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NATIONAL POLICY STATEMENT – RENEWABLE ELECTRICITY GENERATION – KEY REQUIREMENTS

Thank you for taking the time to meet with members of the Electricity Sector Environment Group (**ESEG**) to discuss priority concerns that would need to be addressed within a reformed National Policy Statement – Renewable Electricity Generation (**NPS-REG**), in line with the Government's clearly signalled policy direction to electrify New Zealand through a new NPS-REG and fast track consenting process.

Having regard to the discussion at the meeting, and drawing on sector input to the proposed NPS-REG (2023) as well as wider RMA reform agenda to date,[1] we raise the following priorities, albeit at the necessarily high level discussed (and given the time constraints presented).

Section 6 – Matter of National Importance

First and foremost, in order to have its foundation within Part 2 of the RMA directly, the ESEG considers that the new NPS-REG should be anchored in express provision for "nationally important infrastructure" within s 6.

We note that express reference to the "*planning, design and functioning of significant infrastructure*" was recommended by the Technical Advisory Group appointed by the previous National led Government in February 2012 (in a reframed section 6 and 7), to ensure that infrastructure falls within the hierarchy of matters of national importance that need to be provided for under the Act.

[1] Exposure Draft released by the previous Government, in April this year.

This would also assist in providing direction from within the "engine room" of the legislation, to better ensure that any conflict as to operation of Part 2 can be resolved in favour of infrastructure provision, including renewable electricity generation.

Specifically, we recommend that s 6 be amended to include the following:

> … all persons exercising functions and powers under [the Act] … shall recognise and provide for the following matters of national importance:
>
> (i) Nationally important infrastructure.

The term "nationally important infrastructure" would need to be defined,[2] but ensuring that renewable electricity generation infrastructure that makes a meaningful contribution to New Zealand meeting its commitments under the Climate Change Response Act 2002 is expressly included in that definition, i.e. in order to qualify as 'nationally important'.

While this amendment would be beneficial for achieving the outcomes sought for REG, there are other matters of national importance that could also be added to s 6 to support the wider goals of climate change adaption and decarbonisation being achieved. This includes adding matters reflecting national security of electricity supply, mitigation of climate change risk and the resilience of infrastructure.

This has been a perennial problem with the RMA where s6 prioritises values that conflict with infrastructure development and operation – this balancing and placing matters on an even footing is essential. Without addressing this issue squarely, attempts to fix infrastructure consenting and planning problems using subordinate tools will be weak and ineffective.

With this point made, our remaining comments on priorities are centred on NPS content specifically.

Consent Duration

Adequate security of tenure through the consistent setting of consent duration is critical to incentivising investment and reinvestment in new REG, given the scale of capital commitments involved with such projects, the need to account for the long investment and reinvestment time horizons, and the lifetime of the assets involved.

Actual delivery of the pace and scale of investment in new REG needed to enable electrification and decarbonisation of the economy would otherwise be constrained, however enabling the NPS-REG might be in consenting terms.

The NPS-REG should direct that consent duration for new and re-consenting existing REG must be set at 35 years.

Lapsing Periods – 10 Years

Designation approval and consenting for new REG projects necessarily needs to be 'future focused' and ensure that the essential land and other resources required are secured and remain accessible, consistent with local authority planning and community expectations (particularly for the built environment) in a given region or district.

[2] For example in line with the definition of "specified critical infrastructure" as applied under the Consultation Draft of the first National Planning Framework released on 11 September 2023.

At the same time, project financing, implementation and delivery is complex and multifaceted. To just identify some of the issues that have actually impacted project viability and delivery in the last 5 years (the existing default lapse period) are: currency movements, a global pandemic, climate driven severe weather damaging roading and supporting infrastructure, geopolitical conflict, shipping constraints, labour availability constraints, etc. Unnecessary lapsing date extensions being required (which itself can be a complex and inefficient process), or consents lapsing altogether, if the default five year period under the RMA is applied to new REG projects is wasteful, inefficient and discourages effective infrastructure delivery.

Along with duration, this should also be remedied under the NPS to direct a consistent and secure approach across all new REG consenting.

Activity Status

There are many components to a REG project (both for new projects and renewals), which can trigger wide ranging consent requirements under regional and district plans. Because the most stringent activity status always prevails under the RMA, even a minor or ancillary part of an overall project can trigger non-complying activity status, making consenting of a project unnecessarily challenging and resource intensive.

The NPS-REG should ensure that for new projects, a no more stringent than discretionary activity status is applied for both the principal activity (including renewable electricity generation where appropriate and achievable) and all associated and ancillary activities (construction, distribution, connection etc).

For renewals, there should be no risk that consent will not be granted, with the process instead focused on opportunities for mitigation (offsetting or compensation) of relevant effects. A controlled activity status should therefore be applied on the same consistent basis across all activity components. In particular, it is important to protect existing generation output and flexibility during reconsenting.[3]

Again, consenting the pace and scale of REG needed to meet New Zealand's greenhouse gas emission reduction commitments will be challenging enough, assuming the existing baseline of REG assets is entirely secure. If this is at risk, meeting those commitments would almost certainly become unachievable.

An Infrastructure Pathway - Conflict Resolution

Reflecting the point made above about Part 2, we cannot overstate the importance of clear direction within the overall landscape of national direction under the RMA, as to which factors prevail in the event of conflict.

Simply put, there must be a *nationally consistent and coherent consenting pathway* across all national direction that enables new and renewed REG projects to be approved, despite any conflict with policies directed at the protection of landscape or biodiversity values and resources.

Lack of clear direction on how to resolve competing national and local interests and manage interactions across RMA Part 2 issues was identified in the Discussion Document for the NPS-REG (2023) as one of the most pervasive problems for new REG within the current system.

[3] For further details please refer to the Boston Consulting Report, The Future is Electric, October 2022 see https://web-assets.bcg.com/b3/79/19665b7f40c8ba52d5b372cf7e6c/the-future-is-electric-full-report-october-2022.pdf

As it stands, the Court of Appeal and Supreme Court and have been presented with absurd situations where even upgrades of existing (port) or electricity transmission infrastructure cannot be consented in the face of New Zealand Coastal Policy Statement protections given to outstanding natural landscapes.

For these reasons, a "one stop shop" consenting pathway for new REG must be included in the NPS. That is, the NPS should direct that where the requirements of this pathway are met (particularly as to the management of effects on landscape and natural resources) allowing the activity is deemed to meet the protective requirements of those other instruments. There is no point in the NPS-REG being enabling, if new or renewed REG projects are only to hit a brick wall under another NPS.

We can supply drafting conventions from our previous input to system reform to illustrate this point in more detail, if that would assist.

Effects Management Hierarchy

While generally supporting the intent behind an effects management hierarchy, for developments of the scale and nature required to support electrification and decarbonisation, avoidance of adverse effects is simply not possible.

Forcing such projects through a hierarchy with avoidance of effects as the first stage, therefore serves no useful purpose.[4]

Similarly, rather than 'minimising' *adverse* effects, the more meaningful response in terms of protecting and enhancing natural resources is through mitigation, remediation, and then offsetting and compensation if appropriate and achievable, to achieve an overall positive environmental outcome.

A bespoke effects management hierarchy reflecting this reality should be set under the NPS-REG, tailored to the nature of the activities and effects involved, including the type of natural resources specifically affected (by wind, solar or hydrogeneration in particular).

This type of provision would form part of the consent pathway structure addressed in the previous point.

Existing Environment – Reconsenting

There is a line of case law under the RMA whereby for consent renewals, decision makers are forced to imagine an existing environment without the existing activity including the associated infrastructure in place. This highly artificial approach to assessment puts renewals of existing REG projects at real risk of being refused. This approach also makes the assessment process more complex and resource intensive.

In line with the proposal above regarding consent status, the new NPS-REG should direct that the existing environment for the purpose of re-consenting applications, is deemed to be one with the existing REG activity including all associated infrastructure in place.

[4] As with the effects management hierarchy under the National Policy Statement on Indigenous Biodiversity where effects must be firstly avoided, and then where they cannot be avoided, minimised before turning to remediation, mitigation and offsetting etc.

Conclusion

As noted above, the ESEG has had substantial experience as a group working through the detail of drafting around recent RMA reform including under the NPS-REG (2023). Further, we note the NPS:REG is included in the 100 day plan and as such we see it as incredibly urgent matter to address.

We can, at pace, assist as required in terms of specific drafting addressing the key priorities for a new RPS identified in this letter.

Yours faithfully

For and behalf of the ESEG