



Local Government New Zealand
te pūtahi matakokiri

Submission to the Board of Inquiry on
the Proposed National Policy Statement on
Renewable Electricity Generation
From *Local Government New Zealand*

5 November 2008

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1. INTRODUCTION

Local Government New Zealand thanks the Board of Inquiry for the opportunity to comment on the proposed National Policy Statement on renewable electricity generation, hereafter referred to as the 'Proposed NPS'. This submission outlines a general local government view on the Proposed NPS.

Local Government New Zealand makes this submission on behalf of the National Council, representing the interests of New Zealand local government.

2. PROCESS TO PREPARE THIS SUBMISSION

Local Government New Zealand prepared this submission following:

- consultation with local authorities
- a workshop with a technical expert advisory group
- analysis of the regulatory policy proposals, and the accompanying Section 32 Evaluation Report and Regulatory Impact Statement

This submission is endorsed by the following members of the *Local Government New Zealand* National Council, who have delegations from the full Council to approve this submission on their behalf:

- Lawrence Yule, President
- Kerry Prendergast, Vice President
- Dianne Hale, Regulation Portfolio holder

Many local authorities will be making individual submissions to the Board on the Proposed NPS. *Local Government New Zealand* encourages the Board to carefully consider all council submissions.

3. BACKGROUND

Local Government New Zealand supports the use of renewable forms of energy, and supports the intent of the Proposed NPS. Many local authorities in New Zealand are very actively working to reduce carbon emissions and increase energy efficiency. Many councils have made some clear commitments through the Communities for Climate Protection programme to reducing green-house gas emissions, while others might focus on projects with specific social and health benefits such as the insulation of homes. Many councils are working together with stakeholders and their communities to develop energy strategies looking at both the supply and demand side of energy.

The point here is that councils are responding to the New Zealand Energy Strategy and the New Zealand Energy Efficiency and Conservation Strategy in different ways and in ways that best reflect their communities priorities and needs.

We ask the Board to consider the following submission on the Proposed NPS. This submission has been split into two Parts. The first focuses on broader more general comments. The second part considers the proposed policies individually.

4. GENERAL COMMENTS

4.1 Scope

The initial Ministry for the Environment scoping consultation exercise for the Proposed NPS referred to 'renewable energy'. We note the change in scope to renewable 'electricity generation'. The Act defines 'renewable energy' as '*energy produced from solar, wind, hydro, geothermal, biomass, tidal, wave, and ocean current sources*'. Electricity and its generation are not renewable per se. The energy resources - such as solar radiation, wind, water, and tidal - from which electricity can be generated, are renewable.

The Proposed NPS on renewable 'electricity generation' does therefore not recognise using some renewable sources for their direct use. For example, direct use of geothermal heat for domestic or industrial processes, and the use of solar radiation for heating systems. These types of activities reduce demand on electricity and reduce green house gas emissions contributing towards the goals of the New Zealand Energy Strategy and New Zealand Energy Efficiency and Conservation Strategy (NZES & NZEECS).

There is a need to not unduly favour generation (conversion) to electricity over direct use of renewable energy resources when it is more efficient to utilise the renewable energy resource directly rather than converting to electricity. Sometimes it is inefficient and costly to go for an electricity generation option, and this NPS ought not to lead to inefficiencies and unnecessary energy related cost increases. The Preamble to the Proposed NPS may be an appropriate place to recognise the benefits of direct use of heat from renewable sources.

We suggest that a more appropriate wording for the title of the Proposed NPS on renewable electricity generation may be the NPS on '*electricity generated from renewable energy resources*'. This would provide for more consistency with terminology of the RMA and would be more accurate as electricity generation is not 'renewable' as such.

4.2 Considerations on what the Proposed NPS seeks to achieve

The matter of national significance which applies to this Proposed NPS is '*the need to develop, upgrade, maintain and operate renewable electricity activities throughout New Zealand*'.

The final paragraph of the Preamble suggests that the Proposed NPS seeks to provide, '*a nationally consistent approach to balancing the competing values associated with the development of New Zealand's renewable energy resources*' to provide greater certainty to decision makers, applicants, and the wider community.

In our view, balancing the competing values associated with the development of New Zealand's renewable energy resources is a real issue, many councils in their feedback to us have suggested that further guidance on balancing competing values would be the best focus for national guidance.

However, the focus of the Objective is to promote the development, upgrading, maintenance and operation of new and existing renewable electricity generation activities so that a government set 90 percent renewables by 2025 target can be reached.

We are unsure of the Objective of the Proposed NPS and suggest that it should relate to the policy aim of the Proposed NPS. If the real aim of the NPS is to achieve reduced greenhouse gas emissions and security of supply then the Objective should say so.

We suggest that the 2025 target be removed from the Objective. While this target provides useful context in the Preamble, the target itself is not something that can be achieved through a NPS under the RMA. A NPS as a policy tool is used to recognise the national significance of an issue and to provide consistency, the Objective needs to reflect what can actually be achieved through a NPS.

We consider it very likely that the next generation of local authority policy statements and plans currently being formulated around the country will already provide for the use and development of renewable energy resources, including for the purposes of electricity generation. You will read in the submission of individual councils, how many believe their recent plans or current reviews are likely to give effect to aspects of this Proposed NPS.

Local Government New Zealand believes that the perception of constraint faced by electricity generators, as a result of local regulatory frameworks under the Act, is likely to be overstated. This is particularly relevant in terms of the Board's consideration as to what might be achieved over and above what is already in train, by requiring all local authorities to undertake an additional review of their policy statements and plans by 2012.

The Proposed NPS policies do not guide or direct decision makers at any level or location towards a 'consistent' approach to their deliberations in '*balancing competing values*'. For these reasons the Proposed NPS will not bring greater 'certainty' to the resource management decision-making process.

4.3 Matters of national significance and Part II matters

The purpose of a National Policy Statement under the RMA is to state objectives and policies for matters of 'national significance' that are relevant to achieving the purpose of the Act.

In 2004, the energy and climate change amendment to the RMA saw a number of related policies included in Section 7 - Other matters, of which all persons exercising function and powers under the Act shall have particular regard to. Including: '*(ba) the efficiency of the end use of energy, (i) the effects of climate change and (j) the benefits to be derived from the use and development of renewable energy.*' Most councils are providing for these changes in development of second generation policy statements and plans and would already have applied these matters as part of resource consent decision-making. We query whether the Proposed NPS will add any further value over what is already provided for in the RMA.

When exercising functions and powers under the RMA local authorities must also consider Section 6 - Matters of 'national importance'. It is balancing renewable energy with these Part II matters (Sections 6 and 7) that many local authorities considered that further guidance would be helpful.

At the time of the 2004 changes mentioned above, it was not thought necessary or appropriate to accord renewable energy matters the status it could have been afforded had it been included in Section 6 of the RMA as a Matter of national importance. The section 32 evaluation covers the thinking behind that conclusion at the time and identifies that elevating 'renewable electricity generation' to a Matter of national importance under Section 6 of the RMA could result in projects with unacceptable effects receiving consent.

Elevating renewable electricity generation to 'national significance' status could also result in projects with unacceptable effects receiving consent if some further guidance on how to balance national benefits against other competing matters of national importance is not provided.

We ask the Board to reflect carefully upon the differences in intended effect upon resource management planning processes and decision making, of an NPS in comparison to what is already provided for in Part II. There is a hierarchy established within the framework of the RMA in terms of the various means for promoting sustainable management of natural and physical resources.

4.4 Resourcing and costs

We note that this Proposed NPS is the fifth possible NPS either in place or being consulted on at this time (including the New Zealand Coastal Policy Statement). The large number of National Policy Statements requiring implementation all at the same time will have serious resourcing implications for most councils.

Both Policy 4 and 5 will require significant technical expertise which is beyond the resourcing means for a number of councils.

Local Government New Zealand is concerned that the effect of this NPS upon the resourcing of the RMA function by local authorities is out of alignment with the demand for energy planning services by generators and other participants in resource management processes.

We are not convinced sufficient justification has been provided for a generic regulatory planning directive, to all councils, which presents significant technical and capacity challenges for the sector.

The requirements on local authorities to give effect to the Proposed NPS in its current form (specifically policies 4 and 5), are similar tasks to those identified within the Regulatory Impact Statement as necessary in relation to developing and implementing National Environmental Standards (NES). It is notable that the key reasoning behind choosing not to provide NES was the level of difficulty and thus time and cost associated with designing the National Environmental Standards.

It is our view that the same methodological and technical difficulties and thus extended time and significant costs are passed to local authorities, as each local authority must meet the capability and cost itself.

Our local government technical advisory group have suggested that NES will still be necessary to support the NPS and the NZES, even should policies 4 and 5 remain within an NPS.

There will be significant costs incurred by the local government sector (and thus ratepayers), in implementing this NPS. Costs will be associated with reviewing policy statements and plans. These costs are compounded by the lack of certainty associated with developing local enabling provisions so these will be open to legal challenge.

Costs are further compounded by the inclusion of a date by which local authorities are to notify policy statement and plans to 'enable' certain activities, which is not in line with local authorities existing timetabled reviews.

We suggest that the date in policies 4 and 5 be removed and that any plan amendments required to implement policies 4 and 5 be incorporated at the time of the next review.

We also encourage the Board to consider the use of S55(2a)(b) of the Act, whereby a NPS can direct specific provisions be included in a document, without notification or hearing. It is not necessary or appropriate to require the local authority to conduct a Schedule 1 process as though it had some choices in the matter, given a 'no-

predetermination' assumption inherent in the public consultation provided for within Schedule 1 of the Act.

4.5 Implementation

Promoting the target, highlighted within the objective of the Proposed NPS, cannot be reliant solely upon activities under the RMA, or on one policy option (the Proposed NPS). We suggest that further work would need to be considered. Including targeted National Environmental Standards and the development of electricity generation industry or sector New Zealand Standards (e.g. specifications for energy research equipment and its use in the field).

We ask the Board to recognise the benefits of QP guidance, and to consider the provision of guidance to assist the local government sector to implement this NPS. Indeed, we suggest that the provision of guidance is a serious alternative to several of the policies within the Proposed NPS.

It is our view that the supplementary resources, which must be allocated in support of this NPS, may prove more valuable than the NPS itself, in achieving the objective of this NPS.

Government must provide for a significant implementation package, to facilitate and assist with the capacity raising necessary to support implementation of this NPS.

This NPS will also need to be monitored, in terms of its implementation by local authorities, 'consent authorities' and decision makers, and in terms of its effectiveness for environmental outcomes. Its effectiveness also will need to be assessed relative to the other contributing factors driving a shift towards the 90% target for electricity from renewable energy resources. We would welcome the Boards consideration of what should be monitoring and how at this early stage of developing the NPS. This will help to determine potential effectiveness and the direction of supporting guidance material.

5. SPECIFIC COMMENTS ON EACH POLICY

5.1 Policy 1

The intent of Policy 1 is supported. As mentioned many councils are signed up to the Communities for Climate Protection programme which has a focus on reducing greenhouse gas emissions.

However, we do not think the policy as currently worded offers any value over what is already provided for in Section 7 of the RMA. This policy does not address the lack of clarity and certainty associated with having to reconcile potentially competing Section 6 and Section 7 matters.

The benefits which are noted within Policy 1 are not comprehensive, and therefore add little to consideration of Section 7. In particular Policy 1(ii) does not assist decision makers to better differentiate between the benefits of additional electricity capacity achieved by harnessing renewable energy versus utilising non-renewable energy resources, as both activities deliver the benefits of increasing security of supply and of diversifying type and location of generation, at the local or regional level.

We suggest that this policy might also highlight the benefits associated with providing for 'reversibility' in renewable electricity generation activities. Building 'reversibility' in as a benefit to be considered by consent authorities would allow the deletion of Policy 3 (of the Proposed NPS). Policy 1 could clarify a national preference and benefit to be had in optimising the use of geothermal and solar energy resources for 'generating electricity', rather than large scale hydro projects, as the former are relatively more reversible than the later.

We suggest the benefits to be considered by consent authorities are relevant only as they are weighing up all the matters to be reconciled in relation to a particular proposal. To assist their considerations, Policy 1 needs to further define all the national benefits and perhaps provide a framework for decision making, including by prioritising the benefits able to be achieved by particular types or scale of activities or proposals. If the notion of benefits is to assist with weighing up Section 6 and 7 matters, then a teasing out of the benefits could also be presented as a guidance note.

We ask, what will be gained by the Policy 1 requirement, above what could be achieved in providing non-regulatory guidance or by assisting some local authorities to prepare new resource management frameworks to enable better or quicker access to particular resources within their jurisdiction. For example, by assisting local authorities within the Wellington Region to enable use and development of tidal and wind resources, the Waikato and Northland regions to target their geothermal and biomass resources, or the Bay of Plenty, Nelson and Marlborough to target solar power, and so on according to EECA assessments on the availability of renewable energy resources.

Policy 1 (or the NPS) could better acknowledge that the operating environment across the regions varies widely, in terms of both the renewable resources most likely to provide for electricity generation, and the benefits associated with generation projects (social, economic and environmental).

5.2 Policy 2

The intent of this Policy 2 needs to be clarified. As it is written, it is variably interpreted within the local government sector. It is difficult to know what is reasonable, in terms of the expectations of decision makers, given the variable

interpretations which might be made in implementing this policy. We ask that the intent be clarified and in accordance with the objective of the Proposed NPS.

Local Government New Zealand acknowledges that while many of the available resources to be harvested for generating electricity are renewable, the number of sites or opportunities for generation activity are finite. It is our interpretation that Policy 2 appears to be trying to ease the ability for generators to access these finite sites. However, we think it unlikely this policy will produce an easier resource management passage for any particular proposal in terms of running the consenting process - particularly as 'the measures' alluded to within the policy are unspecified and there is no guidance proffered about how to evaluate their relative merits.

To ensure this policy is not an over-ride of any need to avoid remedy and mitigate adverse effects, *Local Government New Zealand* suggests the inclusion of '*provided there is adequate management of adverse effects*' or '*while providing adequate management of adverse effects*'.

5.3 Policy 3

Local Government New Zealand supports the intent of Policy 3 but as the policy is currently worded it is not clear about what it is asking decision makers to do and will provide more confusion than provide guidance. We request Policy 3 be removed from the Proposed NPS.

We seek that the Board clarify what is intended by this policy, in terms of what it wants decision makers to do, and ask the Board to consider the necessity for it, in terms of what it might add to decision making considerations already made under the Act. If the concept of reversibility is to be retained, we have suggested above that this be incorporated into Policy 1.

5.4 Policy 4

Local Government New Zealand seeks the removal of the date specification within Policy 4 and Policy 5. We suggest '*at time of next review*' is sufficient requirement.

Also for Policies 4 and 5, we also suggest that any 'notification' must be based on a review of the existing regional policy statement or plans, and a finding that these do not adequately give effect to this NPS. Any notification of a revised framework ought not to be necessary, where policy statements or plans have already been amended to provide for matters outlined in the Proposed NPS.

We note that the Section 32 Evaluation Report states that the intent of the enabling requirement, within Policy 4 and 5, is to remove '*unnecessary regulatory barriers and limit the scope of discretion when considering resource consent applications*'. If that is the case, then it is our view that the reference to 'regional policy statements' within

Policies 4 and 5 may not be appropriate as 'regional policy statements' do not include 'rules' which might restrict the matters a council considers.

The Proposed NPS ought to be specific and clear about the matters about which councils might 'restrict' or 'limit' their discretion over, if it is to guide and direct local authorities.

We suggest Policy 4 should identify the type of 'identification', 'research', or 'investigation' activities, or techniques or equipment to be enabled in regional and/or district plans. Many councils do not contain the in-house expertise on specific matters relating to research of possible electricity generation activities and require much more guidance through the Proposed NPS, or supplementary guidance material (produced in a timely manner) in order to give effect to Policy 4.

We also consider that the constraints implied by this policy are more perceived than real - given that there has not yet been a flood of activity to be constrained, presumably this policy is trying to remove an imaginary barrier to research and investigations by generators.

We highlight a need to define "generators" and "research-scale investigations", and "emerging... technologies and methods" - otherwise all policy statements and plans will have to develop definitions in providing appropriate and adequate enabling mechanisms, any these may not be consistent.

5.5 Policy 5

Local Government New Zealand is generally supportive of small and community-scale renewable energy options because they allow for households or smaller communities to be self reliant and self sufficient in a sustainable manner.

The Regulatory Impact Statement states that '*policy five seeks to address the disproportionately high consenting costs associated with small and community scale renewable electricity generation projects with limited environmental effects*'. While consenting costs may be an issue, until further guidance is provided to councils on the actual technologies available and how they might provide for these better in their regulatory processes, this policy is not helpful. Councils cannot just add something into their plans without understanding the technology that is available and the potential environmental effects (including the cumulative effect). Further guidance on the types of small scale renewable options on the market and how councils are to expected to provide for small scale generation in their plans would be required.

We seek the revision of Policy 5 to ensure it provides clear direction to local authorities as to where and how to limit their discretion, or about what ought to be 'permitted', controlled (etc). At the moment this Policy is unclear on what councils would need to do to enable activities associated with small or community scale

distributed electricity generation from renewable energy resources. We suggest that being more specific in the policies would add value, otherwise both Policy 4 and 5 are of marginal value in achieving the Objective.

In noting that greater specificity is required to achieve the intended Objective, we question whether an NPS is the best option. We suggest, again, that the need for NES and/or NZ standards must be re-evaluated as alternatives which could be more effective and efficient.

Again, many councils do not have the technical expertise or the knowledge of the current technologies of small and community scale renewable electricity generation options in order to be able to provide for this in their plans. Further guidance on the emerging technologies and any potential effects are most certainly required before councils can be expected to give effect to the policy. We believe better codification about what exactly is to be enabled, where, how and is required in the Proposed NPS.

The definition of “community-scale” provides for up to 4MW. We observe there are problems associated with this reference to a seemingly arbitrary MW capacity, rather than to any threshold environmental effects. It is noted that what might be thought of as ‘small scale’ in serving rural community, might be large scale in other contexts, and what might be small scale for some technologies represents large scale developments using other technologies. We suggest the Board consider providing for different degrees or scale of effects, as these apply in different operating contexts (city, town, rural-residential, rural) and for different types of electricity generation activities which might be expected in relation to Policy 5.

We envisage this policy has a potential to make it easier to develop a 4MW generation capacity to serve a small community, than it is to harness and utilise the renewable energy directly within that same community. We also envisage possible problems for local authorities, in seeking to manage the potentially significant cumulative effects associated with distributed small or community scale generation activity.

The NPS will need to give direction for local authorities in managing cumulative effects in relation to small community scale generation.

5.6 New Policy requested

Local Government New Zealand asks the Board to consider separating out the need to review policy statement and plans, into a discrete new policy (6). This would leave Policy 4 and Policy 5 to deal with guidance on enabling what activities, where and how. Policy 6 then could direct councils about notification of a plan change or variation, should the NPS require that local authorities do so by a particular date (although we have asserted this is an unnecessary duplication and cost for many local authorities).

Further, this new Policy could address our concern about any need to notify in accordance with Schedule 1, having considered an ability to do otherwise as laid out in Section 55(2A)(b) of the RMA.

6. CONCLUSION

Local Government New Zealand has expressed support for the intent of the proposed NPS. However, to provide for the matter of national significance, expressed as a need to '*develop, upgrade, maintain and operate renewable electricity generation activities throughout New Zealand*', we are of the view that the Proposed NPS is not specific and clear enough to meet this need. The policies within an NPS must be clear and unambiguous, if the Proposed NPS is to serve its purpose under the RMA. The Proposed NPS is an opportunity not to be wasted and must provide clear guidance and assist local authority planning and decision making, over and above what is already provided within Part II, and in terms of what can be achieved via non-regulatory means.

The Proposed NPS will create significant resourcing issues and financial costs for councils for what might be very limited overall value over the planning for renewable energy already taking place at local authority level around the country. We suspect that costs may outweigh the benefits of the Proposed NPS as we are not convinced of the justification or need for all councils to undertake the planning work associated with Policies 4 and 5. The costs and benefits must be fully considered and the Proposed NPS re-evaluated to confirm if a NPS or other options will best meet the policy intent.

If the Proposed NPS is to go ahead we propose the following amendments:

- Recognise the direct use of renewable energy in the Preamble
- Change the title to the NPS on '*electricity generated from renewable energy resources*'
- Remove the target from the Objective and clarify the policy intent/aim
- Provide more guidance on balancing the Proposed NPS with Part II matters of the RMA
- Consider use of Section 55 (2a)(b)
- Remove the date from policies 4 and 5
- Explicitly list the benefits of renewable electricity generation activities in Policy 1
- Consider building 'reversability' in as a benefit to be considered as part of Policy 1
- Clarify the intent of Policy 2 and consider additional wording such as '*provided there is adequate management of adverse effects*' or '*while providing adequate management of adverse effects*'
- Remove Policy 3, but if the concept of reversibility is to be retained, we suggest this be incorporated into Policy 1

- Policy 4 should identify the type of ‘identification’, ‘research’, or ‘investigation’ activities, or techniques or equipment to be enabled in regional and/or district plans
- Reconsider the definition of ‘community scale’
- Further guidance on the types of technologies available in order to give effect to Policy 5
- Further guidance in managing cumulative effects
- Add a new policy relating to the process of policy statement/plan reviews
- Include an implementation package to facilitate, assist with, and support capacity raising and implementation