

IN THE MATTER OF

THE RESOURCE MANAGEMENT ACT, 1991

AND IN THE MATTER OF

**THE PROPOSED NATIONAL POLICY STATEMENT
FOR RENEWABLE ELECTRICITY GENERATION**

A SUBMISSION FROM

NGATI KAHUNGUNU IWI INCORPORATED

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TO:

The Chairperson
Board of Inquiry
Proposed NPS for Renewable Electricity Generation
Ministry for the Environment
P O Box 10362
WELLINGTON
6143

Toitu te Marae a Tane
Toitu te Marae a Tangaroa
Toitu te iwi
Tihei! Mauri ora!

1. Introduction:

(a) This submission has been collated by Ngati Kahungunu Iwi Incorporated in response to the consultation document, "Proposed National Policy Statement for Renewable Electricity Generation," released August 2008. The matters mentioned herein constitute the main issues related to this kaupapa as determined from the incorporation's perspective. They are in no way to be construed as supplanting the views of our individual hapu / marae, but as a support for more meaningful engagement and participation in attempting to address the multiple issues that arise under the guise of "renewable electricity generation".

(b) We recognise the need for consistent direction from decision-makers for implementing renewable electricity regimes, of which a National Policy Statement (NPS) is but one option. The Ministry and the Board of Inquiry must recognise however, that an element of caution needs to be adopted to ensure that the raising of the priority level for renewable electricity generation does not displace other values that are inherent within existing resource management constructs. This would be akin to reverse sensitivity being promulgated under the Act.

(c) These values have been relevant to past decisions made pursuant to Part 2 of the Resource Management Act, 1991 (“the Act” or “RMA”). The existing matters that have “national significance” status have been affirmed and defined through more than a decade of case law. Although renewable electricity must be “given particular regard to” due to its inclusion in section 7(j), it should not overrule the matters of “national significance” contained in section 6. Of specific interest to Ngati Kahungunu is how some of these issues will be addressed, particularly: -

- The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.
- The protection of historic heritage (sites and values) from inappropriate subdivision, use, and development.

(d) Ngati Kahungunu Iwi Incorporated’s interests in the proposed NPS relate mainly to: -

- The lack of a robust consultation process
- The narrow scope of the proposed NPS
- Section 32 analysis report
- The single proposed objective
- Imposition of the new NPS on our constituents
- Potential adverse effects on: -
 - (i) Outstanding natural features
 - (ii) Iconic landscapes
 - (iii) The marine environment
 - (iv) Fresh water environments

- No acknowledgement, recognition or provision for Kahungunu interests
- Adaptive management and climate change
- Flora and fauna

2. The consultation process

(a) The National Policy Statement process under the Resource Management Act signals a requirement for specific consultation with iwi authorities in a way that acknowledges the Treaty of Waitangi partnership, key treaty principles, or the ongoing relationships that Maori have with natural resources through their expression of mana and kaitiakitanga. The process for the proposed NPS to date has involved central government consulting with local government, Crown Research Institutes, and consultants. In effect it has been the Crown consulting with itself.

(b) The partnership approach where the Crown consults with Maori as hapu, whanau and iwi, acknowledging and respecting their rangatiratanga and mana, has not yet occurred. Maori advisors to the Crown are not advising on behalf of iwi or hapu entities; therefore, the Treaty partnership has not been incorporated through the initial stages of this kaupapa, when the scope of the document, the section 32 analysis, or other matters to be addressed in the proposed NPS were going through the conceptual stage.

(c) As the proposed NPS will consist of objective(s) and policies that will have influence on taonga tuku iho (God-given gifts / treasures) of significance to Maori, the minimum requirement should be iwi / hapu representation during the drafting of such higher-level policy, due to the role of the NPS in guiding lower tier regulation

(d) It is our belief that the scope of the document is too narrow. It does not include sufficient elements of environmental protection, reference to the Treaty of Waitangi, or regard for the significance of natural resources to Maori. It trends more towards over-riding Maori interests in the pursuit of providing easier access to resources for renewable electricity generation. Significant

landscapes, outstanding natural features, the rivers and lakes over which Maori hold kaitiaki status, and the marine environment, are all likely to be impacted by existing, new or developing technologies for generation of electricity. Implementation of the NPS as proposed has potential to create further Treaty grievance if not handled with due consideration for tikanga values.

(e) We ask that proper consultation be undertaken with Ngati Kahungunu hapu / iwi before further decisions on the proposed NPS are made. We also seek the addition of a Treaty clause to the NPS in recognition of the Crown's responsibilities.

3. The Section 32 Analysis

(a) In our view, the section 32 analysis is too permissive and weighted significantly towards enabling renewable electricity generation. Although the aim of achieving 90% renewable electricity generation by 2025 is laudable, it should not be achieved at the expense of the matters highlighted above or without giving full cognisance to all four well-beings underpinning the Act. Failure to adequately assess social, environmental and cultural parameters has led to an unbalanced proposed NPS, which will result in unsound decision-making that will not promote the purpose of the Act.

(b) It is acknowledged by the authors of the NPS that a further s32 analyses will be carried out at a future date (Paragraph 3 of the Preface). This is irregular in that submitters do not have another opportunity to provide comment on this additional s32 report. What this paragraph indicates, is that all of the necessary preliminary work / investigation has not been done.

(c) The lack of consideration given to regional priorities in favour of national priorities is not supported by the iwi authority. Our mana is contained within the limits of our iwi rohe and for us, our hapu and iwi interests are paramount. Supporting outside interests at the cost of our own is in conflict with our constitution, has potential to undermine the mana of our hapu and

fails to give sufficient recognition to the Crown's Treaty obligations to Ngati Kahungunu whanau / whanui. Kaitiakitanga, one of the foundations for the mana of our constituent hapu, is not even included in the analysis.

(d) It is difficult to give support to the NPS when so much of it is fundamentally flawed. We are expected to support electricity-generating companies having more authority over our resources than ourselves, which we are unable to do. With pending Treaty settlement processes currently being negotiated, there is a risk that additional pressures being placed on natural water resources will affect the aspirations of Ngati Kahungunu whanau / whanui through diminished access for kaitiaki and their customary activities.

(e) The s32 analysis highlights the costs that will accrue for statutory managers to do the necessary research and further work for developing new policies and planning provisions. What the s32 fails to do is take into account the full cost for tangata whenua to take part in the consultation and plan change process, the preceding research to define and mitigate consequential effects of renewable electricity generation on our people and resources, and the ongoing participation in resultant resource consent processing.

(f) Loss of environmental quality, integrity and function will be another matter that will ultimately impact on hapu groups. What is required is separate accounting for the potential and likely effects on the Maori economy, and the lost opportunities for kaitiaki to self-determination or to develop or improve the natural resource base according to their own preferences. In effect, the proposed NPS is a form of Maori subsidising the electricity sector through loss of access and opportunity. To a lesser extent, this also applies to other sectors of the community. The only way to adequately address this problem would be for a specific objective and related policies to provide protection for iwi / hapu interests, and to enable partnerships between electricity generators and Maori to develop in similar fashion to what has occurred with Mighty River Power and some of our Tainui whanau.

(g) Where the analysis refers to time delays due to Environmental Court action; this is not a failing of the system but a justifying of the need for electricity generators to do more due diligence and provide for better engagement with Maori and community groups to ensure desirable outcomes for all. Where the current system is failing is lack of communication between parties at an early enough stage in the process.

(h) The insertion of section 7(i) “to have particular regard to the effects of climate change” and section 7(j) “the benefits to be derived from the use and development of renewable electricity” into the RMA, still requires appropriate consideration of other provisions in Part 2 of the Act. Section 7 is not accorded higher priority but must be considered while balancing all other matters in Part 2. The s32 analysis fails to address this in a cohesive manner.

(i) It is also acknowledged in the s32 report (p3, last paragraph) that, “Renewable electricity generation activities are often accompanied by significant actual or potential adverse environmental effects and, particularly as new generation technologies become available, the nature and degree of these effects can sometimes be uncertain.” It is a fundamental premise within the RMA, that where adverse effects of activities are uncertain or have yet to be fully investigated, that the precautionary principle should be applied. This has not been referenced either in the s32 report or in the proposed document. The RMA is based on the avoidance, remediation or mitigation of significant adverse effects, yet the proposed NPS fails to address any of these matters.

(j) The Emissions Trading Scheme will assist in making renewable electricity more attractive economically as there will be minimal requirements to offset carbon emissions when compared to fossil fuelled alternatives. This will ultimately lead to preferential economic outcomes and decreased costs for assessing alternatives. Hence renewable electricity production will accrue cost benefits due to the gradual phasing out of alternatives except for emergency supply scenarios. This makes the need for a specific NPS for renewable electricity somewhat redundant, and questions the need for “fast-tracking” mechanisms that will be enabled at environmental costs yet to be fully

quantified in each specific instance. The requirements for a NPS include defining ways and means to address issues of national significance (as outlined in section 6 of the Act), but the NPS fails to achieve this requirement.

4. The Proposed Objective:

(a) We believe the single objective fails to encompass all of the matters that it should. It therefore lacks the ability to reach the threshold of accountability in environmental terms, for achieving the purpose of the Act in a balanced manner. As proposed, the objective allows for a substantial degree of leeway in enabling renewable electricity generation, while sacrificing sound environmental management principles. In our view, it is not the most appropriate way for promoting sustainable management for renewable electricity.

(b) Renewable electricity generation could realistically include new and emerging technologies that have not yet been subject to rigorous testing or for which the environmental effects have not been fully defined and investigated. To enable such technologies to be developed through lack of accountability under an NPS framework, is unsound environmental policy.

(c) As National Policy Statements are tools to help local government make decisions regarding local and national interests, there needs to be an element of partnership with local iwi / hapu in directing and informing the nature and extent of the relevant issues and values around matters of regional and national importance. The Act in section 6 (e) is quite clear about the responsibility placed upon decision-makers to recognise and provide for the relationships of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. This endows these relationships, even at a local and / or regional level, with a degree of national significance. The proposed NPS fails to address this issue. The addition of historic heritage (sites and values) to section 6 as another matter of national significance, endorses the matters identified at 6 (e) of the Act.

(d) For Ngati Kahungunu, we form our relationships with other sectors of the community, including local government entities, based on our cultural preferences and values. Local government as a branch of central government, enacting legislation approved by central government, must also adhere to Treaty guarantees and responsibilities. Nowhere within the proposed NPS is it signaled that Treaty matters will be given due weighting within decision-making processes.

(e) Through treaty settlement processes, Maori are gaining greater autonomy and capacity. Partnerships between Maori and the electricity sector are increasing, along with the Maori percentage of the population. If it weren't for immigration policy, the Maori component of New Zealand's population would be double what it is today.

(f) *We ask that an additional objective be added to the NPS with reference to the principles of the Treaty of Waitangi, the protection of tangata whenua values and customary practices, and for new policies relevant to achieving this (new) objective.*

5. Outstanding Natural Features and Significant Landscapes

(a) To some extent many of these have already been recognised within local plans although they do not always receive adequate protection from inappropriate subdivision, use or development. Where they are of significance to tangata whenua due to their iconic value and / or their place within matauranga and Te Ao Maori, these values need to be provided for within decision-making around renewable electricity, particularly for wind generation. Failure to do so would be in breach of section 8 and the need for decision-making to recognise and provide for the relationship of Maori and their culture and traditions with their taonga.

(b) We seek the addition of a policy to specifically prevent the degradation of these features and landscapes due to maintenance, development or expansion of renewable electricity generation facilities.

6. Fresh Water Environments

(a) Hydro-electricity generation carries with it the potential for disruption to normal ecosystem processes with consequential effects on hapu relationships with fresh water resources. These include, but are not limited to effects on:

- Mana whenua and mana moana
- Kaitiakitanga practices and status
- Aquatic species migration, breeding patterns, health and abundance
- Increased temperature effects due to induced reductions in water flows from diversion or damming of water courses
- Disruption to cultural / seasonal harvest of aquatic flora and fauna
- Reverse sensitivity and associated costs relating to mitigation of hydro related activities

(b) We seek the addition of a policy to enable significant adverse effects of hydro-electricity generation on customary practices and historic heritage sites and values, to be avoided, remedied or mitigated. Higher-level controls are required to guide resolution of resource consent issues affecting these taonga.

7. The Marine Environment

(a) Electricity generation within the marine environment can cause environmental damage due to the discharge of heat, condensate, substances that are bio-accumulative, as well as the environmental effects of turbines on marine life. Excessive heat can destroy zooplankton and phytoplankton, species at the bottom of the marine food chain. Power generation from marine sources has potential to have continual adverse effects on marine life, as it is an activity that will occur constantly.

(b) Heat from cooling towers, or increased levels of conductivity will exacerbate the effects of climate change, particularly in shallow coastal waters or where currents rotate within embayments. Cumulative adverse effects are another issue that requires more focus given the propensity for the combination of tidal power generation and hydro-electricity generation within our rivers causing reduced flows and increased radiation effects.

(c) *We seek the addition of a specific policy to prevent significant adverse effects on marine ecology and on the relationships of tangata whenua with coastal resources.*

8. Indigenous Biodiversity

(a) Indigenous biodiversity has been identified as being under increased threat from inappropriate resource management practices. This resulted in the New Zealand Biodiversity Strategy of 2000 wherein there was recognition of a need to promote the protection and enhancement of New Zealand's native species, natural habitats and ecosystems. The proposed NPS needs to be fully cognisant of this existing requirement and other directions already embarked upon by central government, so as to ensure that the proposed NPS is not inconsistent with international obligations, other relevant legislation or biodiversity management tools.

(b) Renewable electricity generation has the capacity to negate a lot of good work that has already been done or is in the process of being achieved. We would endorse an element of precaution, or a policy indicating such, particularly where the outcomes of projects or proposals for new generation facilities are not all known. The concept of adaptive management is often used whereby projects can be adjusted should adverse effects eventuate, but Ngati Kahungunu and most Maori entities, require a higher level of surety that our taonga are not placed under additional stress in the pursuit of economic gain or additional power generation.

(c) *We ask that a specific policy to aid the protection of indigenous biodiversity be included within the proposed NPS.*

9. New and Emerging Technologies

(a) New and emerging technologies are constantly being appraised and developed. Many effects of these are still to be fully researched within the context of the New Zealand environment and existing ecosystems. The existing objective on its own is insufficient to encompass the avoidance, remediation or mitigation of the likely effects from new technologies.

(b) The development of biomass as a source of electricity is in its infancy, yet there is already concern due to the cumulative effects of climate change, algal proliferation and the byproducts and residues from use of algae as a component of electricity generation. New and developing technologies within the electricity sector need to be assessed with a higher level of scrutiny than existing technologies until we know all of their likely environmental effects both in the actual and cumulative sense.

(c) *We seek the addition of a policy to require robust assessments of the environmental effects of all activities related to renewable electricity generation including new technologies.*

10. Flora and Fauna

The relationships of Ngati Kahungunu marae / whanau / hapu with indigenous flora and fauna has been well documented in the WAI 262 claim to the Waitangi Tribunal. Given that the outcomes from the hearings have yet to be notified, the ratification of new policy that can undermine those outcomes and the aspirations of Ngati Kahungunu is not supported. The addition of new objectives and policies to the proposed NPS as suggested in this submission will provide some safeguards, but the public notification of the NPS at this stage we see as somewhat premature.

11. *We wish to be heard in support of our submission at any hearing or forum convened for the consideration of these matters.*

Noho ora mai,

Na maua

Signed: _____ Date: _____

Kym Hamilton

Manawhakahaere
General Manager

Signed: _____ Date: _____

Morry Black

Resource Management Advisor