

The Chair
CABINET POLICY COMMITTEE

ENERGY EFFICIENCY, RENEWABLE ENERGY, AND THE RESOURCE MANAGEMENT ACT

Purpose

1. This paper considers the options under Resource Management Act 1991 (RMA) for ensuring that resource management decisions and council plans adequately consider energy efficiency and the value of renewable energy.
2. The measures recommended in this paper should be considered alongside the Government's recent decision to amend the RMA to remove the ability of councils to control discharges-to-air of CO₂ in resource consents and the measures in the companion Cabinet paper on the RMA and adaptation to the effects of climate change.

Executive Summary

3. The Resource Management Act 1991 (RMA) does not explicitly provide for improved energy efficiency or give particular weighting to the value of renewable energy. Consultation has shown that there is the potential for resource management decisions and council plans to better address national energy objectives.
4. Support for improved energy efficiency and a greater use of energy from renewable sources comes from both the National Energy Efficiency and Conservation Strategy (NEECS) and the Government 's climate change policy package.
5. Both energy policy (energy efficiency and conservation, and energy supply) and climate change policy are partly dependent for their implementation on the RMA.
6. This paper discusses the options available, through the RMA, for the government to give national direction on energy matters. It recommends:
 - amendments to the RMA to explicitly refer to renewable energy and clarify consideration of energy efficiency
 - continued work on a possible National Policy Statement (NPS) on energy efficiency and renewable energy matters.

Background

Context

7. In October 2000, the Government released its Energy Policy Framework. The overall energy policy objective was to “*ensure the delivery of energy services to all classes of consumer in an efficient, fair, reliable, and sustainable manner.*” One of the energy outcomes was: “*environmental sustainability, including continuing improvement in our energy efficiency and a progressive transition to renewable sources of energy.*”
8. The National Energy Efficiency and Conservation Strategy (NEECS) was guided by this framework. In the NEECS the Government has set targets for energy efficiency (at least a 20 percent improvement in energy efficiency by 2012) and for renewable energy (in 2012, an additional 30 petajoules of consumer energy from renewable sources compared to the 133.5 petajoules in 2000).
9. The Central and Local Government Action Plan of the NEECS tasked the Ministry for the Environment (MfE), in conjunction with the Energy Efficiency and Conservation Authority (EECA) and Local Government NZ, to “*Ensure sustainable energy issues (e.g. solar access, wind farms, maintenance and upgrading of the national grid and distribution networks) are effectively addressed in RMA processes and documents*”.
10. In 2000 the Parliamentary Commissioner for the Environment issued a report, “Getting More from Less: A review of progress on energy efficiency and renewable energy initiatives in New Zealand”. That report recommended that the Minister for the Environment develop and provide guidance to all local authorities on the relative weight to be afforded to the protection of outstanding natural features and landscapes under the RMA, compared with the development of renewable sources of energy such as wind power.
11. The NEECS is a ‘foundation policy’ in the Government’s recently announced climate change policy package. Greater use of renewable energy and improved energy efficiency are key ways of reducing New Zealand’s emissions of greenhouse gases. The ‘foundation policies’, and the NEECS in particular, are critical for meeting New Zealand’s climate change commitments at least cost to the economy. Failure to achieve substantial improvements in energy efficiency and greater use of non-renewable sources of energy over the period to 2012 means that more of our sink credits will have to be used to offset the higher greenhouse gas emissions that will result.
12. Cabinet directed officials to report back, by 30 November 2002, on the potential need to provide a stronger mandate to councils to encourage energy efficiency and renewable energy generation (CAB Min (02) 27/3A).
13. Cabinet also agreed to amend the RMA to remove the ability of councils to control discharges-to-air of CO₂ in resource consents, to ensure consistency between regions and avoid double jeopardy of emitters who also face a future

carbon charge (CAB Min (02) 26/19). This agreed amendment is planned to take place in the first half of 2003 and provides an opportunity to combine any other amendments of the RMA with regard to energy projects, if they are deemed necessary, in one package.

The RMA: opportunities & limitations

14. The purpose of the RMA (as stated in section 5 of the Act) is to promote the sustainable management of natural and physical resources. Councils, through controlling the effects of activities on land and controlling discharges, test proposed activities against this purpose.
15. The RMA implicitly requires councils to have regard to energy efficiency and the value of renewable energy when considering proposals. Also, when preparing or changing their plans, councils must have regard to strategies prepared under other Acts and the NEECS was developed under the Energy Efficiency and Conservation Act (2000). However, nothing in the RMA explicitly requires that they have regard to these matters. A few councils have, but most have not.
16. Section 6 of the RMA lists “matters of national importance” that persons exercising their functions and powers under the RMA “shall recognise and provide for”. Section 7 of the RMA lists other matters that persons exercising their functions and powers under the RMA “shall have particular regard to”. Neither of these sections explicitly provides for energy efficiency or renewable energy, although section 7(b) generically refers to efficient use of natural and physical resources.
17. The lack of explicit mention of energy matters can be problematic. As an example, when a proposal for a wind farm is considered by the RMA there is a strong likelihood of land use conflict involving landscape values or conflict with the amenity enjoyed by nearby residences. Although wind power can be seen as (implicitly) achieving the purpose of the RMA, renewable energy has no explicit recognition in contrast to landscape and amenity values (which are explicitly mentioned in sections 6 and 7 respectively). It can be argued that the benefits of wind power will not be given sufficient consideration compared with the local environmental effects. Similar situations could arise for other renewable energy proposals, ie use of hydro power and wood waste.
18. The RMA is part of a package of measures that are being looked at to give effect to the Government’s energy and climate change policy. The RMA cannot effectively change behaviour nor address existing activities or buildings. Promotion of behaviours and technologies that support energy efficiency, conservation and sustainability is the focus of the Energy Efficiency and Conservation Act (EECA); and for energy efficient design, the Building Act is the key legislation.
19. There are issues about the RMA and its implementation that are not specific to energy efficiency or renewable energy but apply across a number of sectors. These include general concerns about the costs (time and money) of the

resource consent process. The Ministry for the Environment is currently considering these issues and a report back is expected in March 2003.

Renewable Energy

20. This paper refers to renewable energy. The NEECS glossary defines a “renewable energy source” as “*energy that occurs naturally, the use of which will not deplete energy sources of that kind. This includes water, wind, solar, geothermal (with certain controls) and biomass.*” The Strategy notes that “*renewable energy systems will ultimately be the main source of energy for a sustainable economy. They replace dependency on fossil fuels and provide permanent solutions to the use of energy sector CO₂ emissions*”. In regard to adverse effects, it is acknowledged that renewable energy use will potentially have localised environmental effects that need to be managed.

Issues

21. The RMA, and its implementation through regional and district plans and decisions on resource consents, has a significant effect on the level and timing of investment in renewable energy projects, the cost of electricity from energy projects, the use of solar energy for heating in buildings and the level and timing of investment in upgrading the national electricity grid. (Upgrades to the electricity transmission lines can improve the overall efficiency of the electricity system and so reduce the need for additional generation.)

Plans

22. District and Regional plans, produced under the RMA, can help implement the Government’s energy policy and climate change policy. This can include developing or changing plans so that:

- proposals for renewable energy do not encounter unnecessary barriers
- projects which incorporate energy efficient designs and/ or energy conservation measures are not penalised or inadvertently restricted, and optimally are encouraged
- neighbouring councils deal with maintenance and upgrading of transmission lines in an integrated manner
- where possible, the benefit of proposals, in terms of energy and climate change objectives, are considered in decision-making.

23. More proactive measures might include protecting property owners from future developments diminishing the sun light entering a property. Such protection might be necessary for passive solar heating or solar water heating for their building. Also, policies and methods developed to address issues that can impact on renewable energy projects (such as landscape values or in-stream values impacting on the use of wind farms and hydro power respectively) should consciously be designed to maximise win-win outcomes for such projects.

24. From consultation carried out, officials have found that few plans have specifically provided for energy matters as outlined above. Amongst those that

have, the quality of the plan provisions is variable. A detailed analysis of existing plans to quantify the scale of the problem would be part of future analysis on the need for national direction. There is a need to ensure that more councils address these issues in their plans, and address them well.

Decisions on resource consents

25. Because the RMA does not explicitly provide for energy efficiency or renewable energy, there is a risk that in decision making on applications for resource consents, the national benefits of these projects in reducing the greenhouse gases from fossil fuelled plants, will not be given appropriate weight compared with some local environmental and amenity effects.
26. Both energy producers and councils have sought national guidance on these matters, particularly the appropriate weighting to give:
- the benefits of renewable energy projects over other forms of energy production
 - national costs and benefits versus regional and local costs and benefits
 - national policies (e.g. the NEECS and climate change policies).

Summary

27. Meeting the Government's objectives, detailed in the NEECS and Climate Change policies, would be assisted by a stronger legal mandate under the RMA to take into consideration energy matters. Guidance on local and regional circumstances and national direction on the content of district and regional plans would also be needed.

Analysis of Options

28. Officials have held consultation meetings with twenty four local authorities, six renewable energy developers, Transpower, the Electricity Networks Association, the Major Electricity Users Group, Business New Zealand and a number of people working with Maori on energy issues. Sixty one submissions were received on an Issues and Options paper issued in early November. Local Government NZ has supported the work and has been kept informed of its progress.
29. The following options, alone or in combination were considered:
- non-statutory guidance
 - a National Policy Statement (NPS) under the RMA
 - an amendment to the RMA to explicitly refer to the energy matters in relevant sections (section 6 or section 7).
30. There was an across-the-board call from those consulted for national direction. Most of those consulted suggested that the national direction should take the form of a NPS. Many expressed the view that a NPS should be complemented by non-statutory guidance to local authorities, developers and communities. There was considerable divergence of opinion over the desirability of amending either section 6 or section 7 of the RMA in addition to having a NPS.

NPS and/or non-statutory guidance

31. The main difference between a NPS and non-statutory guidance is that compliance by local authorities with guidance notes is voluntary whereas they are required under the RMA to amend their plans so that they are not inconsistent with a NPS. Guidance material, however, has the advantage over NPSs in that they are more flexible in what they can cover and are more quickly and easily updated.
32. Matters that could be in a NPS addressing energy efficiency and renewable energy might include:
 - a general statement on the importance of promoting these initiatives
 - direction on how plans should treat certain technologies
 - direction on how to assess applications.
33. Such a NPS might address all the matters around the concept of sustainable energy.
34. Officials consider that a NPS complemented by non-statutory guidance is likely to be more cost-effective than a NPS by itself. However, the actual content of a NPS is currently uncertain. Officials recommend further analysis on effectiveness of a NPS and the relative costs and benefits of its preparation and implementation.

Amendment to section 6 or 7 of the RMA

35. The RMA could be amended to ensure that more weight is given to the value of renewable energy. Such an amendment would convey a clear message to local authorities, decision makers and applicants that the national benefits of renewable energy (as expressed in the Government's energy and climate change policies) are to be given specific consideration.
36. An increased weighting could be achieved through an addition to the matters of national importance (Section 6) or an addition to the list of other matters that have to be given "particular regard to" (Section 7). An amendment to either section would affect decisions on development proposals (resource consents) and also the prioritisation around plan making.
37. A statement in the RMA would necessarily be of a very general and high-level nature. It would not provide guidance on what specific effects should be considered, or the appropriate responses. It would, however, be a signal that the energy matters specified must not be ignored.
38. Officials consider an amendment to section 7 is appropriate. Section 6 sets out matters of national importance and refers in the most part to things that have to be protected or preserved. It is considered that amending section 6, to provide for renewable energy, would interfere with the current framework of that section.

39. In considering the matters already listed in section 7, it is noted that particular regard must already be given to the “*efficient use and development*” of natural and physical resources (ss7(b)). There is an argument that this would include consideration of the efficient use and development of a resource (including mineral) for the generation of energy. However caselaw at the Environment Court (*Winter v Taranaki Regional Council* A 105/98 Judge Sheppard presiding; *Suburban Estates Limited v Christchurch City Council* C217/01 Judge Jackson presiding) casts some doubt on this interpretation. It is considered that section 7 needs to be amended to clarify that the efficient use of minerals to generate energy, and the efficient use of the energy generated, can be considered. Efficiency considerations in this respect should include the rate of use and minimum wastage of the energy from minerals.

Preferred option and timeframes

40. Amendments to section 7 are recommended to increase the weighting given to the use of renewable energy and clarify consideration of the efficient use and development of all energy resources (including energy derived from minerals). In addition to raising the priority of the energy matters discussed in this paper such an amendment would support any future guidance directed at councils.

41. The need for a NPS to back up these amendments, by providing more detailed direction, will be considered over the next couple of months. If a NPS is needed, ideally it should be in place at the time any amendment takes effect.

42. The priority given to assessing the content, effectiveness and cost/benefit of a NPS on energy will be seen as important to many because the amendment itself is not designed to address issues with current council RMA plans. Only a NPS can be directive and require changes to plans.

Risks to manage

43. There may be some negative reaction to the proposal to amend the RMA. It may be seen as national needs overriding important local concerns, e.g. the impact on landscape qualities of a wind farm. It will be important to emphasise that the amendment raises the profile and weighting of renewable energy while retaining the importance of already identified matters.

44. Negative reactions may also come from certain energy developers and suppliers for whom an amendment doesn't actually address the problem. Their concerns related to council practice, delays in decision-making (particularly at the Environment Court) and uncertainties of outcome. Some of these concerns are not specific to the energy sector and some are being dealt with as part of the programme focus on business compliance costs (MfE and Local Government are partners in this work). Concerns relating to specific barriers in existing plans will be considered as part of the ongoing programme to look at an energy NPS.

45. Officials have considered whether the amendment proposed by this paper will conflict with the earlier decision of Government to remove the ability of regional

councils to consider emissions of greenhouse gases in discharge-to-air consents (CAB Min (02) 26/19). The risk is that the earlier decision will affect the ability of decision-makers to consider the national benefits of renewable and energy efficiency activities in terms of reducing discharges of greenhouse gases. Officials believe that the amendment previously agreed to can be drafted in such a way that it will not detrimentally affect consideration of the benefits of renewable energy in terms of reducing emissions of greenhouse gases.

Consultation

46. This paper was prepared by the Ministry for the Environment and the following departments/agencies were consulted: Climate Change Project Team, Energy Efficiency and Conservation Authority, Treasury, Ministry of Economic Development, Ministry of Agriculture and Fisheries, Department of Conservation, Ministry of Transport, Te Puni Kokiri, Foundation for Research Science and Technology, and Department of Prime Minister and Cabinet.

Financial implications

47. The cost of amending the RMA will be covered by existing baselines.

Human rights

48. This proposal has no human rights implications.

Legislative implications

49. Amendments are proposed to the Resource Management Act 1991. If accepted the amendment would be part of a stand-alone bill that incorporates those amendments that address climate change matters. (The Government has already agreed to an earlier amendment (CAB Min (02) 26/19) which proposes to remove the ability of regional councils to consider effects on climate change of discharge-to-air activities.)

Regulatory impact and business compliance cost statement

50. A regulatory impact statement (RIS) is attached as an appendix. The implications of the proposed amendments to the RMA are discussed.

51. There are no new compliance costs from this proposal. An amendment to section 7 does not in itself require councils to actively do anything, such as change their plans.

52. The amendment changes the weighting given to a particular matter. As such, applicants will be required to provide information on how their proposal provides for or affects renewable energy and the efficient use and development of the resource. However, this requirement is already an implicit requirement of RMA processes.

Publicity

53. Information on the reason for amending the RMA and on the additional matters under consideration will be required for councils, key stakeholders and the general public.

Recommendations

It is recommended that the Committee:

- a) **note** that in the National Energy Efficiency and Conservation Strategy (NEECS) the Government has established targets for renewable energy and for improvements in energy efficiency and the Strategy is a ‘foundation policy’ in the Government’s climate change policy package;
- b) **note** that the Resource Management Act 1991 (RMA) allows councils to consider energy efficiency and renewable energy, but they are not explicitly mentioned;
- c) **note** that in giving effect to the Government’s energy and climate change policies, the RMA has a role in assessing energy production and distribution proposals against the RMA test of promoting sustainable management;
- d) **agree** that it is desirable to provide national direction on the matters set out in paragraphs (a) to (c) and that an explicit reference to renewable energy in the RMA will assist in this regard;
- e) **agree** to amend the RMA to require all persons exercising functions and powers under the Act to give greater weighting to the value of renewable energy;
- f) **agree** that a definition of renewable energy, required for the amendment detailed in paragraph (e), will generally follow that used in the NEECS;
- g) **note** that the definition of “renewable energy source” in the NEECS is “energy that occurs naturally, the use of which will not deplete energy sources of that kind. This includes water, wind, solar, geothermal (with certain controls) and biomass”;
- h) **note** that an amendment to sections 7 and 2 of the RMA is a likely outcome of paragraphs (e) to (g);
- i) **agree** to amend section 7 of the RMA (other matters to give particular regard to) to clarify that the efficient use of minerals to generate energy, and the efficient use of the mineral-generated energy, is a consideration;
- j) **agree** to include the amendment outlined in paragraphs (e) and (i) in the Bill previously agreed to by Government (CAB Min (02) 26/19) so forming a climate change Resource Management Act Amendment Bill;

- k) **note** that the Amendment Bill referred to in paragraph (j) has been accorded priority 5 (drafting instructions to PCO to be provided in 2002);
- l) **note** that a National Policy Statement on energy efficiency and renewable energy may be required to support amendments to section 7, as detailed in paragraphs (e) and (i), particularly because an amendment to the Act will not in itself require changes to district and regional plans;
- m) **direct** officials from the Ministry for the Environment to report back by 30 April 2003 on
- the findings of an effectiveness and cost/benefit analysis of a NPS, under the RMA, addressing energy efficiency and the use of renewable energy
 - The need for non-binding guidance material;
- n) **note** that a more coherent and appropriate treatment of proposals, consistent with the Government's energy and climate change policies, will result from a combination of:
- the amendment to add energy matters to the RMA, as outlined in this paper
 - the Government's recent decision regarding treatment under the RMA of emissions of greenhouse gases from industrial and trade premises
 - the measures in the companion Cabinet paper on the RMA and adaptation to the effects of climate change;
- o) **note** that the Minister for the Environment is currently investigating concerns about the cost of RMA processes, including time delays, and she expects to report on these matters by 30 March.

Hon Pete Hodgson
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on Climate Change

Hon Marian Hobbs
Minister for the Environment

Appendix

Regulatory Impact Statement

1. *Background*

- 1.1 Energy efficiency and the use of renewable energy are key elements of the Government's energy and climate change policies.
- 1.2 The Resource Management Act 1991 (RMA) does not explicitly provide for improved energy efficiency or renewable energy. Although these matters can be considered in RMA processes (e.g. in council plans and in decisions on resource consent applications) and the National Energy Efficiency and Conservation Strategy (NEECS) should be given regard to in plan making, there is no explicit requirement for them to be given particular weighting.

2. *Statement of the nature and magnitude of the problem and the need for government action*

- 2.1 The Government's energy policy (covering energy efficiency, energy conservation and renewable energy) and its climate change policy are partly dependent on the RMA for their implementation.
- 2.2 Meeting the Government's objectives, detailed in the NEECS and Climate Change policies, would be assisted by a stronger legal mandate under the RMA to take into consideration energy matters. Guidance on local and regional circumstances and national direction on the content of district and regional plans would also be needed.
- 2.3 The magnitude of the problem, in terms of potential barriers in current regional and district plans, has not been quantified. But consultation strongly endorses the need for national direction in this area.

3. *Statement of the public policy objective(s)*

- 3.1 The policy objectives are:
 - a) To provide a stronger legal mandate for consideration of energy efficiency and the value of renewable energy so that decisions and council plans under the RMA take into consideration national objectives detailed in the NEECS and climate change policies.
 - b) To provide a legal framework in the RMA that would support any guidance or national direction provided through any future National Policy Statement or non-statutory guidance material.
 - c) For council plans, that they contain appropriate provisions - for example:
 - proposals for renewable energy should not encounter unnecessary barriers

- projects which incorporate energy efficient designs and/ or energy conservation measures should not be penalised or inadvertently restricted, and optimally would be encouraged
 - neighbouring councils should deal with maintenance and upgrading of transmission lines in an integrated manner
 - where possible the benefit of proposals, in terms of energy and climate change objectives, should be considered in decision-making.
4. *Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective(s)*
- 4.1 The options for achieving the policy objective include, either independently or in combination:
- development of non-statutory guidance and reliance on development of case law
 - A National Policy Statement (NPS) under the RMA
 - An amendment to the RMA to explicitly refer to the energy matters and give consideration of the value of renewable energy greater prominence
- 4.2 The proposal is to amend the RMA, specifically a reference to the value of renewable energy . An amendment is also required to clarify that the efficient use and development of the energy resource is a consideration – including energy derived from fossil fuels. This will result in amendments to sections 7 (other matters which must be given particular regard to) and 2 (definitions) of the RMA.
- 4.3 The need for a NPS to back up these amendments, by providing more detailed direction, requires more analysis on possible content, effectiveness and relevant cost and benefits.
5. *Statement of the net benefit of the proposal, including total regulatory costs (administrative, compliance and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options*
- 5.1 Any amendment to section 7, plus future guidance (ether a NPS or non-binding guidance) will potentially have long-term benefits as councils consider how, through their function under the RMA, they can give regard to national policy. However, the actual benefits (and costs) are difficult to estimate.
- 5.2 The proposed change, to explicitly refer to renewable energy, is consistent with the direction of the Kyoto Protocol and, depending on the future price of carbon, could bring direct benefits to the New Zealand economy.
- 5.3 An amendment to section 7 will involve very little incremental administrative cost. The Government has already decided to proceed with one climate change amendment to the RMA (CAB Min (02) 26/19). There will be only a small cost to central government from adding a further amendment to that Bill.

- 5.4 In amending the Act to introduce the term renewable energy to the RMA and consider energy efficiency (from all energy sources including mineral) there will, necessarily, be discussion about consistency in the use of terms across government. The cost of this process has not been quantified.
- 5.5 It is not expected that local authorities as a result of the amendments to section 7, would incur any additional administrative costs. An amendment to the Act itself doesn't require them to change their plans.
- 5.6 Similarly, it is not expected that there would be any additional costs to applicants, including business. The amendments change the weighting given to a particular matter. As such applicants for resource consents will, where relevant, be required to provide information on how their proposal contributes to, or affects, renewable energy. However, this requirement is already an implicit requirement of the RMA and many businesses already provide it, particularly where it strengthens their case for granting their proposed development a resource consent.
- 5.7 There is a potential cost in that the proposed amendment to the RMA may not, by itself, address the policy objective in some circumstances and so provide little initial benefit. For some developers their primary concerns relate to council practice, delays in decision-making (particularly at the Environment Court) and uncertainties of outcome. It is acknowledge, however, that some of these concerns are not specific to the energy sector.
6. *Statement of consultation undertaken*
- 6.1 Officials have held consultation meetings with twenty four local authorities, 6 renewable energy developers, Transpower, the Electricity Networks Association, the Major Electricity Users Group, Business New Zealand and a number of people working with Maori on energy issues. Sixty one submissions were received on an Issues and Options paper issued in early November.
- 6.2 Government departments specifically consulted through Cabinet paper process are: Climate Change Project Team, Energy Efficiency and Conservation Authority, Treasury, Ministry of Economic Development, Ministry of Agriculture and Fisheries, Department of Conservation, Ministry of Transport, Te Puni Kokiri, Foundation for Research Science and Technology, and Department of Prime Minister and Cabinet.
- 6.3 Local Government NZ has supported the work and has been kept informed of its progress.