

1. NZ Windfarms Limited (**NWF**) is a Listed Issuer with ordinary shares quoted on the NZX Main Board. Meridian Energy Limited (**MEL**) is a 19.99% shareholder of NWF, making MEL a Related Party of NWF.
2. On 27 June 2024, NWF announced it had entered into a contract for difference (**CFD**) agreement with MEL (the **Transaction**). The Average Market Capitalisation of NWF on 26 June 2024 was approximately $46.37 million. 10% of NWF's Average Market Capitalisation on that date was $4.637 million.
3. The Transaction comes within the definition of Material Transaction because the liability of NWF to pay to MEL under the CFD is uncapped. If the market price of electricity generated by NWF exceeds the fixed price offered by MEL, NWF must pay MEL the difference. So, under the CFD:
    - NWF could incur an obligation above $4.637m to MEL; and
    - the CFD could expose NWF to a liability above $4.637m to MEL.

NWF CFDs

4. All electricity generated by NWF (and almost all other electricity generators) is sold on the wholesale (or spot) electricity market at the prevailing half hour spot price. NWF is an electricity generator only and has no customers, so it does not purchase electricity on the wholesale market. The wholesale market clearing manager arranges payment to NWF of the spot price for all electricity that NWF generates.
5. To manage the risk of market price volatility, NWF enters into variable volume fixed price agreements (**VVFPAs**) with counterparties. These VVFPAs are CFDs and are in a form common in the New Zealand electricity industry.
6. The quantity of the electricity in any VVFPA is a portion of the electricity generated by NWF's wind farm. Under each such VVFPA:
    - if the market price received by NWF for that quantity of electricity through the clearing manager is greater than the VVFPA fixed price, NWF pays the difference to the counterparty; or
    - if the market price received by NWF for that quantity of electricity through the clearing manager is less than the VVFPA fixed price, the counterparty pays the difference to NWF.
7. The full terms for NWF's VVFPAs (and other non-market CFDs) are set out in contracts agreed by the parties based on the International Swaps and Derivatives Association (**ISDA**) master agreement, a schedule to the master agreement (**Schedule**) and a confirmation. Each Schedule is negotiated between the parties to apply to all electricity CFDs between them but is based on an industry standard form with minor changes.
8. Each VVFPA provides for a monthly calculation and cash settlement by NWF or the counterparty (as applicable).
9. The outcome of sale by NWF of electricity on the wholesale market and a VVFPA is that, each month, after adjusting the amount received by NWF from the wholesale market by sums paid or received by it under the VVFPA, NWF receives and retains the VVFPA fixed price for the applicable percentage of electricity it generates - rather than the spot price.

NWF offer process

10. NWF submits that fixing forward electricity prices through VVFPAs enables NWF to take a prudent approach to its expenditure. NWF follows an Electricity Price Hedging Policy that provides the flexibility to hedge between a minimum hedge level and 100%, for the next 24 months.
11. Consistent with that policy, in May 2024 NWF engaged Jarden to run a competitive request for proposal (**RFP**) process for a CFD in respect of the unhedged portion of NWF's output - being 50% of output from October to December 2024 (**Q4 2024**) and 100% from January to March 2025 (**Q1 2025**).
12. The RFP from Jarden was finalised and released on 14 June 2024 with proposals to be submitted by 5pm on 24 June 2024 and valid until 12pm on 26 June 2024.
13. Jarden received four confirmed responses to its RFP including a proposal from MEL. Jarden handled all dealings with bidders as an independent broker for NWF and presented the offers to NWF. NWF had no direct dealings with bidders, other than the invitation to MEL to make an offer with respect to the Stub Period as described below.
14. In addition to the RFP for Q4 2024 and Q1 2025, NWF contacted MEL directly to check if MEL was interested in offering a price for the period from April 2025 to the final investment decision (**FID**) to be made under the joint venture between NWF and MEL for the repowering of NWF's wind farm (the **Stub Period**). This FID is expected to be in April/May 2025. If the FID is positive NWF's existing windfarm will be decommissioned and repowered with new turbines in a joint venture with MEL, and NWF will cease generating electricity.
15. NWF submits that it decided to approach MEL directly with respect to the Stub Period because:
    - there is flexibility required with respect to this period as the final FID date is not yet known; and
    - as partners in the repower joint venture, NWF considers that MEL is the logical choice as counterparty for this period assuming NWF is able to negotiate a fair and reasonable outcome.
16. All directors of NWF are Independent Directors (as defined in the Rules). Mr Neal Barclay, CEO of MEL, was a Director of NWF but resigned from office on 19 June 2024 before the RFP proposals were received by NWF and the proposed CFD was conditionally accepted. Philip Cory-Wright is a director of Te Rere Hau Limited and Te Rere Hau Holdings Limited, the joint venture entities established by MEL and NWF, but only as a representative of NWF.
17. The fixed price offered by MEL for 50% of Q4 2024 and 100% of Q1 2025 was the best price offered by any bidder for those periods. The price MEL offered for the Stub Period (but not beyond September 2025) was higher than the price MEL offered for the prior periods.

Application of Rule 5.2.1.

18. Rule 5.2.1 requires that an Issuer must not enter into a Material Transaction if a Related Party is a party to the transaction unless that Material Transaction is conditional on approval by Ordinary Resolution (subject to voting restrictions).
19. A Material Transaction includes a transaction whereby an Issuer:
    a. incurs an obligation of an amount; or
    b. enters into a guarantee, indemnity, underwriting or similar obligation which could expose the Issuer to liability,

    above 10% of its Average Market Capitalisation.

NWF market guidance

20. While NWF is unable to disclose the exact agreed for the CFDs, NWF anticipates providing a FY24 results update and FY25 EBITDAF guidance to its shareholders by the end of August 2024. The guidance will reflect anticipated revenues through to FID, with revenues after that date dependant on whether FID is positive or not. NWF revenues depend on the quantity of electricity generated by its turbines and the price it receives.

Appendix Two

Rule 5.2.1

5.2 Transactions with Related Parties

5.2.1 An Issuer must not enter into a Material Transaction if a Related Party is, or is likely to become:

(a) a direct party to the Material Transaction, or

(b) a beneficiary of a guarantee or other transaction which is a Material Transaction,

unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval.

Relevant Definitions

Material Transaction	means a transaction, or a related series of transactions, whereby an Issuer: … (c) borrows, lends, pays or receives money, or incurs an obligation of an amount above 10% of the Average Market Capitalisation of the Issuer …, (d) enters into any guarantee, indemnity, underwriting, or similar obligation, or gives any security, which could expose the Issuer to liability above 10% of the Average Market Capitalisation of the Issuer, ….
Related Party	means a person who, at the time of a Material Transaction, or at any time within the previous six months, was: … (b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes, …