Effects Management Hierarchy Text / Clause (derived from 3.6 NPS REG 2023)	Rationale
1. Allow REG activities in areas with significant environmental values where: (a) For new REG assets and activities there is an operational need or functional need for the REG assets and activities to be located in that area; or (b) For REG activities involving existing REG assets, the REG activity involves the continued operation, or the maintenance, upgrading or repowering of that asset; and (c) The effects management hierarchy is applied.	• Based on 3.6(1) of NPS REG 2023; note broad scope (at 'point of entry') i.e. covers all "*areas with significant value*" (as defined in NPS REG 2023, but with the definition amended as then proposed by ESEG[1]) and equally covers all relevant matters of national importance falling within s 6 of RMA, other than cultural heritage. As with the NPS-REG 2023, a bespoke approach to Māori interests is considered appropriate, acknowledging the special place of Māori under RMA, and reflecting established best practice of direct engagement. . • The *functional and operational need test* would only apply to new assets/activities; it is not considered helpful/appropriate for existing REG (location is settled by previous investment/development, again as submitted by ESEG on the 2023 proposal). • Alongside functional and operational need, this clause otherwise applies the same "gateway" filters to qualify for access to the provision as under clause 3.11 NPSIB/3.22 of NPSFM (i.e. *significant national/regional benefits* would be inherent to REG under the operative policies, and applies to REG as a form of "*specified infrastructure*").
2. The effects management hierarchy is as follows: (a) Subject to (b); (i) Adverse effects are mitigated where practicable. (ii) Where adverse effects are not mitigated, they are remedied where practicable. (iii) Where more than minor residual adverse effects are not mitigated or remedied, offsetting is provided where possible. (iv) Where more than minor residual adverse effects are not offset, compensation is provided where appropriate.	• Commences with mitigation rather than "avoid" or "minimise", reflecting options available under s 5(2)(c) (avoid, remedy or mitigate); that said an 'avoidance' test is applied at the end of the sequence (see (b) below). • Functional/operational need test will also serve to filter out effects which can be 'avoided', by only allowing entry for *ipso facto* unavoidable effects (locationally; through REG dependency on renewable resource location/quality and connections to grid/market), i.e. effects which are able to be avoided where location is more flexible, will be so avoided through application of this test. • Residual effects test (under 3.6 NPS REG 2023) moved to be part of EMH itself -see (b) below. Comprises an 'avoidance' test, and proposed to be set

[1] The one change made being that ONC only are covered in the definition as now advanced, HNC have been deleted in this drafting version to match the Schedule One resources discussed below.

	at same effects threshold as (iii) (after mitigation/remediation) – i.e. "more than minor" rather than the "minor or transitory" threshold in *King Salmon,* or "significant" as under NPS REG 2023. • On the other hand, the threshold applies only to specific resources of greatest environmental value (as noted further below). • Acknowledges place of mitigation/remediation as techniques to avoid material harm (*Port Otago* at [66] to [68]).
(b) For new REG activities, any more than minor residual adverse effect on the resource values identified in Schedule One must be avoided.	• Places 'avoidance' at end of hierarchy where adds greater 'value', ie as bottom-line threshold for areas of <u>most</u> environmental value. • This test is necessarily confined to new activities (as under ESEG drafting input to NPS REG 2023, clause 3.6)- existing activities will inevitably have impacts on the environment, including resources of significant value, that would fail this threshold (particularly when assessed against the zero-baseline approach which has emerged under RMA case law). As discussed at the meeting, reconsenting existing generation capacity is as important to meeting the nationally prescribed emission reduction targets, as for all the new generation required. • The avoidance test is sheeted to specific resources and values; rather than generic "significant adverse effects" threshold in NPS-REG 2023 (which would be highly contestable, and essentially just add an additional test to RMA for all areas of significant value (Option 2A) or SNAs (Option 2B)). • Conversely, the test is more stringent otherwise ("more than minor", c/f "significant") and matching the test in item (iii) after mitigation/remediation (as noted above).
3. Where each step of the effects mitigation hierarchy under clause (2) has been applied; the REG activity must be allowed if the national significance and benefits of the activity outweigh the residual effects.	• Drafted in this way, the clause provides consenting certainty ("must be allowed" reflecting Electrify NZ, "*near automatic provided national rules are met*").

	• Does not duplicate or compound existing RMA tests under eg s 104 of RMA; provides 'one stop shop' approval for REG specifically. Conversely where clause 3 is not met; assessment *would* default back to s 104.
4. Clause 3 applies despite any contrary provision of any other national direction, regional policy statement, or plan. 5. For the avoidance of doubt, any effects management hierarchy under any other national direction, regional policy statement or plan must not be applied to an REG activity.	• Rather than displacing NPSFM/NZCPS altogether; or "deeming" that this national direction is met as a whole (as under previous ESEG proposal in 2023), instead: – Authorises (requires) approval only where the EMH is applied to qualifying activities (REG with functional operational need, minor residual effects after offsetting/compensation). – Displaces (under clause 5) tests already available under NPSIB/NPSFM for eg <u>all</u> SNAs/natural inland wetlands/loss of rivers (3.11 NPSIB, 3.22/3.24 NPSFM); *and regardless of level of residual impact*. Arguably, this bespoke EMH for REG is more stringent than those other EMH 'exceptions', given the threshold test proposed above, but the provision is then more directive as to what results i.e. "must be allowed". Again, this serves the certainty objective. – Beyond that, the wording has "bottom lines" per Schedule One for resources of greatest environmental value.
<u>Schedule One</u> 1. Any taxa, habitat, ecosystem or area covered by Policy 11(a) of the New Zealand Coastal Policy Statement 2010, and located in the coastal environment. 2. Any area of outstanding natural character in the coastal environment.	• 1. Essentially preserves Policy 11(a) of NZCPS (given no more than minor residual impact allowed under 2 (b) above). • Biodiversity values outside the coastal environment (beyond ambit of NZCPS) will be addressed through the NPSIB review (coalition agreement with New Zealand First), as might ultimately inform content of this schedule • 5. also essentially preserves Policy 13(1)(c) of NZCPS for ONCs; ONLs by contrast are extensive and arguably of less environmental value than ONC (which have high abiotic/biotic value weighting), and warrant less absolute protection than areas of biodiversity value under s 6 of RMA (see *Port Otago* at [28]).