Memorandum to Electrify NZ policy team, MBIE, and Urban and Infrastructure team, MfE from the Electricity Sector Environment Group re RM Reform and NPS REG.

Responses to Paper Dated 6 August 2024

Kia ora koutou

Thank you for sharing the draft paper on policy options for RMA consenting changes and reform of the NPS REG with the ESEG, and for meeting online with us on 6 August.

We have held off on providing immediate written feedback on the basis that we understood that announcements may be imminent regarding further steps in the Government's RM Reform package; ideally we wanted to calibrate the feedback to an initial consideration of any announced proposal. There has been a helpful announcement regarding amending the NPS-HPL but no wider announcements related to REG so far and we want to provide feedback that is timely, so it is summarised below.

Overall the potential reforms that were shared were disappointing. It appears that there is a disconnect between the recent messaging from Minister Bishop to our CE's, and the options now proposed. If there are significant imminent improvements proposed for REG policy, consenting and re-consenting then the tone of the comments below would be more moderate – currently that is not the case.

As frequently discussed, (and we understand agreed as the whole point of these reforms), there is an urgent need to establish a clear policy and streamlined consenting path for new REG, as well as the re-consenting and upgrading of existing REG. This is vital for New Zealand to meet its electrification needs, ensuring energy security, affordability and sustainability. Merely re-working the status quo RMA approaches and expanding the applicability of a flawed effects management hierarchy (EMH) concepts, will worsen rather than improve the existing framework.

Previously we have highlighted that reform of section 6 and 7 of the RMA is crucial and submitted specific drafting to the Minister for this in April this year. It was disappointing that there has been no news on that front and the reforms to date seem to reflect status quo or worse approaches.

As requested at our March meeting, we also provided detailed drafting and supporting rationale for what ESEG considers would deliver on the Government's ambition for REG, but again this doesn't seem to have gained any traction within the reform proposals as they stand.

We believe that there is a strong political will to rapidly advance REG development, re-consenting and re-powering. The most current political expression of that is Electrify NZ, whereas the proposals outlined in the 6 August memorandum reflect little if any advance or improvement on the draft NPS-REG 2023 consulted under the previous Government. Senior officials from time-to-time present to industry forums suggesting that they recognise the need for step-change and transformation of the RMA and consenting approaches to REG, but we don't see that step change in the latest proposals. We strongly encourage reconsideration of the current proposals so that they can be consistent with the obvious and urgent need.

Specific feedback on the concepts in the paper:

<u>Proposal: One-year consent processing time limit for renewable energy consents.</u>

- The existing timeframes specified in the RMA should already result in notified consenting that takes less than 1 year.

- RMA statutory timeframes for consent processing are already routinely exceeded; merely directing in a new RMA provision that consenting of REG should take less than 1 year would be essentially meaningless.

- Decision maker resourcing and capability, endless unnecessary information requests, risk aversion, and inevitable appeals are the root cause of delays, cost and uncertainty that has become inherent in current notified RMA process. It is this consenting culture that a directive and enabling NPS-REG can and must address, more so than a blunt timeframe (1 year consenting approach).

- The current circumstances in the electricity market underscore the challenges faced by REG developers and operators when consenting and re-consenting and the urgency for solutions to ensure reliable and affordable energy supply.

- A consent process that is a one-stop-shop and with appropriately restrained scope for additional information requests (at the applicants' risk) would assist with REG consenting and re-consenting. We were advised at the meeting that since our March meeting, the Ministers had decided on a 'one stop' approach, but again, we did not see that in was what was being proposed in the paper.

- The norm for REG consenting should be based on a fast-track approach where a public (notified) decision making process is required.

Proposal: 35-year duration consents for renewable energy activities

- This is essentially a weak attempt to re-codify status quo – it is something that the RMA currently makes possible. Against the backdrop last year, of the NBEA, this would have been better than, the plainly too short, 10 year default for consent duration.

- It was further disappointing that the draft paper focused on a range of circumstances (review and shorter durations) primarily aimed at reducing the certainty of the proposal. It seems clear that certainty of consent duration can be prescribed through legislation (eg as has been introduced for marine farming). We believe that an approach giving consent duration certainty for REG must be possible, given its significance for both environment and economy.

Proposal: 10-year lapse periods for renewable energy consents

- This is a further weak attempt to re-codify status quo – 10 year lapse periods are something that the RMA currently can deliver.

- While a default lapse of 10 years would be of some assistance, it would not deliver the consenting certainty required, at least without clear direction under the NPS that the default must be consistently applied, and better definition of what is meant by 'substantial progress" as discussed at our meeting.

NPS REG

- The proposed approach to the review of the NPS REG would result in an NPS which is worse (less enabling of REG) than the current NPS REG, which is recognised as being ineffective.

- A wholly new concept is proposed being areas requiring protection from REG - significant environmental values (SEV's). SEV's, as well as including SNA's, would also include cultural, heritage, landscape and natural character values.

- The very widely defined SEV's invoke a mandatory application of the effects management hierarchy (EMH) to the SEV. This creates new and increased uncertainty and insurmountable hurdles to REG consenting.

    - This consenting risk is worsened if SEV's can be argued to exist when a proposal is being consented i.e. irrespective of a relevant plan and during the consent process. Effectively meaning for an REG application the consenting pathway and assessment requirements would not be clear until the end of the process; after a decision maker has heard the evidence about the application

and surrounding site, and all the pre lodgement investment in that application could be undermined or wasted.

- The EMH has a targeted and limited applicability to specific aspects of ecology (wetlands and potentially indigenous biodiversity); rather than areas of landscape, natural character, heritage and cultural value. Even in relation to wetlands and biodiversity, the EMH (eg as under the NPS-FM or NPS-IB) is controversial, results in considerable expert debate, is expensive and a significant hurdle to approval of REG.

- Presumably the challenges of applying the EMH (or at least in part) is why the NPS-IB doesn't apply to REG; enabling the new NPS-REG to set a more suitable activity specific approach. The ESEG's proposed framework approach was intended to address these concerns and provide the requisite degree of certainty that REG would be allowed (per *Electrify NZ*) but appears to have been ignored or misunderstood.

- It appears to us that there is fundamental difference in opinion and logic regarding what an NPS can and cannot do (i.e. relative to other national direction and in a s 104 context). We believe that it is essential to try and resolve that fundamental difference, if the ESEG's lead legal advisor could discuss this with the legal advisor for the agencies undertaking this policy work. We otherwise appear to be at cross purposes.

    - We propose a meeting be urgently arranged to try and make progress on what appears to be a crucial difference in understandings and expectations.