

5 November 2008

Our Ref :12/2/1

Board of Inquiry
Proposed NPS for Renewable Electricity Generation
C/- PO Box 10 362
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By email: renewable.electricity@mfe.govt.nz

Dear Sir/Madam

SUBMISSION ON PROPOSED NPS FOR RENEWABLE ELECTRICITY GENERATION

1. Introduction

- 1.1 The Hawke's Bay Regional Council (**the Council**) would like to thank the Board for the opportunity to submit on the Proposed National Policy Statement for Renewable Electricity Generation (**NPS**). This submission has been prepared by staff, the councillor energy portfolio holder and Deputy Chairman.
- 1.2 The Council has recognised the importance of renewable energy-related issues in its 'Strategic Goals' for the region. The goal is to "*develop a regional understanding of renewable energy options and advocate renewable energy use.*" One objective relating to this is to "*develop a policy and regulatory framework supporting renewable energy.*" This strategic goal and associated objective are considered to be consistent with the proposed NPS.
- 1.3 In September, the HBRC received a report from SKM Consultants which identified and assessed the renewable energy potential in Hawke's Bay. That report also provided advice on how that potential may be realised. Many of the actions suggested in the SKM report to realise the region's renewable energy potential are not too dissimilar from those promoted by the NPS insofar as changes to the regional policy statement and regional plans.

2. The specific provisions of the NPS that the Council's submission relates to are:

The intent of the NPS, the Objective, Policies 1 – 5, and Interpretation.

3. Council's submission is as follows:

NPS Intent

- 3.1 The Council generally supports the NPS. However, the Council requests that the Board considers further improvements to the NPS prior to its gazettal. These improvements are outlined below and primarily focus on the interpretation and clarity of the policies.
- 3.2 The Council considers that these changes, the NPS will provide greater certainty for decision-makers, applicants and the wider community in relation to balancing the competing values associated with development of Hawke's Bay's renewable energy resources.

Objective

- 3.3 The Objective is uncertain and confusing. It does not state a clear environmental outcome or desired environmental state. Objectives should be outcome focussed and measurable. Instead, the Objective mixes 'purpose' with 'how'. The 'how' (ie: "by promoting the development...") should be removed from the objective. Existing Policies 1-5 already assist in implementing a (revised) Objective.
- 3.4 The Board should consider rewriting the Objective so it is clear, certain and outcome focussed.
- 3.5 For example it could read "*Promotion of development, upgrading, maintenance, and operation of new and existing renewable electricity generation activities as a matter of national significance so as to ensure that 90 per cent of New Zealand's electricity will be generated from renewable sources by 2025 (based on delivered electricity in an average hydrological year).*"

Policy 1

- 3.6 Policy 1 attempts to elevate the importance of the benefits of renewable electricity generation (REG) activities by requiring RMA decision-makers to have particular regard to those benefits. The Council considers that decision-making (on plans, policy statements and resource consents) must involve weighing up national benefits alongside the effects (social, economic, cultural, environmental) at a local government level. The Council accepts that there are national benefits of REG activities, but the NPS should not be used (actually or implied) to override local government decision-making. Despite Policy 2, Policy 1 must be amended to enable all RMA decision-makers to have regard to the adverse effects of REG activities as well as beneficial effects.
- 3.7 The reference to "security of electricity supply" in Policy 1(ii) requires clarification as many decision-makers will be unfamiliar with this phrase.

Policy 2

- 3.8 This policy relates specifically to consent authorities (as opposed to Policy 1 which applies to all RMA decision-makers). It provides a useful range of 'criteria' when considering resource consent applications for REG activities. The Council supports this level of guidance in the NPS, but is mindful that as currently written, Policy 2 may be misinterpreted as preventing consent authorities from requiring applicants to avoid, remedy or mitigate the adverse effects of their projects. Policy 2 should be amended to ensure consent authorities are not prevented from ensuring consent applicants avoid, remedy or mitigate adverse effects on the environment of their REG activities.
- 3.9 Implementation of Policy 2 may be difficult in relation to restricted discretionary activities. Although s104(1)(b)(i) appears to enable consideration of relevant NPS provisions, problems may arise when this general power is limited by the limited scope of s104C(a).

Policy 3

- 3.10 This policy requires decision-makers to have particular regard to 'reversibility' of adverse effects associated with development of new REG activities. This term is not defined in the NPS, nor widely used in case law. 'Reversibility' is largely a theoretical concept (ie: effects are only theoretically reversible – that is given enough money, they could be reversed, but in practical terms, most effects would not be reversible because there is never enough money). If the Board considers that this concept should be retained, the Board should consider using references to "irreversible adverse effects" rather than "reversibility".

Policy 4 and 5

- 3.11. It is unclear what objectives, policies and methods may be required to be introduced into an RPS and regional plans to 'enable' activities referred to in Policies 4(i) and (ii) and Policy 5.
- 3.12 The s32 Evaluation report suggest that Policy 4 is based on anecdotal evidence of unnecessary regulatory barriers. Anecdotal comment should not be used to inform decisions to impose costs (both financial and resources) on council's. Amending policy statements and plans is expensive and time consuming and should be evidence based.
- 3.13 The Hawke's Bay Regional Resource Management Plan (**RRMP**) is an operative second-generation combined regional policy statement and regional plan. The RRMP already contains a number of objectives and policies relating to physical infrastructure (which by definition is inclusive of REG infrastructure). The RRMP does not specifically prohibit REG activities so it could be argued that the RRMP already gives effect to Policies 4 and 5 insofar as 'enabling' REG activities.
- 3.14 If there are any 'unnecessary regulatory barriers' in the RRMP, these would not be insurmountable because resource consents can be applied for, and granted if adverse effects are properly avoided, remedied or mitigated. Case-in-point is if such activities referred to in Policies 4 and 5 are small scale with no more than minor effects, then it would be entirely appropriate for them to be permitted, or granted resource consent with conditions to ensure avoidance, remediation or mitigation of adverse effects.
- 3.15 The Council has had some experience with wind turbines in the region and small hydro generation projects. In the case of wind turbines, this form of renewable electricity generation is not regulated by regional rules, unless it say, involves earthworks in close proximity to surface waterbodies. This type of restriction applies generically across the region so REG activities are not "singled out" and so are not unnecessarily regulated. There are other instances of generic regional rules applying to elements of REG activities (eg: bore drilling, water takes, etc), but REG activities are not singled out in these instances either.
- 3.16 In the absence of better clarity and certainty of what would or would not constitute 'enabling' REG activities, the Council remains faced with the prospect of having to undertake unnecessary plan changes at its cost. Policies 4 and 5 should be qualified to only apply to an RPS and plans that do not already generally enable REG activities. This qualification would avoid imposing unnecessary costs on councils to change plans unnecessarily.
- 3.17 Ideally, the NPS must provide guidance to clarify what type of plan provisions would or would not 'enable' REG activities. An NPS 'implementation guide' may be of some assistance, but it needs to be noted that any guide would not have a strong legal status in any debate about whether or not a plan 'enables' REG activities and similarly whether or not a council must introduce plan changes to give effect to Policies 4 and 5.
- 3.18 Until more certainty exists around what is / is not 'enabling' it is difficult to provide meaningful comment on the timeframes specified in Policies 4 and 5. The common deadline in these policies of March 2012 appears at least reasonable in terms of allowing time to modify the Council's own work programmes relating to other issues and ever-increasing number of plan changes arising from central government policy initiatives.

Interpretation

- 3.19 The Council supports the inclusion of an Interpretation section in the NPS. This 'glossary' will assist users to understand and consistently interpret the NPS.
- 3.20 The definition of '*small and community-scale distributed electricity generation*' is unclear in relation to projects in the coastal marine area. The current definition excludes offshore wind, tidal and wave generation (which are assumed to be based in marine areas). This covers the broadest range of foreseeable marine generation projects but the definition could be

simplified by rewording the exclusion to refer to REG activities in the coastal marine area (ie: nothing in Policy 5 would apply to projects in the coastal marine area).

3.21 Additional definitions of key terms used elsewhere in the NPS are requested. These terms include: reversibility (if still to be used); security of electricity supply; enable; research-scale investigation.

4. HBRC seeks the following changes to the NPS:

Amend NPS to satisfy HBRC's concerns raised in section 3 of its submission.

5. HBRC does wish to be heard in support of its submission.

6. Once again, thank you for the opportunity to make this submission on the Proposed National Policy Statement for Renewable Electricity Generation.

Yours faithfully,

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Deputy Chairman

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