MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
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Ministry for the Environment
Manatu Mō Te Taiao

DATE	6 August 2024
TO	ESEG
PREPARED BY	Electrify NZ policy team, MBIE; Urban and Infrastructure team, MfE
SUBJECT	Electrify NZ proposals, including the national policy statement on renewable electricity generation and electricity transmission

BACKGROUND

We have prepared this memo in advance of our meeting on the 6th August 2024.

In March, we met to discuss Electrify NZ proposals. We discussed proposed issues and drafting for an effects management framework, consent duration, lapse periods and decision timeframes. Since then:

- We have progressed work to strengthen the NPS-REG
- You have provided updated suggested NPS-REG drafting and case studies, and
- The Government has announced a three-phase RMA reform programme.

'Phase 2' of the reform programme will include changes to the RMA and national direction that support Electrify NZ commitments. The NPS-REG and NPS-ET are being progressed alongside other national direction instruments in an integrated programme, which will manage conflicting direction on how significant environmental values will be treated. Other national direction such as the NZCPS will also be amended through this process.

For NPS-REG the Government is wishing to achieve a 'one stop shop' across national direction.

For this workshop, we would like to focus on the 'consenting pathway' for REG activities in areas with significant environmental value, and broader RMA consenting changes. We have drawn on your April 2024 NPS-REG draft suggestions where appropriate. We also have set out some commentary/questions at Annex 1 on your proposed drafting for the NPS-REG – especially where your proposed changes would have likely required changes to primary legislation.

We also are at the initial scoping phase on new NES for renewable energy projects. We'll briefly discuss next steps on this.

CONTENTS

1	RMA Consenting changes	Page 2
2	Consenting pathways for REG activities in areas of significant environmental values	Page 4
3	Annex: Response to ESEG drafting (April 2024)	Page 8

1. RMA CONSENTING CHANGES

In March we discussed consenting challenges related to consent durations, lapse periods and consent timeframes for renewable energy consents (covering renewable electricity generation, electricity transmission and electricity distribution). We have been progressing policy advice on three proposals that would:

- Set a one-year consent processing time limit for renewable energy consent applications (excluding new hydro and geothermal)
- Extend consent duration to 35-years for renewable energy generation consents and
- Set 10-year lapse periods for renewable energy generation consents.

Discussion questions

Proposal: One-year consent processing time limit for renewable energy consents

- What are your observations – any further reflections on why consent processing exceeds one year (including excluded days etc)?
- There are different ways to hold timeframes to one year – for example suspending the ability of local authorities to 'stop the clock' for further information. What parts of the process do you think can be sped up for least risk?
- What are the key risks in prescribing a one-year timeframe? For example, are there risks to engagement with mana whenua or wider public participation? Are there risks of ending up with conditions you don't like?
- Are there any perverse outcomes from set deadlines – eg low quality applications that must be processed despite being incomplete? (and still likely to gain consent if policy is very enabling)
- Would a 1-year calendar deadline with exceptions be workable in practice:
    - Eg where applicant agrees to a longer timeframe
    - Where affected mana whenua requests longer timeframes?
- Would do you think the relative importance of primary legislative changes to impose faster consent processing timeframes are vs improvements to national direction?

Proposal: 35-year duration consents for renewable energy activities

- What policy or regulatory adjustments might be needed to support the implementation of the above proposals? E.g., do you think a default 35-year consent period would require exceptions to allow shorter consents to respect Treaty settlements/ affected mana whenua?
- How would a 35-year consent duration influence your long-term planning or monitoring for land use, infrastructure development, and resource allocation (i.e., water) in areas with renewable energy projects or long-lived infrastructure?
- Do you currently use review clauses and how useful have you found these for managing these consents?
- How would you maintain ongoing communication and engagement with communities affected by renewable energy projects over a 35-year period?

Proposal: 10-year lapse periods for renewable energy consents

- How would a longer lapse period affect the scope and depth of environmental impact assessments conducted during the consenting process?

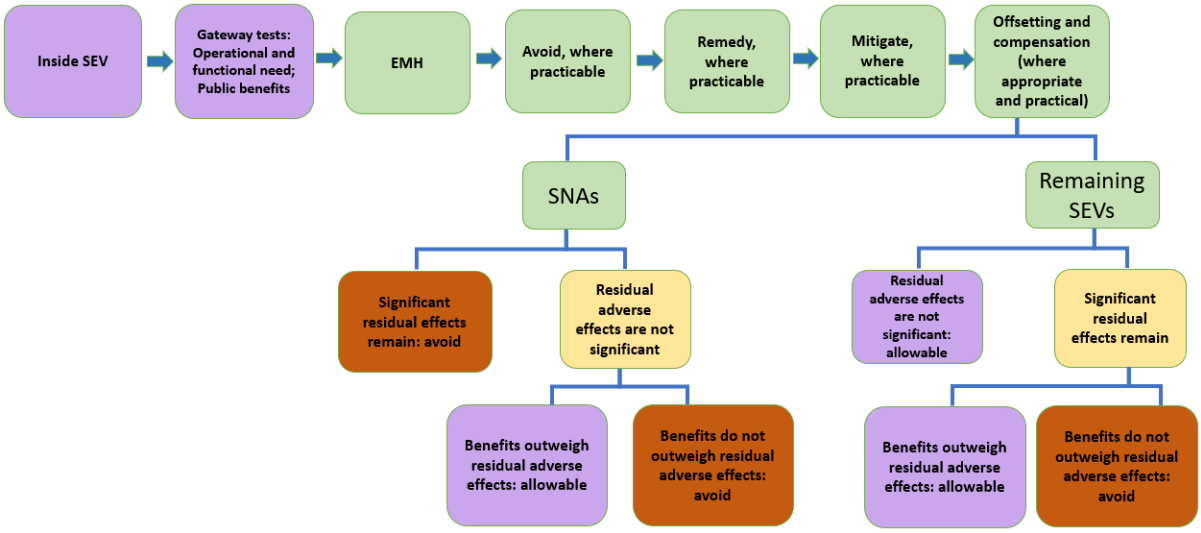
- How would you address the potential for changing environmental conditions or technological advancements over a 10-year lapse period?
- Do you have any concerns about the ability to request an extension to a lapse period?
- Could changes to make extensions easier to obtain be an effective way of overcoming concerns about shorter lapse periods.

2. NPS REG: CONSENTING PATHWAY FOR REG ACTIVITIES IN AREAS WITH SIGNIFICANT ENVIRONMENTAL VALUES

We are refining the consenting pathway for REG activities in areas with significant environmental value. We want to ensure it is sufficiently enabling of REG, in line with sustainable management under the RMA and reduces unnecessary complexity. Our approach builds on that suggested by the ESEG and at Options 2A and 2B in the 2023 discussion paper, i.e., it:

- Includes proposals in the NPS that recognise the benefits of REG activities, while recognising these activities may need to locate in areas with significant environmental values (SEVs).
- Defines SEVs, and potentially includes 'tiers' of significance as a distinction.
- Provides 'consenting pathways' for REG activities inside and outside an SEV. This includes an effects management hierarchy for activities inside an SEV.
- Explores a 'residual effects' approach – which provides direction to decision makers and depends on the level of residual effects remaining after application of an EMH.

Below we have mapped a consenting pathway similar to 'option 2B' from the 2023 consultation document. This option has gateway tests (operational and functional need, and public benefits), an EMH that uses residual effects and weighting guidance, and includes two different outcomes – one for significant natural areas and one for the remaining SEVs.



We would like to test/refine some of the key design features/options including:

- Defining SEVs
- Gateway tests and the application of avoidance policies
- Stepping through different approaches to an effects management hierarchy
- Residual effects and weighting direction.

Defining areas with significant environmental value (SEV)

The 2023 consultation draft defined SEVs as:

- areas with natural character in the coastal environment
- outstanding natural features and landscapes, both within and outside the coastal environment
- areas with historic heritage, including sites of significance to Māori and wahi tapu

- SNAs

In April ESEG provided a definition of ANI that included 'outstanding water bodies' (as referenced in Policy 8 NPS-FM) and required values to be mapped or identified in an operative plan or policy statement. ESEG also proposed that a consent should be allowed (i.e., consented) once effects on an SEV have been managed through the EMH. This goes beyond the scope of what an NPS can do. Legislative change would be required for an NPS to bypass RMA consent considerations (eg at s104).

If the NPS-REG were to apply a 'one stop shop' including for example interactions with the NPS-FW and NZCPS we need to define SEV for these domains – particularly for freshwater bodies. The NPS REG may also need to be clear about other section 6 values not expressed in national direction.

As these instruments also are under review, NPS REG drafting will need to reflect any changes made.

Tiers of SEVs

Other national direction creates different levels of significance, or tiers, for different values. For example, the NZCPS refers to both 'outstanding' and 'high' areas of natural character in the coastal environment. The NPS-IB treats biodiversity values differently in and out of 'Significant' Natural Areas.

We are exploring whether it is helpful to specify the 'tiers' of SEVs in the NPS REG – which would require a different approach to managing effects. For example, s6 matters could require a greater level of protection from effects than less important values. The level of effects allowable could be matched to the value being protected.

We also need to consider how section 6 values are articulated in plans and how any NPS REG implementation clauses can be inserted into plans and for plans to still be coherent.

Discussion questions

- Given it is not possible for the NPS to 'allow' a REG activity, does this change the proposed ANI definition? Would ESEG prefer to include more values in the definition (ie for certainty)? This could create more complexity but provide greater certainty of outcome.
- What section 6 values and what 'tier' of values do you consider most important to have specified in the NPS REG?
- How should they be treated through the effects management approach?

Avoidance policies

We need to determine how the NPS REG interacts with other s6 matters. We are exploring if avoidance policies (separate to an EMH) are appropriate in the NPS REG to provide for effects on certain matters (separate to the matters at s17 of the RMA).

Avoidance policies specify the activities and/or levels of effects on certain important values that are to be avoided to protect those important values. This sets a clear environmental 'bottom line' for adverse effects on any specified important value and provides certainty to decision-makers and system users. However, it means there may not always be a pathway for some REG activities to be considered in situations where a level of effects on these defined matters cannot be avoided. This means projects that might achieve positive economic and environmental outcomes (e.g., offsetting achieving net gain) may not have a pathway to consent.

The alternate approach does not apply avoid policies at the 'gateway' to the EMH. This means that all REG activities, regardless of the level of effects, can use the EMH to manage adverse effects, with decisions to follow.

Option 1	*Option 2*
Retain avoid policies where they currently exist only (NZCPS) but make them more enabling. For example, the avoid policies in NZCPS could be limited to avoiding significant adverse effects on outstanding natural character, landscapes and features, and threatened taxa. Less than significant effects could be managed using the EMH.	No avoid policies. All levels of effects can be managed through the EMH & degree of residual effects allowable.

Discussion questions

- Does an avoidance policy (set at the right level) create more certainty and reduce applicant costs than having to demonstrate effects management via the EMH? For example, is it preferable to have a clear line of effects to avoid rather demonstrating effects management at each stage of the hierarchy with a potentially uncertain outcome? Or is the flexibility of no avoid policy preferable?
- Are there particular values where an avoid policy is preferred (if set at the right level)?

Weighting test

Weighting direction can be used at the end of the EMH to ensure the wider benefits of REG are considered on a case-by-case basis. The direction is applied to decision-making under s104 of the RMA (where the positive and adverse effects of a proposal are considered) and ensures projects are only consented when these achieve net benefits. The NPS would specify REG-specific benefits that would be considered.

However, there is still a risk the weighing direction becomes highly contested through the consenting process, especially given the difficulties of weighing specific adverse environmental effects against wider benefits.

ESEG provided comments on weighting direction in March. At the time, the primary concern was that the direction is only appropriate if it provides certainty, otherwise it is another hurdle.

We are interested in your feedback on weighting direction (given the 2023 wording specifying benefits), which could be used as follows:

After application of the EMH – no further direction in NPS	After application of the EMH – direction in NPS provided
• Where significant residual adverse effects remain on highest value SEVs the proposal is avoided. • Where less than significant residual adverse effects remain (more than minor or minor) on highest value SEVs, the proposal is allowable if the benefits outweigh the adverse effects. • Where significant effects remain on lesser value SEVs, the proposal is allowable if	• Where significant residual adverse effects remain on specified highest value SEVs (TBC – but cf. Schedule 1 ANIs) the proposal is avoided. • Where significant residual adverse effects remain on specified highest value SEVs (TBC – but cf. Schedule 1 ANIs) the proposal is avoided. • Where less than significant residual adverse effects remain (more than minor

the benefits outweigh the adverse effects.	or minor) on specified highest value SEVs, the proposal is allowable if the benefits outweigh the adverse effects. • Where significant effects remain on lesser value SEVs, the proposal is allowable without weighting direction)

Discussion questions

- How workable is weighting direction in practice? Is there a better way to ensure REG activities with significant effects on significant values can be considered?
- Should direction on any benefits the project proposes beyond REG be considered? Eg, net positive benefits from offsetting, or additional biodiversity restoration above what is needed to mitigate effects.

3. ANNEX: RESPONSE TO ESEG NPS REG DRAFTING (APRIL 2024)

ESEG proposal	*Comment*
Definition of allow "Allow" means: i. In the case of a plan or policy statement, to provide for the activity as permitted or controlled, subject to development standards; ii. In the case of a notice of requirement, to confirm the requirement subject to conditions imposed, or proposed or agreed to by a requiring authority under s171(1B) of the RMA; iii. In the case of a resource consent application, to grant the resource consent, subject to conditions imposed, or proposed or agreed to by an applicant under s104(1)(ab) of the RMA	NPS can provide guidance for but cannot override section 104. An NES could help by specifying standards for permitted activities.
Definition of ANI Areas of National Importance or ANI means: i. Areas of the coastal environment with outstanding natural character as identified or mapped in any operative plan or policy statement; ii. Outstanding water bodies, that are identified or mapped in any operative plan or policy statement, and any water bodies that are included within significant natural areas under (iii) below. iii. Significant natural areas as defined in the National Policy Statement for Indigenous Biodiversity 2023 (excluding geothermal SNAs) that are identified or mapped in any operative plan or policy statement. iv. Outstanding natural features and landscapes identified or mapped in any operative plan or policy statement; v. Sites of historic heritage identified or mapped in any operative plan or policy statement; vi. Sites of significance to Māori including wāhi tapu identified or mapped in any operative plan or policy statement.	The suggestion provides greater certainty for the values specified by narrowing their application. For values identified in other instruments (eg, proposed plan), there would be no further direction or certainty. The NPS can't disapply other instruments.
Policy 1.4	We are aiming to deliver 'decision-making in one place' in NPS REG.

Planning decisions for REG activities are to be made in accordance with this National Policy Statement, instead of any other National Policy Statement prepared under the Act.	NPS can't disapply all other national direction.
Definition of enhancing/upgrading/repowering Enhance in relation to an existing REG asset means the repowering or upgrading of that asset. Upgrading in relation to existing REG assets means increasing the capacity, efficiency, security, reliability, longevity or safety of the REG assets. Repowering, in relation to existing REG assets generating electricity from wind or solar resources, means their whole or partial replacement or upgrading within an existing site to increase generation output and extend the operational life of the asset.	What does the 'enhancing' definition add that isn't already covered by repowering or upgrading?
Definition of decision maker Decision-maker means any person exercising functions or powers *in making planning decisions* under the Act	The definition has been amended to specify 'in making planning decision'. What is the rationale for this change?
Definition of existing assets Existing REG assets means REG assets that have either been established at the time a planning decision is being made, or which can lawfully be established pursuant to a resource consent, designation or other authorisation granted and which remains in force (has not lapsed), at the date of commencement of this policy statement.	The effect of the final part of the clause is to 'freeze' the lapse dates of consents etc. granted at the time of commencement. On its face, it appears to exclude the authorisations granted after the date of commencement. Is this the intent?
Implementation policies ESEG removed all clauses to be directly inserted into plans (via s.55A) and proposed an 'efficient decision-making' clause to implement the NPS.	What is trying to be achieved here? Are there problems with direct insertion we need to be aware of?