FEEDBACK TEMPLATE (Please save separately and save a PDF version for filing)

Area of interest: Renewable Electricity Generation – National direction and consenting policy proposals
Stakeholder group: Electricity Sector Environment Group (ESEG)
Meeting dates: 26 September and 1 October 2024

Note that agendas to both meetings follow the notes

Document reference (use document name if none)	Engagement Sessions with ESEG on REG, ET and consenting policy proposals
Stakeholders present	**26 September** – Kristina Healy (Mercury), Karen Sky (Genesis), Lisa Mead (Manawa), Hamish Cuthbert (Meridian), Chris Drayton (Contact), Shirley Chamberlin (Mercury), Caleb Sjardin (TBC), Alice Barnett (Genesis), Grace Burtin (Manawa), Martin Williams (counsel), Humphrey Tapper (Meridian) **1 October 2025** - Martin Williams (counsel), Alice Barnett (Genesis Energy), Karen Sky (Genesis Energy), Chris Drayton (Contact), Shirley Chamberlin (Mercury), Grace Burtin (Manawa Energy), Humphrey Tapper (Meridian), Brett Woods (Contact), Tanya Perrot (Te Waihanga)
Who led the meeting (agency and person)	MBIE – Daniel Brown MfE – Michael Tucker (& Liz Moncrieff for 26 September)
Name of note taker	Matt Spiro
Engagement Lead name (agency and name)	MBIE – Daniel Brown MfE – Michael Tucker
Policy Leads	MBIE – Tayla Sumner MfE – David Chittenden and Matt Spiro
Summary notes of discussion (both meetings)	*Introduction – Government RM Reform Programme* Liz Moncrieff outlined the Government's approach to Fast Track, RMA Bill 1 changes, Phase 2 Bill 2 and ND programme *Introduction – NPS REG* Dan Brown noted key points from the attached ESEG memorandum (22 August): • We support the recognition that a fundamental level of change is required to boost our economy and reduce emissions and - enabling REG and infrastructure as part of the RM reform programme is essential to achieve this. • The resolution of actual and perceived conflict between RM national direction instruments must be achieved through this unprecedented, ambitious national direction review. • The approach and proposed scope of new terms, such as Significant Environment Values (SEVs) run the risk of creating new, additional and expanded consenting hurdles. • The application of the operational and functional need test is problematic and an expanded consenting hurdle. • The effects management hierarchy cannot be applied to all environmental values, rather a framework (not hierarchy) should only apply to biodiversity and wetland values. *Addressing policy tensions across ND – Bespoke EMH and SEVs* ESEG • Keen to understand how the proposals will address conflicts across ND. • Noted areas where there is no 'gap' (i.e. pathway) for consenting • ESEG want to ensure REG avoid getting through NPS-REG and being 'tripped up' by other ND. • This process is an opportunity to make changes across arrange of instruments, so that the NPS-REG can act as a code.

MfE/MBIE

- Explanation of aligned NPS amendment process - reciprocal amendments in other instruments.
- Mechanics yet to be determined (i.e. whether to both instruments or just the 'carved-out' instrument would need to be amended).
- Access to 'consenting pathway' for key interactions across ND
- Effects Management Hierarchy/Approach for Significant Environmental Values only – provides direction for the most challenging interactions, leaves other less frequent/onerous interactions to other ND / local instruments, and NPS to provide a more enabling 'general' pathway for other values.
- Noted that this was not something we were in a position to discuss at earlier meeting (April).
- Also noted that the recommendations going to Ministers in this briefing are for the discussion document – so there will be further opportunities for targeted engagement with ESEG as well as a public process in early 2025

ESEG

- Significantly increased level of comfort with that approach (*not their exact words*).
- Acknowledged that draft policy was subject to confidentiality until public announcements from Minister.

Allowed vs Allowable – what are the limits of an NPS?

ESEG

- Initially concerned that the NPS should act as a code for REG activities
- Note differing view on the legal scope of an NPS in terms power to direct decision-makers as to outcome (i.e. whether NPS can direct that consent must be granted)
- Considered that amendments to s45A would ensure that this could be the case
- However – much less concerned given new understanding of policy intent
- Reserve legal position in the meantime

MfE/MBIE

- Acknowledged ESEG position and new perspective on NPS-REG interactions with other ND
- Noted that options to amend s45A etc. could potentially progress through Phase 3 of RM Reform (but not Phase 2)
- [Note joint legal advice to be provided to Ministers with briefings]

Defining SEVs through spatial identification and planning instruments

ESEG

- Concern that if an SEV might be identified through the resource consent process (up to and during hearing process) it would lead to delays and additional costs
- Preference for identification via operative plans to provide greatest certainty
- Councils should have their information available

MfE/MBIE

- Note that an SEV doesn't 'occur' – it must meet the definition in the NPS-REG
- No intention to include information on values obtained via resource consent process, but note that 'values' can always be identified through the applicant's Assessment of Environmental Effects process and/or submissions (in accordance with the statutory framework)
- Preferred approach is to include notified plans – as notified plan process would include engagement with both REG providers and community / iwi, would be informed by better information, and could benefit REG providers by identify appropriate areas for development
- ESEG subsequently comfortable with inclusion of notified (as well as operative) plans to be covered by SEV definition

Gateway test vs alternatives

ESEG

- comfortable with functional or operational need as gateway test but concerned that there have been Environment Court decisions where the test has been used as a proxy for consideration of alternatives. This would be a problem if it prevented access to the consent pathway

MfE/MBIE

	• happy to adopt the approach that explicitly excludes consideration of alternatives as part of this test (could insert criteria as restricted matters for decision-makers to consider) *Residual effects – direction to decisions-makers* MfE/MBIE • Residual effects test remains as part of package to direct decision-makers • Different structure to EMHs in other ND, but that isn't adding complexity because all REG activities will flow through the NPS-REG EMH and not any other EMH • Same approach as for ET and Infrastructure ESEG • Comfortable with that approach given reciprocal arrangements (carve-outs) from other ND – no other policy obstacles e.g. 'avoid' policies to navigate *Weighting tests* • ESEG view that the weighting test adds complexity and uncertainty as it is another point that experts could contest – better to address the benefits and effects earlier in the assessment process than as a final decision-making step • MfE / MBIE agree to remove weighting test for consideration of direction to decision makers on residual effects *Offsetting and compensation* ESEG • Key concern is that there is a change in direction (via RM practice) toward a net gain approach • Prefer that offsetting and compensation requirements in the EMH are only applied to biodiversity / wetlands (and not other values eg, landscapes) • Recommend NPS-REG specific guidance • Comfortable with proposed amendments that offsetting and compensation are applied 'where practicable' and 'where practicable and appropriate'. MfE/MBIE • Note that the intent is to only apply offsetting and compensation (via the EMH) where the NPS-REG 'carves out' policies from other ND that includes those principles • NZCPS (Policy 11), NPSIB (Policies 3.10, 3.11, 3.15), NPSFM 3.22, 3.24) *Existing environment* ESEG • Concern with High Court decision (*Ngati Rangi*) that did not appear to adequately recognise an existing REG asset as part of the existing environment • This approach deters investment by decreasing certainty, especially in the case of hydroelectricity MfE/MBIE • Acknowledge the concern but note that consideration of the existing environment is a broader issue that would require legislative change and is more appropriately addressed through Phase 3 reforms (rather than an individual NPS) • Suggest including in proposed amendments consideration of existing REG assets (as well as activities) in relevant NPS-REG policy *Implementation clauses (direct insertion vs Schedule 1 plan changes)* ESEG • Concern with Environment Court decision (*Gibbston Vines*) that did not afford sufficient weight to NPS clauses that had not yet been incorporated into local plans (via direct insertion) • Otherwise prefer direct insertion MfE/MBIE • Have looked at the legal case and are considering its impact across the ND programme – At this stage agree to include all the relevant aspects in both policies and implementation clauses to avoid doubt – actual drafting will come later

Comments	
Key Messages	•

AGENDA – 26 September

Topic	Who
Introductions, confirm agenda	All
Update on Government direction: - Section 6/Part 2 - Bill 2 policy – consenting - Other ND changes - Phase 3	MfE/MBIE
NPS REG Intent	MfE/MBIE
ESEG NPS REG drafting – issues to discuss - Code / one stop shop - ANIs vs SEV and what values are captured - EMF vs EMH - First step of EMF: avoid where practicable, functional or operational need - Identifying and mapping values vs in a consent process - Use of offsetting and compensation - Putting EMF in NPS policies vs implementation clause - Residual effects and weighing benefits test - Existing environment	All to discuss
Any other points on what an NPS can and cannot do [although this might come up in the above]	All to discuss
Next steps	MfE/MBIE

Agenda 1 October

Topic	Who
ESEG NPS REG drafting – issues to discuss that were not covered last week - Use of offsetting and compensation - Putting EMF in NPS policies vs implementation clause - Treatment of "existing environment"	All to discuss
Follow up from issues covered last week - Conflict resolution – allowed v allowable. An NPS-REG as a code v edits and qualifications to numerous other NPS's in existence now and the future. s45A amendment - SEV v ANI – identified in operative plans v notified plans v at any time during consenting - Functional and operation need - not directing an alternatives assessment - After applying an EMF – the test for residual effects	All to discuss