OUT OF SCOPE

**From:** Sarah Holdem
**Sent:** Monday, 5 February 2024 9:54 am
**To:** Humphrey Tapper; Ashleigh.Richards@mfe.govt.nz; Joanne Dowd; Emma Robertson; Daniel Brown; Hamish Cuthbert; 'Alice Lin'; 'Karen Sky'; Chris Drayton; Shirley Chamberlin; Nicola Foran; Stephanie Gard'ner; Michael.Tucker@mfe.govt.nz; Matt.Spiro@mfe.govt.nz; Tayla Sumner; 9(2)(a) ; Martin Williams
**Subject:** RE: NPS REG/ET re: Meeting 24 January 2024 and email 26 January 2024 [CLASSIFI RELEASE-EXTERNAL]

Dear Humphrey and ESEG group members,

Thank you for your comprehensive response. We will read and digest and come back to you for clarification or further views if that is needed.

Thanks
Sarah

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**From:** Humphrey Tapper <Humphrey.Tapper@MeridianEnergy.co.nz>
**Sent:** February 2, 2024 5:14 PM
**To:** Ashleigh.Richards@mfe.govt.nz; Joanne Dowd <Joanne.Dowd@mbie.govt.nz>; Emma Robertson <Emma.Robertson@mbie.govt.nz>; Daniel Brown <Daniel.Brown@mbie.govt.nz>; Sarah Holdem <Sarah.Holdem@mbie.govt.nz>; Hamish Cuthbert <hamish.cuthbert@meridianenergy.co.nz>; 'Alice Lin' <Alice.Lin@genesisenergy.co.nz>; 'Karen Sky' <Karen.Sky@genesisenergy.co.nz>; Chris Drayton <Chris.Drayton@contactenergy.co.nz>; Shirley Chamberlin <Shirley.Chamberlin@mercury.co.nz>; Nicola Foran <Nicola.Foran@manawaenergy.co.nz>; Stephanie Gard'ner <Stephanie.Gard'ner@mfe.govt.nz>; Michael.Tucker@mfe.govt.nz; Matt.Spiro@mfe.govt.nz; Tayla Sumner <Tayla.Sumner@mbie.govt.nz>; 9(2)(a) <9(2)(a) @transpower.co.nz>; Martin Williams <martin@shakespearechambers.co.nz>
**Subject:** NPS REG/ET re: Meeting 24 January 2024 and email 26 January 2024

Dear Sarah and all

Responding to your email last Friday below, we **attach**:

- A suggested drafting (and supporting rationale) for the type of "one stop shop" effects management hierarchy (EMH) provision discussed at our Teams meeting last week.

- Proposals for specific drafting of what the Group considers to be the type of directive and enabling national direction essential to deliver on the Electrify NZ objectives, providing a framework to complement the proposed EMH clause (which would form part of the implementation section). We consider this wording includes, substantively, all of the key elements of the objective and policy framework as we submitted last year, but in a more concise (less repetitive) way.

We note this is a "both and" situation. That is, the Group considers that both a strongly directive and enabling policy direction would be required to prevail over (or at least match/counter) the content of other national direction (along with local authority policy statements and plans which give effect to that other national direction) for general purposes of application under s 104/171 etc, and the specific code as to how decision makers should reconcile or resolve conflict when confronted with REG activities in areas with significant environmental values, in particular.

Taken together the instrument would then be sufficiently armed or equipped to deliver on the Government's Electrify NZ ambition to "turbo charge" new renewable power projects (within nationally consistent rules).

In that regard, you will see that we have proposed an EMH which does have a 'bottom line' or avoidance test (of no more than minor adverse effects being allowed) for specific natural resources and values as set out in Schedule One to the EMH document (particularly where located within the coastal environment, i.e. not just the coastal marine area).

To clarify your point 2 below however, you will also see from our drafting that under clause 1.4, all national direction would still need be considered and applied as a general proposition. This was as submitted and explained after discussion with you and your team last July. Within that, the EMH we propose would operate at the specific level of conflict (where that would otherwise arise) under this general approach, i.e. as the "one stop" for areas with significant environmental values. In other areas, Policy 4 (as proposed here) would simply direct approval be granted where adverse effects are remedied or mitigated to the extent practicable.

Please note that the EMH drafting is now much more nuanced (or targeted) than our "deeming clause" put up last year within clause 3.6. Clause 4 of the EMH document would not say (as proposed last year) that decisions under the clause would be " deemed to meet" all other national direction. Simply that a qualifying activity (under clause 3) must be approved despite that direction.

We reiterate the point noted in your email that in the absence of the drafting we propose (particularly suggested clauses 4 and 5 of the EMH wording), the EMH would not add value but instead simply compound the existing degree of clutter across the national direction landscape (and broader local planning framework) as a whole.

We have not proposed wording for what you describe as a "more fundamental rethink" of the NPS-REG.

As explained above we are clearly and firmly of the view that there must be both the directive and enabling policy framework as proposed in the attached NPS policy drafting , and the EMH clause (operating in the one stop shop way proposed).

Finally, you will note that we have not attempted to drill down into the implementation section of the NPS 2024, which we assume would be populated once the policy framework is settled and determined (at least for consultation purposes).

Our proposed EMH would "live" within that section (and is derived from current implementation clause 3.6). We have also retained our previously proposed clause 3.10 regarding efficient and effective consenting and decision-making processes (addressing issues of activity status, lapsing date, duration etc).

There is one further point we wish to raise as highlighted in the 1 December letter to Bruce Parkes also attached, regarding the existing environment. While we haven't proposed specific drafting for this in the NPS wording, this is a very significant issue to the group and does need to be resolved . We recommend that you seek advice as to how this concern can be addressed either by way of specific policy wording in the NPS, or through a potential "corrective" amendment to the RMA itself as to the definition of environment (perhaps) . Our EMH clause drafting reflects this concern (as explained in the rationale, ie in confining the functional and operational need test and residual effects test to new REG) but the point is a much broader one than can be resolved simply in that way .

We would also note that the attached drafting has necessarily been prepared at pace. There are some complex issues in here including as to the scope and coverage of the EMH clause (what falls within an area within significant environmental values). We would wish to reflect on that (and related issues/detailed drafting) further and provide further input as the NPS engagement process progresses.

In the meantime we hope that you will find this input helpful to your cause of delivering a draft NPS-REG 2024 within your stringent timeframes.

We are very grateful for the opportunity to discuss this initiative with you and provide the attached input.

Equally we are happy to discuss that input with you and your team further at this stage if that would assist.

From the ESEG members.

Ngā mihi

**Humphrey Tapper** (he/him) **– Associate General Counsel - RMA**
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