MINUTES
Electricity Sector Environmental Group – NPS REG

Date	Tuesday, 26 November 2024, 1.30 pm – 4.00 pm	
ESEG attendees	Alice Barnett Hamish Cuthbert Kristina Healy	Martin Williams Shirley Chamberlin
MBIE / MfE attendees	Daniel Brown David Chittenden Emma Robertson Jerome Wyeth	Matt Spiro Tamara Polglase Tayla Sumner
Apologies	Chris Drayton Grace Burtin Humphrey Tapper	Karen Sky Lisa Mead Michael Tucker

1. Definition of 'specified environmental values' (SEVs)

ESEG were satisfied the SEV definition did not include historic heritage and cultural values.

ESEG raised concerns about 'identified extent and values of rivers' and the issues that could arise during the consenting process. The definition of 'identified extent and values of rivers' refers to the National Objectives Framework, which is broad and doesn't identify the extent of rivers. ESEG queried whether it was the correct reference and if 'waterbodies' is more appropriate.

Officials explained the basis for the reference is section 6 (s.6) matters or values which are protected by strong 'avoid' policies or restrictive effects management hierarchies (EMHs) in other national direction. 'Identified extent and values of rivers' is the terminology used in the NPS-FM (3.24). The intent of cross-referencing the NPS-FM is to ensure alignment and to disapply and replace the NPS-FM EMH. Any changes to the NPS-FM will need to be checked for alignment.

We discussed the implications of identified/mapped vs unidentified/unmapped values. ESEG noted that requiring SEVs to be identified or mapped creates certainty for REG developers – they are clear on the effects they need to manage and can plan accordingly. ESEG also noted that SEVs are not always identified in the AEE (unless identified in the plans), and it is not uncommon for them to be identified during the process e.g., natural inland wetlands. Without this caveat, values that emerge during the consenting process can hijack the project and proposed strategies for mitigation etc.

ESEG suggested that SEVs identified during the consenting process could be addressed using policy 7(3) (i.e., effects are avoided, remedied and mitigated where practicable). This will ensure all values have a pathway. Officials will need to consider whether it is consistent with the Act to treat the same s.6 values differently (in terms of protection). Officials intend to consult on the implications of including or excluding these s.6 values based on the variations of definitions.

2. Operational and functional need

ESEG agreed the NPS-REG should contain an operational and functional needs test but were unsure if the proposed drafting met the policy intent. ESEG were concerned the tests will be interpreted to require burden of proof and REG would only be provided for where operational/functional need have

been proven. This could lead to increased litigation. ESEG reiterated the importance of ensuring the language is helpful/not weaponised and suggested the following changes:

- Policy 3(1): remove reference to “and provide for” and redrafting the clause to read “decision-makers must recognise that REG has an operational need or functional need to be in particular environments…”.
- Policy 7: remove reference to “demonstrate”.

Officials explained that ‘recognise and provide for’ is stronger NPS language, and that we need to be clear on the policy intent as the legal drafting of the words would likely change.

3. Effects management hierarchy

ESEG queried the treatment of new vs existing REG and noted there is little nuance for how the effects of new vs existing REG will be managed. Officials clarified that when policy 7 is read alongside policy 9, the intent is that, for existing REG, only additional or different effects are considered through the effects management hierarchy. If there is no change in effects, there should be no issue, unless the environment has changed significantly. The drafting should strengthen the link between these two policies.

ESEG reiterated their proposed legislative change would resolve the existing environment issue.

ESEG suggested supportive clauses on what is ‘practicable’ and how it is different from what is ‘possible’. A definition would be too blunt, but an explanation or guidance would be useful. It could be helpful to outline what ‘where practicable’ doesn’t include.

4. Offsetting and compensation principles

ESEG reiterated their concerns about applying the offsetting and compensation principles to the NPS-REG as currently drafted in NPS-Indigenous Biodiversity. The hierarchical nature of the EMH, the mandatory nature and the appropriateness of the criteria of what is considered for offsetting and compensation is onerous – particularly the no net loss/net gain.

Officials queried what were the most problematic principles that would need to be amended to achieve the intended outcomes.

ESEG suggested a future workshop, which could include ecologists, on the offsetting and compensation principles to ensure they are fit-for-purpose for REG.

Officials mentioned the need to be clear about the problem so it can be addressed while keeping policies as consistent as possible across the system. This could mean addressing the operation of the EMH as intended rather than changing the principles given the other proposed changes to the EMH.

5. Directiveness of the NPS

ESEG emphasized the importance of clear, sharp and directive language. The NPS-REG needs to match the directive language used in other national direction. ESEG suggested refining the objective and reviewing their drafting of policies 1, 8,9 and 10 for examples of directive wording.

6. Other points raised by ESEG

- There is a gap in the objective – policy 9(1) does not hang off the objective.
- The carve out in NPS-REG needs to be clear about what policies in other national direction continue to apply (e.g., for REG outside of areas with specified environmental values).
- Proposed amendments to other national direction are also important.

7. Next steps

Officials agreed to include content in the discussion document that reflect ESEG's perspective and would benefit from public consultation.