ESEG POSITION PAPER

NATIONAL POLICY STATEMENT FOR RENEWABLE ELECTRICITY GENERATION - WHAT IT MUST DELIVER

Introduction

1. This Position Paper is submitted by New Zealand's principal electricity generators.[1]

2. It has been prepared following extensive engagement with Ministry for the Environment officials ahead of the proposed new National Policy Statement for Renewable Electricity Generation (**NPS-REG (2025)**). ESEG understands that the NPS-REG 2025 will soon be notified for formal consultation under the RMA, as part of the broader national direction review.

3. Appended to this position paper is a draft NPS-REG (2025) that ESEG considers will deliver the goals of the overall reform concerning Renewable Electricity Generation (**REG). ESEG strongly requests that this version of the NPS be included in the formal consultation process,** either as the preferred option, or at least an alternative.

4. The reasons for change include that New Zealand must have a secure, affordable, and sustainable electricity system with reduced emissions to support a growing electrified economy, while ensuring environmental limits are not compromised. Supreme Court decisions require REG policy statements to align with national protection policies. REG policy therefore must directive to achieve urgent development, and maintain and protect existing REG at the highest planning level. Consenting pathways for REG development should focus on managing significant adverse effects and applying a practical approach to residual effects.

The Case for Change

5. Bold and ambitious national policy direction enabling REG to be consented urgently and at the necessary scale for New Zealand to meet its electrification and emission reduction targets is long overdue.

6. *Electrify NZ* committed to "cut red tape" to double renewable electricity, ensuring affordable clean energy, and achieving New Zealand's climate change goals. *Electrify NZ* records the Government's plan to "turbo charge" REG projects and "unleash" investment in transmission infrastructure.

7. ESEG strongly supports that ambition. This is an imperative for New Zealand's economic growth.

[1] Meridian Energy, Mercury NZ, Contact Energy, Manawa Energy and Genesis Energy, together with the New Zealand Wind Energy Association collectively referred to as the Electricity Sector Environment Group (**ESEG**).

8. In 2022, Concept Consulting prepared a report for ESEG advising that New Zealand will need to develop REG at an unprecedented rate to meet its decarbonisation objectives, requiring 1,250 GWh/y of new REG every year until 2050; being over three times that commissioned annually in the 30-year period from 1990 to 2020. To put that into perspective, this is the equivalent of building one *West Wind* scale generation project (New Zealand's second largest windfarm) every five months.

9. Critically, this direction assumes that all existing generation capacity will be retained, i.e. that the operating capabilities of existing renewable power stations will not be reduced when their consents are renewed. If that does not eventuate, the scale of the challenge would be even greater, and likely insurmountable.

10. ESEG's members are currently committed to an unprecedented pace and scale of capital investment in REG projects. with delivered Over the past 24 months, they have delivered 3.1 TWh of new generation capacity, with an additional 2.2 TWh currently under construction.

11. The consenting process for these projects was generally fraught, being loaded with excessive risk, uncertainty, cost and delay. REG projects can take years to consent and even if approved may have unworkable consent conditions, or conditions that are so complex the consents take years to implement before generation can begin.

12. REG projects frequently need to be revised with changes to consent conditions approved through a yet further complex RMA process, in order to apply more up to date and efficient technology and componentry to ensure the project remains competitive in the electricity market.

13. The consenting risk and cost have increased due to recent Supreme Court rulings, which favour stronger and more directive 'bottom line' requirements of other national policy statements[2]. The NPS-REG (2011) is not sufficiently directive to compete in any consenting contest of conflicting policy priorities.

14. The reality is that REG projects, even when well sited and designed will have unavoidable adverse effects at the scale needed to meet New Zealand's electrification goals. A strict "bottom line" approach to adverse effects as seen in the *King Salmon* line of cases can be fatal to the consenting of major REG projects and would potentially defeat the transition to renewable energy and electrification.

15. Although its scope has been reduced, the ongoing comprehensive review of national direction offers a unique opportunity to address this fundamental defect in New Zealand's current resource management system concerning REG.

[2] The New Zealand Coastal Policy Statement (**NZCPS**) and National Policy Statement – Freshwater Management (**NPS-FM**) in particular. While not currently applicable to REG, the National Policy Statement- Indigenous Biodiversity (**NPS-IB**) has this 'bottom line' characteristic as well.

16. This opportunity is **crucial**. Climate change presents an existential threat to New Zealand's society, economy and natural environment including biodiversity. Urgent and significant development of REG activities is essential to reduce greenhouse gas emissions and mitigate these adverse consequences.

17. Considering these core concerns in mind, ESEG submits that the proposed NPS-REG 2025, along with other national directions being produced, replaced or amended in this phase of the RMA reform programme, must:

    (a) Direct the approval of new REG to significantly increase REG capacity and the supply of affordable clean energy, as a nationally significant matter of priority and urgency, at the objective and policy level.

    (b) Maintain, secure, protect, repower, upgrade and enhance existing REG capacity as a "rock solid" platform for the pace of additional generation capacity to meet electrification and energy targets.

    (c) Set a comprehensive one stop shop 'consenting pathway' for managing adverse effects on significant environmental resources, that fully resolves conflict with competing policies at national and local levels.

    (d) Recognise the nationally significant benefits of REG for both climate change adaptation and mitigation, and give priority over local adverse effects.

    (e) Direct process efficiency for REG consenting at the pace required to meet energy and emission reduction targets, addressing consent status, information requirements and consent processing timeframes.

    (f) The Effects Management Hierarchy (EMH) is often ineffective for many values, including, outstanding natural landscapes,

    (g) Attaining nil effects from REG is unachievable, and there will always be some residual adverse effects

18. To underscore point (c) above, the consenting pathway must ensure that new, expanded or renewed REG projects are not only consentable, but actually consented.

19. REG projects should only have to run the "RMA gauntlet" of effects management once.

20. There is no need for an REG project to be evaluated across all other national direction and lower order plan provisions as well as the NPS-REG (2025), particularly where this other direction may conflict with the NPS-REG directed approach.

21. There is also no point in enabling an REG project under one NPS (as with the proposed NPS-REG (2025)) only for that project to hit an effective brick wall under another NPS, or lower order plans giving effect to it.

22. These concerns are mission critical. The reforms will fail to deliver on *Electrify NZ*, and New Zealand will fail to decarbonise, if the overall issue of "conflict management" across and between national direction is not **resolved now**. This point is addressed in more detail in the following section of this Position Paper.

The Core Concern: Operation of the NPS-REG within Section 104

23. A trifecta of Supreme Court decisions has determined that apart from situations which are "truly exceptional", infrastructure projects with material adverse effects cannot be approved in the face of highly directive "avoidance" or "bottom line" policies (e.g. as currently set under the NZCPS).[3]

24. Furthermore, that in cases of conflict between competing objectives and policies, the most directive provisions will prevail and must be given greater weight (*King Salmon/ Port Otago*).

25. The overall impact of these Supreme Court decisions is that a consent authority's discretion under s 104 of the RMA is now very significantly constrained by the wording of a range of national policy direction currently in force under the RMA, i.e. prior to these reforms.

26. Whatever positive benefits an infrastructure project might have, if the project offends a single "bottom line" avoidance policy in one of these national policy statements, it will very likely not be able to "thread the needle" for RMA consenting,[4] and nothing in Part 2 of the Act can dictate otherwise.[5]

27. From the engagement process, ESEG is aware that some Ministry officials believe a national policy statement cannot "bypass" s 104 of the RMA, for example by dictating that consent for REG projects must be allowed, even in certain situations. Similarly, that one national policy statement cannot "act on", "override" or "disapply" other national direction.

28. ESEG strongly disagrees, because that is exactly what existing national direction does.

29. It is clear from *King Salmon*, *Port Otago* and *Forest & Bird* that even a single protective policy in just one national policy statement (i.e. the NZCPS) can all but displace operation of s 104 of the RMA, dictating that consent must be refused, despite s 104 on its face requiring the consent authority to otherwise have *regard to*:

[3] *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (***King Salmon***), *Port Otago Limited v Environmental Defence Society* [2023] 1 NZLR 205 (***Port Otago***), and *Royal Forest & Bird Protection Society v New Zealand Transport Agency* [2024] NZSC 26 (***Forest & Bird***). See *Forest & Bird* at [105]-[129] in particular.
[4] *Forest and Bird* at [88].
[5] *Forest & Bird* at [106].

(a) Actual and potential effects (including positive effects) on the environment, of allowing the activity;

(b) Any measures agreed by the applicant for the purpose of ensuring positive effects to offset or compensate for adverse effects;

(c) Any relevant provisions of national, regional and local policy statements and plans;

(d) Any other matter the consent authority considers relevant and necessary to determine the application; and

(e) In the case of a renewal of consent, the value of the investment of the existing consent holder etc.

30. Under the Supreme Court's "*true exceptions only*" approach, all other factors that must be considered under s 104 can be disregarded. Even significant benefits or future generations can be sidelined if an infrastructure project is found to "subvert" a relevant restriction in the NZCPS.

31. There is no hiding from this problem. It must be resolved. As noted above, electrification and decarbonisation will otherwise fail. The NPS-REG (2025) will not deliver on its objectives, and we will not '*Electrify'* NZ.

32. The answer to this issue actually lies within the *King Salmon* decision itself.

33. The Supreme Court confirmed that policy makers have choices under the RMA, as to which elements of the overall sustainable management purpose (as expressed in s 5-8 of the Act) are given priority.[6] The choice *can be made* to protect the environment, with protection forming an aspect of sustainable management,[7] *but not the only aspect*.

34. ESEG submits that national direction from the Minister can chose to promote the social and economic wellbeing aspects of sustainable management, particularly where nationally significant (per s 45 of the RMA), and direct that these activities *be allowed* (consented, approved, provided for in plans), despite adverse effects conflicting with other national policy statements.

35. In short, if *protective* policies can, in effect, "bypass" or sideline operation of s 104 (along with consent authority discretion) so can *enabling* policy direction.

36. The National Policy Statement – Urban Development (2020) (**NPS-UD**) is a case in point. It has *enabling* yet "bottom line" requirements for housing capacity which local authorities must include in their planning instruments. The same "bottom line" approach to ensure sufficient REG capacity to meet New Zealand's decarbonisation

[6] Refer paragraphs [119], [142]-[143] and [148]-[149] along with [125] of *King Salmon*.
[7] *King Salmon* at [24(d)], [132] and [148].

objectives is surely available under the RMA, particularly given that at the core of the concern -is the existential environmental threat presented by climate change.

37. Regardless of the legal position, this reform programme must seize the opportunity to deliver a comprehensive framework of national policy direction that:

    (a) Provides certainty through sufficiently directive policy wording that new REG projects (along with renewals, upgrades and repowering of existing REG assets) will actually be approved;

    (b) Is coherent, consistent and aligned, avoiding potential conflicts between national policy statements that decision makers would need to resolve at the consenting stage;

    (c) Provides a true and effective "one stopshop nationally consistent 'consenting pathway' for REG;

    (d) Is comprehensive as to the management of the range of resource values (and effects on those values) of potential relevance to REG under the RMA.

38. As well as the issue of conflict management, this summary of the critical requirements of the reform for REG raises the issue of "complete coverage".

39. The RMA's purpose matters of national importance, "other matters" to which "particular regard" must be had, the recognition of Treaty principles and wide definitions of "effects", "environment" and "amenity values", collectively have an enormously broad compass. There are equally broad levels of discretion conferred on the Minister, local authorities and consent authorities as to how they go about addressing those issues and effects when preparing plans and deciding consent applications.

40. Given that incredibly broad scope of discretion under the RMA, the overall package of national direction must not *either leave gaps or create anomalies*, raising conflict or the prospect that despite what the NPS-REG (2025) says, some other factor of potential relevance under s 104 of the RMA will surface to defeat its objectives and policies, when tested in the plan making and consenting arena. That may still happen in an extreme case, but this should be the 'true exception', not the other way round.

41. As the Supreme Court found in the *Port Otago* decision, this type of conflict between competing policy direction should be resolved at the planning rather than consenting level.[8] ESEG submits that the Minister must address conflict right at the top of the planning hierarchy in this respect, if the objectives of this reform package are to be achieved.

[8] *Port Otago* at [72]-[74].

42. ESEG submits that while the proposed NPS-REG (2025)[9] is a substantial improvement over the status quo (and the NPS-REG 2011), the most recent draft shared by Ministry officials during the engagement process (**Engagement Version**[10]) will not deliver on *Electrify NZ*, or enable New Zealand to meet its decarbonisation/ electrification objectives because:

(a) The wording is not sufficiently directive, including as to the necessary degree of priority and urgency with which REG generation capacity must be both secured and significantly increased to meet New Zealand's emission reduction and energy targets; and

(b) The drafting leaves scope for conflict between competing national direction that will likely be resolved against REG projects being approved or reconsented; and/or

(c) The overall drafting approach leaves gaps in the system, such that provisions of lower order plans giving effect to other national direction addressing resource values potentially affected by REG, would be applied with the same result.

43. To address these fundamental concerns with the Engagement Version, ESEG has prepared its own version of the NPS-REG (2025) which ESEG strongly submits should be adopted by the Minister, if the objectives of this reform phase in relation to REG (as recorded at paragraph 2 above) are truly to be realised and achieved as shared by email on 7 May 2025.

44. As noted above, it is s requested that this drafting option be included in the formal consultation process as the preferred option or alternative option. This ensures issues of scope and fairness are addressed, allowing other interested parties to to comment on the ESEG version after considering all submissions.

45. Against that background of general comments, ESEG outlines the following more specific points on the drafting approach for the NPS-REG (2025) within the context of the other proposed national policy statements currently under consultation as part of the RMA reform process.

Definition of Areas of Specified Environmental Value

46. The Engagement Version includes a definition of the term "specified environmental values" (SEV's). This proposed definition provides the foundation for the operation of the provisions of the NPS-REG that are of concern to ESEG.

[9] That is, even alongside the other national direction as proposed and to be amended in this overall reform package.
[10] Received from Officials CLASSIFICATION on 25 November 2024.

47. Considering the fundamental issues raised previously in this Position Paper, this proposed definition engages the following key concerns:

    1. The need for comprehensive coverage to ensure that the NPS provide an exclusive and effective "code" or consenting pathway for all planning and consenting decisions relating to REG under the RMA; and

    2. The NPS must provide sufficient consenting certainty considering the level of investment involved

48. On the first point, there is a balance to be struck between the breadth of the definition (to ensure that when applied under the relevant policies and machinery provisions *all* relevant resource values are captured) on the one hand, and the impact of the definition in terms of driving specific consenting outcomes, on the other.

49. The NPS must (again, on the one hand), not leave gaps in terms of either resource values or effects on those values, creating uncertainty at the policy level as to how those resources and values are to be managed.

50. On the other hand, if there is no *qualitative* filter within the definition, the result will be that:

    - REG projects affecting resource values that are not actually significant may be forced through an inappropriately rigorous (and risky) consent process (as under the EMH or framework, addressed below); and/or

    - Specific resources and values are found to surface during a consent process that effectively send the project back to the drawing board.

51. By way of example of these concerns, the following points are noted:

    - Including areas of natural character (in the coastal environment) that are not outstanding or even of high value within the definition of SEV's will mean that REG projects affecting such areas of natural character can only be approved, if residual effects on the area of natural character are not significant (i.e. even if that area has low or only moderate levels of natural character);

    - If the definition is not confined to areas and resource values that are mapped or identified in a planning instrument, areas claimed to have such resource values might surface during the consent process for a given project, presenting a potentially fatal barrier to the REG project being approved.

52. This latter consequence might mean that all of an REG proponent's investment in the consent process is effectively wasted.

53. ESEG members undertake very thorough "due diligence" to ensure that no *known* significant resource values are likely to be affected through a new REG project,

applying what amounts to an "avoidance" approach to such resource values right at the outset, as a matter of best practice. The only exception is where a particular impact is truly unavoidable (within the confines of functional and operational need, as addressed further below).

54. Under the RMA as it stands however, it remains possible for an objecting party to a given project to call an expert to say that an area of landscape value is in fact outstanding, or that a particular piece of bush has significant habitat values; regardless of whether the applicant's own expert or the relevant plan maps and schedules known to the proponent at project initiation, applied that rating.

55. The High Court has confirmed the ability of objectors to successfully make such claims during a consent process, specifically in a case involving of an REG project said to affect an outstanding landscape that was not mapped as such in the relevant District Plan (*Unison v Hastings District Council* CIV 2007-485 -896).

56. The NPS-REG (2025) must resolve this balance within the definition of SEV by:

- Applying a "broad brush" approach to the *range of resource categories*, such that all resource values (particularly those subject of matters of national importance in s 6 of the RMA), are *captured* by the definition, but conversely;
- Setting *qualitative filters* so that the more rigorous or onerous consenting pathway provisions do not apply to resource areas within that range (e.g. landscape, native vegetation) that are not significant or outstanding; and
- Confining the definition of SEV to resource areas and values as mapped or identified in operative planning instruments.[11]

57. REG projects affecting areas other than SEV's must have their own specific consenting pathway to ensure nothing falls through the cracks. This is further addressed in the specific drafting of NPS-REG policies for applying to such "other areas".

58. More broadly, ESEG submits that the focus should be on "Areas of National Importance" (**ANI**) rather than areas with "specified environmental values", i.e. prefers an ANI rather than 'SEV' terminology to be applied throughout.

59. The ANI reference would better align with s 6 matters of national importance, providing greater certainty that all important RMA bases are covered under the NPS not just through the definition, but through the policies and machinery provisions engaged for a given REG project, by that definition.

[11] With an exception for areas that emerge during engagement with mana whenua in the consent or designation process.

Reconsenting Pathway Specifically – What Does "May Allow" Mean?

60. This point addresses a fundamental concern ESEG has with the Engagement Version of the NPS-REG (2025) and its operation within a s 104 context, as discussed above in this Position Paper (alongside the issue of "conflict management/ resolution" more generally).

61. Reflecting the position taken during the engagement process, ESEG's understanding is that the "consenting pathway" provisions of the NPS-REG (2025) as proposed by Officials would not be a consenting pathway at all, but instead the "gateway" to that pathway.

62. Under that drafting, an REG project found to meet the requirements of the pathway provisions under the NPS-REG (i.e. including having no significant residual effects and stepping through all *mandatory* elements of the 'EMH'), would still need to run the full s 104 gauntlet under the RMA, before being approved.

63. This is not a "one stopshop" approach. The NPS instead adds another consenting obstacle outside the existing RMA system, which is already fraught with consenting risk, uncertainty, delay and cost. The proposed drafting makes a bad situation worse, not better.

64. ESEG very strongly submits that if the NPS-REG Policy requirements for effects management are met, that should be the end of the matter.

65. The consent authority should decide whether or not to approve the REG project having regard to that exclusive (yet comprehensive) code, alone.

66. That should certainly be the case in relation to the *effects* of the REG project on any and all resource values covered by the SEV/ANI definition, as addressed previously.

67. It must be clear within the NPS-REG that:

    (a) Consent authorities *may allow* REG projects that meet the Policy requirements of the NPS-REG, despite anything to the contrary and any other national policy statement (or the provisions of any lower order planning instrument giving effect to that other national direction); and

    (b) No other EMH or framework (as might otherwise apply to infrastructure or development projects under the RMA generally) can be considered for an REG project.

68. This point also underscores the critical need for boldly directive policy wording in the NPS-REG such that (applying *King Salmon*/ *Port Otago*) in the event of conflict with any other national direction applied in a wider s 104 evaluation, the NPS-REG

provisions *can be found to prevail* and are not necessarily defeated for lack of sufficient directive effect.

69. While ESEG understands from Officials that some restrictive provisions of other national direction would now be expressly "disapplied" for REG activities, a wider range of policies could still prove highly problematic in an overall s 104 evaluation.

70. There is then the potential impact of lower order planning instruments giving effect to this other national direction to consider, ie lower order provisions which might also be brought to bear in a s 104 context for a given REG project with, again, (potentially) fatal consenting outcomes.

71. For these various reasons, ESEG strongly submits that the NPS-REG needs to include a "sweeper" conflict management provision as follows:

> The provisions of this national policy statement prevail over the provisions of any other national policy statement if there is a conflict between them.
>
> For the avoidance of doubt,
>
> (i) a planning decision may allow an REG activity as defined by this policy statement, despite anything to the contrary in another national policy statement or the provisions of a policy statement of plan or proposed policy statement or plan giving effect to that other national policy statement.
>
> (ii) The effects management framework as set out in this national policy statement applies to any planning decision involving an REG activity, not the effects management hierarchy or framework in any other national policy statement, or the provisions of a policy statement of plan or proposed policy statement or plan giving effect to that other national policy statement.
>
> (iii) Where there is a conflict between them, this NPS does not prevail over Te Ture Whaimana o te Awa o Waikato – the Vision and Strategy for the Waikato River.

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72. ESEG's version of the NPS-REG (2025) includes this clause to address this fundamental concern regarding operation of the NPS in a s 104 context.

Offsetting and Compensation

73. ESEG fully supports provision for both offsetting and compensation under the NPS-REG (2025) as an essential part of any EMH or framework.

74. However, ESEG raises three key concerns regarding offsetting and compensation that must be addressed through the NPS-REG (2025) drafting:

(a) Offsetting and compensation must be confined to natural resource values of a biophysical (rather than cultural, heritage or landscape) value, reflecting the origin of these concepts in both international law and domestically; and

(b) The framework including provision for offsetting and compensation should be exactly that, a framework rather than a hierarchy. In particular, there should be no compulsion to start with an "avoid" test, with a proponent then required to move in sequence through each subsequent step (as proposed under the Engagement Version i.e. "*then*", etc);

(c) Bespoke offsetting and compensation principles appropriate to the inherent nature and effects of REG projects need to be established and applied in the framework, rather than simply adopting the principles for offsetting and compensation currently set under the NPS-IB and NPS-FM (as also proposed under the NPS-REG (2025)).

75. Dealing with the first point, there can be no doubt that offsetting and compensation principles were established in a biophysical natural resource context, for example as currently included within the NPS-IB and the NPS-FM.

76. As they stand, the EMH's under the NPS-IB and NPS-FM are inherently confined to biophysical resource values.

77. For example, under the NPS-FM, offsetting for specified infrastructure projects can be employed to address the loss of extent of a natural inland wetland under clause 3.22. In doing so, the principles in Appendices 6 and 7 to the NPS-FM have to be applied, including a requirement of "no net-loss" for offsetting.

78. The same applies under the NPS-IB, with implementation clause 3.11 providing an exception to the bottom-line requirements of clause 3.10. Management of effects under the NPS-IB EMH is mandatory, applying biodiversity and offsetting principles as set out in Appendices 3 and 4 (in this case requiring not just no net loss for offsetting, but a "net gain").

79. Offsetting or compensation principles are generally not appropriate for cultural, heritage or landscape values. An exception might be areas of outstanding natural character (ONC), where there is a very strong relationship between the biotic resource values and the rating or ranking of an area as an ONC. The Engagement Version appears to confine offsetting to SEV's that do have biophysical resource value, and this is supported by ESEG.

80. The second point noted above is the issue of 'hierarchy' versus 'framework'. ESEG strongly submits that nothing in the RMA including the purpose in s 5 requires that a continuum or sequence approach be applied (i.e. starting with the avoid step first, *then* remedy, *then* mitigate etc). This was confirmed by the Environment Court in *Winstone Aggregates v Auckland Regional Council* (A49/02), with there being no decision of any

higher Court since saying to the contrary (including *King Salmon*) that ESEG is aware of.

81. As discussed earlier, *King Salmon* instead confirms that policy "choices" can be made as to whether the protective or enabling dimensions of the RMA purpose are given greater emphasis in national direction.

82. As also discussed above, the process of site and resource selection for an REG activity inevitably involves an element of "avoidance" at the stage of project initiation. In large measure, the "avoidance step" as might conventionally be applied in other contexts is inherent to the question of functional and operational need[12] regardless.

83. Simply put, if there is a functional and operational need for an REG activity to be established within an area of significant environmental value, then *ipso facto* effects cannot be avoided on that area, given the inherent nature (and generally scale) of any REG project making a meaningful contribution towards decarbonisation/ electrification.

84. A mandatory "avoid" test in that context would serve no practical purpose, and essentially be self-defeating.

85. There is then the issue of what the offsetting and compensation principles require.

86. ESEG's experience is replete with lessons learned from unworkable attempts to '*shoe horn*' REG projects into the existing NPS-FM and NPS-IB offsetting and compensation principles. The overall assessment is that these attempts generally prove controversial, result in considerable expert debate, are expensive and a significant hurdle to approval of REG. There is a real element of "square peg into the round hole" to many of these situations. Presumably the difficulty inherent in forcing REG projects into a generic offsetting/ compensation set of principles (as proposed under the NPS-REG (2025), was at least one of the reasons why REG was expressly exempt from the NPS-IB when it came into force.

87. For a recent "case study" of the difficulties inherent to offsetting/ compensation in an REG context, one need look no further than the Expert Panel decision declining the Southland wind farm under the Covid-19 Fast-track legislation. The Expert Panel's decision is 190 pages long. In addition to the expert's retained by the applicant and parties providing comments on the application, the Panel appointed four experts of its own in ecology, offsetting and compensation.

88. In its decision, the Panel followed an approach for each potential ecological effect traversing:

    - The applicant's information.

[12] As addressed further below in this Position Paper .

- The comments received.
- The applicant's response to comments.
- The peer review findings (from the experts appointed by the Panel).
- The applicant's response to that peer review.
- The outcomes of expert conferencing.
- The comments received on further information and draft conditions following expert conferencing.
- The applicant's response to comments on the further information and draft comments.
- The peer review of comments on further information and draft conditions.
- The applicant's response to that further review.
- The peer review supplementary advice then received.
- The applicant's response to that peer review/supplementary advice,

before recording its findings.

89. Armed with all of that information, the Panel found (for example) that significant residual adverse effects on the wetlands plateau could not be offset through like for like protection and net improvements. The definition of EMH in clause 3.2.1(1) of the NPS-FM in relation to that impact was instead found to direct that the activity should be avoided.[13]

90. Overall, this experience from a range of recent consenting processes confirms just how complex, litigious, and uncertain this one requirement of the more generic EMH (such as under the NPS-FM) can prove, and how extensive the risk, cost and delay associated this hurdle can be.

91. The most difficult and intractable principle within the more general principles of offsetting is the requirement of "no net loss" or "net gain". The sheer complexity in resource accounting terms of satisfying a consent authority that no net loss or net gain would be achieved for a given REG project can ultimately prove fatal to the project proceeding, particularly in the face of a raft of experts expressing divergent opinions on that issue, as the Southland Wind Farm case so starkly demonstrates

[13] Paragraph 806 of the Panel's decision.

92. During engagement with officials, ESEG has raised and consistently maintained a request for a bespoke set of offsetting/ compensation principles rather than taking the indolent approach of adopting generic frameworks that might be suitable to other forms of development, but which simply do not work for REG.

93. There would be no point to this reform if despite all of the directive language and intent to "*turbo charge"* REG and cut red tape, REG projects come to a crash landing in the middle of a mandatory EMH requirement, that no net loss or net gain be established.

94. As one possible exemplar of a workable approach, ESEG generally supports the offsetting/ compensation principles in the Auckland Unitary Plan.

95. ESEG acknowledges that the reality is development of a bespoke set of offsetting or compensation principles that is workable for REG may take some time to prepare and that this could not realistically be completed before formal notification of the NPS-REG (2025).

96. Recent announcements from the Minister responsible for RMA reform have also indicated that this reform round will not address the EMH approach to electricity and infrastructure development, including through making any substantial changes to the NPS-IB.

97. For that reason, and in the meantime, ESEG's version of the NPS-REG includes a **critically important** clause that ensures there is no requirement for "no net loss" or "net gain" in relation to the offsetting step of the framework for REG projects.

98. Instead, residual effects following offsetting must be minimised to the extent realistically achievable while still meeting the operational and functional need requirements of the project.

99. Policy 5 in ESEG's version of the NPS-REG includes this wording and would address this range of concerns regarding offsetting and compensation, along with the requirements for a workable EMH more generally, as discussed above.

100. The drafting (in the conflict clause as set out above) also confirms that it is only the EMF in the NPS-REG that applies to planning decisions for REG projects, not any other EMH.

Functional and Operational Need

101. ESEG supports the drafting in the Engagement Version that would confine any assessment of functional and operational need to new REG activities. For an existing REG asset, the question of location would have been settled or determined by previous investment/ development decisions, and forms the logical "existing environment" baseline for assessment of consent renewals (or consents to repower or upgrade an existing asset).

102. ESEG also supports the proposed wording which confirms that the functional and operational need test does not require an assessment of alternative locations.

103. The risk of descending into such an assessment is most acute for solar REG projects where an argument can always be made, any number of sites would have potential access to solar energy, and an alternative location would avoid (say) a wetland, stream or other resource value situated on the applicant's chosen site. Issues of alternative sites and locations have beleaguered REG consenting under the RMA as it stands, for this very type of reason.

104. Furthermore, the functional and operational need requirements should not be framed as something that the REG proponent must "demonstrate", but instead a reality that must be recognised and acknowledged by decision makers.

105. In the *Southland Windfarm* decision, the Expert Panel referred to the requirements of functional and operational need (as defined in the National Planning Standards) as setting a "high bar" which it was not satisfied the applicant had met i.e. that the windfarm "can only" be located as proposed by the applicant. It said that there are "other high points with similar windfarm conditions and other well-suited locations in the area" as part of its reasoning declining that application.[14]

106. In short, while intended to be enabling, there is a real risk that any functional and operational need test set through the NPS-REG becomes effectively 'weaponised' by objectors which (again) would defeat the objectives of this reform.

107. ESEG believes the NPS should clearly outline the criteria for "functional and operational need" assessments for REG projects. It must specify what these assessment should include (all functional and locational attributes essential for a new REG project's viability) and what they should <u>not</u> involve.

108. Specific drafting for that prescription is included in ESEG's version of the NPS, whereby the functional and operational needs tests are embedded within the EMH or framework proposed under Policy 5.

Existing Environment – Baseline of Existing REG Capacity

109. As submitted earlier, it is vital that the NPS reforms deliver a "rock solid" baseline for the pace of additional generation capacity needed for New Zealand to meet its decarbonisation and electrification targets.

110. There are three dimensions to this concern namely:

(a) The line of case law under the RMA[15] whereby for consent renewals, decision makers are forced to imagine an "existing environment" without the REG

[14] Paragraph 795 of the Expert Panel's decision.
[15] *Ngāti Rangi Trust v Manawatu-Whanganui Regional Council* [2016] NZHC 2948.

activity, including in some instances the associated REG asset infrastructure in place. This highly artificial approach to assessment puts renewals of existing REG projects at real risk of being refused.

(b) The potential for RMA planning and consenting decisions involving other activities to constrain future access to resources of finite extent or location on which REG depends (e.g. subdivisions or developments constraining future access to geothermal fields, areas of sufficient wind generation capacity or quality etc); and

(c) Reverse sensitivity impacts from new or expanded other activities of various kinds being approved in locations that may lead to constraints on existing REG activities (or their ability to be repowered or upgraded); and

(d) Related to (c), consent conditions being imposed on consent renewals that constrain or reduce the previously approved level of generation capacity for an existing REG asset, or the operational flexibility of that asset.

111. Regarding point (a) above and as previously noted, the pace and scale of REG needed for New Zealand to meet its greenhouse gas emission reduction targets (including to double the amount of renewable electricity in New Zealand as committed to under *Electrify NZ* , will be challenging enough assuming the existing baseline of REG assets is entirely secure. If that existing baseline is at risk through the consenting process, meeting those commitments and the *Electrify NZ* ambition would almost certainly become unachievable.

112. While the policies as proposed in the Engagement Version for existing REG assets are supported, they do not provide the robust platform of existing generation capacity essential for these reforms.

113. For example, they do not:

(a) Direct that reverse sensitivity effects must be avoided (instead only to the extent ‘reasonably possible’);

(b) Prevent consent decisions for other forms of development and activities from constraining future access to natural resources upon which REG would depend (ie for new or expanded projects);

(c) Direct that decision makers must assume an existing environment including the effects of the existing REG asset for consent renewals;

(d) Prevent conditions on renewal applications that constrain existing REG capacity and operational capacity (except perhaps in exceptional circumstances when existing hydro assets offend bottom line requirements over aquatic habitat values).

114. ESEG's version of the NPS-REG 2025 addresses all of these concerns, noting Policy 2 in particular and must be included in the NPS if the objectives of the reform are to be delivered.

Residual Effects Threshold

115. Related to this point (baseline of existing generation capacity), ESEG is particularly concerned at the implications of any residual effects threshold within the EMH or framework.

116. This is particularly the case for existing REG assets. There is no point in setting up a situation where a consent renewal (or approval for repowering or upgrading of an existing asset) might fail because it is found that the existing asset has significant adverse effects (which cannot be mitigated, offset or compensated for), having regard to a "zero baseline".

117. Alongside the amendments sought to the "existing environment" policy set within the NPS-REG (2025), ESEG's Version therefore does not include a residual adverse effects threshold within the EMH or framework.

118. Instead, and as discussed above, residual effects must be minimised to the extent consistent with meeting the functional and operation requirements of the project (refer Proposed Policy 5 and the definition of EMH).

Conclusion

119. ESEG repeats the point made above that climate change presents an existential threat not just to the New Zealand economy and society, but to biodiversity and the natural environment more generally.

120. If New Zealand is to take that threat seriously and meet its commitments as part of the overall global response to climate change, a boldly and unashamedly directive NPS-REG is essential.

121. ESEG submits that its preferred drafting in the NPS-REG (2025) version would both respond to that context, and deliver on the Government's policy commitments in *Electrify NZ* to double the amount of renewable electricity generation to ensure a supply of affordable clean energy.

122. ESEG urges the Minister to include its drafting version as part of the formal consultation process on the NPS-REG (2025) to ensure that this once in a generation opportunity to finally confront the fundamental defects in the RMA planning system as it relates to REG, and to meet these commitments.