MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
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DATE	21 March 2024
TO	Electricity Sector Environment Group
PREPARED BY	Electrify NZ policy team, MBIE; Urban and Infrastructure team, MfE
SUBJECT	Electrify NZ proposals, including the national policy statement on renewable electricity generation and electricity transmission

BACKGROUND

We have prepared this memo in advance of our meeting with you on 26 March 2024.

Following our meeting with you in January, we have provided advice to Ministers about the way to progress amendments to the two national policy statements along with the Electrify NZ commitments.

We are now seeking to work through the more detailed provisions for the National Policy Statement for Renewable Electricity Generation (NPS-REG) and the National Policy Statement for Electricity Transmission (NPS-ET). We would also like to engage with you on:

- Your proposal from December 2023 about changes to Part II of the RMA, and what impacts that would have.
- Some specific proposals for changes to the RMA contained in Electrify NZ, including changes to consenting processes.

The agenda for the meeting will be:

1. Consideration of changes to Part II of the RMA
2. The NPS-REG / NPS-ET effects management provisions – a ‘one-stop shop’ or single code
3. Consenting proposals referred to in Electrify NZ:
    a. Consent duration
    b. Consent timeframes
    c. Consent lapse periods

1. CONSIDERATION OF CHANGES TO PART II OF THE RMA

ESEG has requested a change to Part 2 of the RMA which would involve adding a new matter to section 6, covering 'nationally important infrastructure'. This would be defined so that only REG that would make, "a meaningful contribution to New Zealand meeting its commitments under the Climate Change Response Act 2002" was covered.

In addition, ESEG has said that other matters could also be added to section 6, "to support the wider goals of climate change adaption and decarbonisation being achieved. This includes adding matters reflecting national security of electricity supply, mitigation of climate change risk and the resilience of infrastructure".

It is not clear whether ESEG proposes that the existing section 7 matter covering 'the benefits to be derived from the use and development of renewable energy' would be retained (ie to cover REG that does not qualify as 'nationally important').

ESEG has explained that its reasons for seeking the changes are:

- "This would … assist in providing direction from within the "engine room" of the legislation, to better ensure that any conflict as to operation of Part 2 can be resolved in favour of infrastructure provision, including renewable electricity generation".
- "This has been a perennial problem with the RMA where s6 prioritises values that conflict with infrastructure development and operation – this balancing and placing matters on an even footing is essential. Without addressing this issue squarely, attempts to fix infrastructure consenting and planning problems using subordinate tools will be weak and ineffective".

Officials are aware of same cases where section 6 matters have 'trumped' some projects in the past (for example, Meridian's Lake Hayes project). However, this has not always been the case, since section 6 is not treated as an 'end in itself'.

It would be useful to understand what evidence there is about how, and to what extent, section 6 would hinder REG going forward (for example, constraints mapping similar to that carried out by Transpower).

ESEG's above wording is one option. To develop other options officials will need to consider whether any REG that makes a 'meaningful' contribution' to commitments should be 'on an even footing':

- With all section 6 matters (for example, should REG be on an even footing with the most vulnerable significant natural areas, all waahi tapu and all protected rights under the Marine and Coastal Area (Takutai Moana) Act 2011 or only some of those places)?
- Regardless of the relative contribution to decarbonisation that would be made by a particular project?
- Regardless of the alternatives (and the costs of the alternatives)?

It is important to bear in mind that new section 6 and 7 content would need to be calibrated so that it is consistent with achieving sustainable management.

Discussion question

- What evidence is there is about the extent to which section 6 would hinder REG going forward?
- Does ESEG consider that every REG project that is nationally important should be on 'an even footing' with all section 6 matters, and regardless of the alternatives?

2. NPS-REG AND NPS-ET

The intent of a 'one-stop shop' or single code for REG and ET is to provide greater certainty and clarity for both the decision-maker and the REG / ET provider, as well as create a more enabling environment for REG and ET to occur. The 'code' would apply as a single repository of national direction to provide a nationally consistent and coherent consenting pathway for REG/ET across all national direction. That is, the NPS-REG would direct the requirements about the management of effects and protection of landscapes and natural resources, and those would be the only national policy provisions that apply to REG.

There are two issues which we would like to discuss with you at the workshop:

- What (further) changes are required to the objectives and policies of the NPS-REG and NPS ET; and
- The appropriate drafting of the effects management hierarchy (EMH) to provide the certainty sought for REG/ET providers.[1]

We note that while the NPS-REG and NPS-ET can resolve tensions across national direction, it cannot direct decision-makers to grant a consent independent of other considerations under the RMA (e.g. Treaty Settlements).

There are different ways that a single 'code' for REG and ET could be developed within the relevant national policy statement. For instance, it could:

- incorporate all objectives and policies from all national direction for how impacts of REG and ET are considered, and include a bespoke EMH for REG/ET, or
- it could be limited to specific effects management provisions such that the NPS-REG or NPS-ET provides the only effects management hierarchy - but general policies of other national direction continue to be relevant.

In your most recent submission to us (2 February 2023), you have indicated support for the latter approach and included specific drafting for how the effects management hierarchy would operate (relating to clause 3.6 of the 2023 consultation draft).

We have responded to your feedback and included specific questions for you to consider. This is contained in the table in attachment A. Some further discussion questions are contained below.

Discussion questions

- Do the objectives strike the right balance between enabling REG/ET and managing adverse effects on SEVs? How?
- If other provisions of national direction continue to apply to REG and ET, is there a need for a provision which deals with a 'deadlock' situation? I.e. 'in the event of conflict…'
- You have previously noted in your 2023 submission that you consider all clauses of the NPS-REG should be required to be directly included in plans under s55(2)? Will this create conflicts with existing plan objectives and policies and if so, what are the impacts of those? Could those be mitigated?

3. CONSENTING CHANGES

Electrify NZ commitments include to provide a quicker and more certain planning and consenting framework for renewable energy generation, transmission and distribution.

We are developing policy advice on what changes to the RM system are needed to improve the consenting processes for REG activities.

In your submission to us (1 December 2023) you have indicated the need for:

- minimum new and re-consenting existing REG to be set at 35 years
- an extension of the default 5-year lapse period on consents
- requirement that the existing environment for the purpose of re-consenting applications is deemed to be one with the existing REG activity including all associated infrastructure in place

Changes to consent durations and lapse periods can impact on iwi/Māori freshwater rights and interests. There is a balance to be struck between enabling REG and recognising iwi/Māori freshwater rights and interests.

It would be useful to understand what evidence you have that illustrates these positions. We have further discussion questions on these issues below:

Discussion question

Consent durations

- How is it that consent durations constrain the delivery of REG projects (cost benefits, investment)? What evidence about the extent of this do you have?

Lapse periods

- What evidence is there about the extent to which lapse periods have hindered delivery of REG projects?

Consent timeframes

- We have heard from you that consideration of existing environment in line with case law is the key issue for reconsenting. Do you have examples of this in practice? And are there other issues that come up with re-consenting?
- Is the timeframe for decisions on consents an issue, and if so, where do you see the delays are? What evidence is there of these delays?
- Do you see national standards as a way to address these issues? What would be key features?