

# Providing National guidance on Renewable Energy Projects through the Resource Management Act 1991

Reference number:

CBC (07) 177

Office of the Acting Minister for the Environment and the Minister of Energy

The Chair

Cabinet Policy Committee

## Proposal

1. This paper proposes that Cabinet invites the Minister for the Environment to commence preparing a proposed national policy statement (NPS) on renewable energy under the Resource Management Act 1991 (RMA). The paper reports the findings of the Reference Group on a proposed NPS on electricity generation, and also reports some improvements that are being made to the administration of the call in procedure.

## Executive Summary

2. The RMA was amended in 2004 to require councils to have particular regard to the benefits of renewable energy (section 7(j)) when deciding resource consents and formulating plans.

3. The New Zealand Energy Strategy (NZES) and the National Energy Efficiency and Conservation Strategy (NZECS) are not recognised under the RMA as matters to which councils and courts must have regard.

4. A NPS could help decision-makers by clearly setting out the government's objectives on renewable energy, including what the national benefits are. This could help to ensure that the benefits of renewable energy are considered fully by councils and the courts.

5. I recommend that Cabinet notes that it is desirable to issue a NPS, and invites the Minister for the Environment, in consultation with the Minister of Energy, to commence the process of preparing a proposed NPS on renewable energy.

## Background

6. The RMA defines renewable energy as: energy produced from solar, wind, hydro, geothermal, biomass, tidal, wave, and ocean current sources.

7. About 70% of New Zealand's electricity is now generated from renewable sources.

8. New Zealand's electricity demand is projected to grow at about 1.3% per annum, taking into account improved energy efficiency.

9. In the future, more electricity will need to be generated from renewable energy sources, because of New Zealand's international obligations with respect to climate change.

10. It was not until 2004 that the RMA was amended to require councils to have particular regard to the benefits of renewable energy (section 7(j)) when deciding resource consents and formulating plans.

11. Although councils are now reviewing their plans and policy statements to take account of the benefits of renewable energy, currently only a few regional policy statements, regional plans (3 out of 16) and district plans (11%) acknowledge the benefits of renewable energy.

12. Renewable energy projects, such as wind farms, are often located in sensitive landscape areas. The protection of outstanding landscapes and the relationship of Maori with their ancestral lands and sites are both matters of national importance under section 6(b) and (e) of the RMA. Section 7 matters (such as renewable energy) are not matters of national importance.

13. The NZES and the NZEECS are not recognised under the RMA. The Environment Court has taken these strategies into account in resource consent decisions, but can give them as much or as little weight as it sees fit.

14. Industry, interest groups such as the Environmental Defence Society, some councils, the Environment Court and other stakeholders have therefore called for government to take a leading role in developing a NPS for renewable energy.

15. Many submissions received on the draft NZES support a NPS on renewable energy, including all eight Auckland councils and the NZ Wind Energy Association. Local Government New Zealand was silent on the matter. Taranaki and Northland Regional Councils did not favour a NPS. Taranaki was of the view that it could be overly prescriptive and limit flexibility, while Northland believed it would take too long to develop and could potentially become unwieldy. The New Zealand Fish and Game Council recommended a degree of caution, noting that not all renewable generation proposals to dam rivers should proceed.

## Reference Group report back

16. In November 2004, Cabinet invited the Ministers for the Environment and Economic Development to set up a Reference Group of officials and stakeholders (including generators) to look into the merits of a NPS for electricity generation generally. Cabinet agreed to a limited period of consultation on the Reference

Group's findings, and to set a report back date of November 2005 [EDC Min (04) 24/5 refers]. In 2006, the Cabinet Business Committee agreed that the report back should be deferred until 31 July 2007 [CBC memo (06) 15/1 refers]. This paper includes the report back required of the Reference Group's findings.

17. Cabinet did not give a specific mandate for renewable energy in 2004 when the role of the Reference Group was defined. Some members of the Group were strongly opposed to a renewable electricity NPS on the grounds that it would add little value and be risky to non-renewable sources, to New Zealand's security of supply, and to the environment. Other members of the Reference Group regarded these risks as small. Most of the Reference Group concluded that a high level NPS that stated that electricity generation is a nationally significant activity, and that the benefits associated with generation (particularly renewable energy) should be taken into account by decision-makers, would add value.

18. Since then, energy and climate change policy has developed to favour greater emphasis on renewable energy generation.

19. There was no public consultation on the Reference Group report. However, there was public consultation on drafts of the NZES and the NZEECS. Both documents set out the government's desire for renewable energy to play a stronger role in supplying New Zealand's future energy needs. The draft NZES, in particular, requested comments on:

- The RMA's role in providing national guidance to help meet the strategy's objective of maximising renewable generation; and
- How greater use of renewable energy could be reconciled with local environmental effects that are site specific.

20. A decision on providing national guidance through the RMA for renewable energy is needed to finalise the NZES.

## Comment

### Providing guidance through National Policy Statements

21. Councils are responsible for managing the effects of renewable energy development, and, in exercising their functions under the RMA, must have particular regard to the benefits to be derived from the use and development of renewable energy. In their wider role of managing natural and physical resources (such as water, ecosystems, natural character or outstanding landscapes), councils, through regional and district plans, can indirectly provide or limit opportunities for renewable energy development.

22. A NPS is at the top of the hierarchy of planning instruments under the RMA that local authorities must give effect to through their regional policy statements and regional and district plans. Councils and the courts also must have regard to NPS and regional policy statements and plans when considering consent applications. Currently, the only operative NPS is the New Zealand Coastal Policy Statement, which does not have provisions that recognise the benefits of renewable

energy. A NPS for Electricity Transmission is in development and is currently being heard before a Board of Inquiry.

23. A NPS states objectives and policies for matters of national significance that are relevant to achieving sustainable management. A NPS could contain objectives and policies that recognise the national benefits to be derived from the use and development of renewable energy. Councils are required to give effect to national policy statements by amending their policy statements and plans. This could help to ensure that councils and the courts consider the benefits of renewable energy fully in resource consent applications.

24. A NPS would help decision-makers by clearly setting out the government's objectives on matters of national significance that are relevant for achieving the purpose of the Act, including what the national benefits are. This could help to ensure that the benefits of renewable energy are considered fully by councils and the courts when making decisions on competing considerations. A NPS would not guarantee that all renewable energy projects were consented. Indeed a NPS could recognise the protection of natural resources and clarify that some developments with high environmental costs are inappropriate in certain areas. All projects would still have to meet the RMA's purpose of promoting sustainable management in order to gain resource consent.

25. In determining whether it is desirable to prepare a proposed NPS on renewable energy, the Minister for the Environment could consider that the following criteria of national significance set out in section 45 are particularly relevant:

- The actual or potential effects of the use, development, or protection of natural and physical resources (s 45(2)(a));
- New Zealand's interests and obligations in maintaining or enhancing aspects of the national or global environment (s 45(2)(b)); and
- Anything which affects or potentially affects more than one region (s 45(2)(d))

26. Consequently, I recommend that Cabinet notes that it is desirable to issue a NPS, and that Cabinet should invite the Minister for the Environment, in consultation with the Minister of Energy, to commence the process to prepare a proposed NPS on renewable energy.

### ***Process for development***

27. The RMA requires the Minister to seek and consider comments from iwi authorities and other appropriate persons and organisations (s 46(a)), first, before preparing a proposed NPS.

28. After preparing the proposed NPS, the Minister has two choices: either to appoint a Board of Inquiry to inquire into and report on the proposed NPS (s 47), which is being used for the Transmission NPS, or an alternative process provided for in section 46A(1)(b). The alternative process requires an adequate period and opportunity for public consultation, analysis of written submissions, and preparation of a report and recommendations for decision by the Minister. This approach may see the proposed NPS being in place within twelve months, in accordance with our intention.

29. The Board of Inquiry process requires the proposed NPS to be publicly notified for submissions; the Board conducting a series of hearings, and preparing a report and recommendations to the Minister. The Board process allows the submissions and evidence to be reported on by an independent panel. Some statutory timelines apply to the Board submission and hearing process. It is possible, through the terms of reference, to set the time within which the Board of Inquiry makes its report and recommendations.

30. While the Board process may appear to be longer, using the Board process means that once the NPS has been approved, it can come into effect immediately after gazettal, notification and presentation to the House.

31. The Board of Inquiry process also allows the NPS objectives and policies to be imported directly into councils' plans without the need for councils to go through the RMA First Schedule process (which involves public notification, submissions to the council, and possible appeals).

32. In comparison with the Board process, the alternative process is possibly faster, but any changes to plans must go through the RMA First Schedule process. This could take much longer (at least another year) and be more costly to local government and ratepayers.

33. For either process, the NPS can specify when councils must make changes to their plans, and councils may need to develop rules in response to the NPS through the RMA First Schedule process. The Quality Planning website and EECA's regional renewable energy assessment programme for regional councils could assist with the process of developing rules.

34. The Minister, in choosing the process, could consider the extent and timing of public consultation and debate on NPS in the draft NZES and the general support for a NPS on renewable energy.

35. I recommend that a Board of Inquiry process is adopted for the proposed NPS with a view to a Board reporting back around mid 2008.

### ***National policy statement options***

36. There are two main options for structuring a proposed NPS. Either a proposed NPS could state the government's general objectives for renewable energy. Or, a proposed NPS could go further and include policies specific to forms of renewable generation (e.g. wind and geothermal).

37. These options are examples only, and I recommend that no decisions are made on the form of the proposed NPS until after comments are sought under section 46.

### ***Option 1: Proposed NPS: Renewable Energy Objectives***

38. As a minimum, a proposed NPS could be developed that sets out the government's position on the national significance of renewable energy.

39. Under this option a NPS could contain objectives and policies requiring that councils consider the government's objectives that are relevant for promoting the sustainable management of renewable energy generation and recognise the national benefits of renewable energy when preparing plans and policy statements. These

statements of principle could be consistent with the principles set out in the New Zealand Energy Strategy. These provisions would in turn guide decisions on resource consents.

40. These objectives and policies could be general to all forms of renewable energy. For example, the NPS could provide that the generation of electricity from renewable energy sources is a nationally significant activity, and then spell out the benefits of generation from renewable energy.

***Option 2: Proposed NPS: Renewable Energy Objectives, including specific policies on types of renewable generation***

41. This option could contain the objectives and policies of Option 1, but could go further by including policies that are specific to particular types of renewable energy. Specific policies could give even greater guidance to councils and the courts when considering the sustainable management and the benefits of renewable energy.

42. There may be little benefit in a NPS attempting to address detailed issues associated with some renewable energy generation type. For example, it is expected that water allocation policies and other tools that are relevant to hydro energy would be developed under the government's Sustainable Water Programme of Action, and any policies for hydro energy would need to be consistent with any national water policy. An NPS on water quality and demand management is under development and it is expected that it would address the existing allocation of water for electricity generation purposes. Generation occurring in or near the coastal marine area could be affected by the current review of the New Zealand Coastal Policy Statement (NZCPS). Consideration would need to be given to the relationship between the NZCPS and any NPS policies that could be developed with respect to tidal, wave or ocean current energy or other renewable energy developments on the coast.

43. The NPS could be developed in stages. The proposed NPS could be reviewed at a later stage to see whether it was appropriate to include specific policies for other types of renewable energy.

44. The proposed NPS could, however, include some policies in particular for wind energy in the first instance. Opportunities from a national perspective to influence decisions on wind consent applications that are in the pipeline are likely to be missed if a NPS is deferred for two or three years. Consent applications for other renewable generation types would still be considered against the general objectives and policies of the proposed NPS. The NPS could, for example, require councils to identify any areas that may be appropriate to locate wind generation and identify any areas where it would be inappropriate to develop wind generation because of other values. The Government could provide guidance and assistance to councils to fulfil this requirement.

45. Such a NPS could not, however, deal with detailed issues such as noise from wind turbines and technical methodologies for landscape assessment (when dealing with wind farms, for example). These matters can be dealt with by National Environmental Standards (NES), but the Reference Group concluded that there was not a strong case for developing such NES. The reasons for this view were that the landscape impacts of wind farms could be dealt with by non-statutory guidance, and

there is an existing New Zealand noise standard that is well used and understood by councils.

## **Call in of nationally significant renewable energy projects**

46. The RMA allows the Minister for the Environment to intervene in proposals of national significance if the Minister receives a request from an applicant, a council or if the Minister otherwise decides. The Minister of Conservation has this power where the project is wholly in the coastal marine area.

47. The Minister's intervention powers include the power to make Crown submissions and to appoint project co-ordinators to assist the council. The most directive power is to call in a project and refer it to a Board of Inquiry or directly to the Environment Court for decision-making.

48. The use of the Minister's call in power can potentially reduce the time and costs involved in consenting renewable energy projects.

49. Some renewable energy projects could be called in because of a combination of factors of national significance, including the scale and significance of the proposal and the importance of renewable energy. National significance does not necessarily have to mean 'big'. For example, the Parliamentary Commissioner for the Environment has reported on the potential importance of smaller widely distributed wind farms and the NZES has emphasised the importance of cost-effective baseload geothermal generation.

### ***Early engagement approach to call in process***

50. Applicants for renewable energy projects are expressing a growing interest in the Minister's intervention powers under the RMA, particularly the call in power. Some applicants seem to be unclear on the circumstances in which an application would be called in, and when they should approach the government about the call in option.

51. Under the RMA, the Minister can call in applications in the period between when they are lodged and up to five days before the hearing commences.

52. Experience is showing, however, that to manage the process properly and fairly, it is important to engage early with the Ministry for the Environment about possible intervention options.

53. The Ministry will provide further guidance on the call in powers, setting out the need for early engagement. The Ministry will also work with key agencies in the energy sector about which proposals may be candidates for call in.

### ***Call in resources***

54. A Board of Inquiry must be chaired by a current, former or retired Environment Judge (s146(5)). Judicial numbers are limited, and several call in cases running concurrently may require more than one Board to be available. Every application will be different and may require at least one person with local or regional knowledge, and one person with experience in tikanga Maori.

55. Experience has shown that it would assist to identify a pool of Board candidates with relevant expertise. MfE already has a pool of independent commissioners who have qualified under the 'Making Good Decisions' course. MfE is currently drawing up a list of potential Board candidates.

56. One of the advantages of using the call in process for a number of consent applications is that a Board of Inquiry with similar membership could hear a number of applications. A Board of Inquiry is free to determine its own processes and could, if it considered it appropriate, hear proposals jointly. While a common decision maker is likely to result in more consistent approach, decision making for each application must be determined on its own merits in accordance with local plan rules and the RMA.

### *Consolidated consenting*

57. The draft NZES asked for submissions on whether there was interest in a consolidated consenting process. Such a process would enable a pool of projects to be called in and considered by the same decision making panel.

58. There was little interest from stakeholders in a consolidated consenting process. Stakeholders said that the consenting process would be slowed to the speed of the most complicated project. There were also questions about whether the RMA needed to be amended to allow this option.

## **Consultation**

59. The following departments have been consulted in the preparation of this paper: the Treasury, the Department of Conservation, Te Puni Kokiri, the Department of Internal Affairs, the Ministry of Health, the Ministry of Agriculture and Forestry, the Ministry of Transport and the Ministry of Research Science and Technology.

60. The Department of Prime Minister and Cabinet, the Energy Efficiency and Conservation Authority and the Electricity Commission were informed.

61. The Department of Internal Affairs considers that, given what appears to be a problem of low magnitude (17 of 19 consent applications for wind energy granted); a NPS may be too strong an intervention, particularly when the costs of such projects fall disproportionately on local communities. In the Department's view, further consideration could be given to promoting best practice between councils as an alternative to a NPS.

62. The Ministry for the Environment and the Ministry of Economic Development do not agree that best practice is an adequate solution. A number of organisations and individuals, including the Environment Court, have asked for national guidance in the form of a NPS on renewable energy.

## **Fiscal implications**

63. The costs of preparing and consulting on the proposed NPS are significant and can not be met through baseline funding. I will be seeking a specific appropriation

for this work and intend to apply for funding for this work from the RMA/CMA contingency fund.

## Human Rights

64. The proposals contained in this Cabinet paper do not appear to be inconsistent with the New Zealand Bill of Rights Act 1990, or the Human Rights Act 1993. A final view as to whether the proposals will be consistent with these Acts will be possible once the proposed NPS is prepared.

## Legislative implications

65. There are no legislative implications arising from this proposal.

## Regulatory Impact Analysis

66. A Regulatory Impact Statement will be required at the stage that Cabinet agrees that the proposed NPS should be notified.

67. Section 32 (the cost-benefit report required under the RMA for any new policy statement, plan or standard) reports will need to be prepared before the proposed NPS is publicly notified for submissions and again before the NPS is issued.

## Publicity

68. I recommend that the Minister for the Environment and the Minister of Energy announce the decisions resulting from this paper.

## Recommendations

69. The Minister for the Environment and the Minister of Energy recommend that the Committee:

1. **note** that in the future, more electricity will need to be generated from renewable energy sources, because of New Zealand's international obligations with respect to climate change;
2. **note** that Cabinet invited the Ministers for the Environment and Economic Development to report back on the findings of a Reference Group that looked into the merits of a national policy statement for electricity generation;
3. **note** that consultation on the Reference Group's findings did not occur but consultation on the draft New Zealand Energy Strategy provided some support for a national policy statement;
4. **note** that a decision on providing national guidance under the RMA for renewable energy projects is required to finalise the New Zealand Energy Strategy;
5. **invite** the Minister for the Environment, in consultation with the Minister of Energy, to commence the process for preparing a proposed national policy statement on

renewable energy and a section 32 report (cost-benefit evaluation); and to report back to the Cabinet Policy Committee by 5 December 2007;

6. **note** that the Ministry for the Environment will provide further guidance on the call in powers, setting out the need for early engagement;
7. **note** that there was little interest in a consolidated consenting process from submitters on the draft New Zealand Energy Strategy;
8. **invite** the Minister for the Environment and the Minister of Energy to announce these decisions publicly.

Hon David Parker

Acting Minister for the Environment  
Minister of Energy