

SUBMISSION

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To: Ministry for the Environment

On the: Proposed National Policy Statement (NPS) for Renewable Electricity Generation (Original submission)

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**SUBMISSION TO THE
PROPOSED NATIONAL POLICY STATEMENT (NPS)
FOR RENEWABLE ELECTRICITY GENERATION**

1. INTRODUCTION

- 1.1 Federated Farmers welcomes the opportunity to comment on the Proposed National Policy Statement (NPS) for Renewable Electricity Generation.
- 1.2 Federated Farmers of New Zealand is a primary sector organisation that represents rural businesses. Federated Farmers has a long and proud history of representing the needs and interests of New Zealand farmers.
- 1.3 The Federation aims to add value to its members' farming business. Our key strategic outcomes include the need for New Zealand to provide an economic and social environment within which:
- Our members may operate their business in a fair and flexible commercial environment;
 - Our members' families and their staff have access to services essential to the needs of the rural community; and
 - Our members adopt responsible management and environmental practices.

Key Recommendations

- Federated Farmers does not support the establishment of an NPS on renewable electricity generation. It is inappropriate for central government to provide "blanket" direction to local authorities on the issue, and to direct them to give excessive recognition to renewable energy sources as a nationally significant activity.
- Federated Farmers considers that the proposed NPS will take away private property rights. Without a rigorous process to ensure that landowners are compensated fairly for private property interests, an NPS should not proceed.
- Federated Farmers considers that it is impossible for an NPS to provide adequate direction on competing use issues. Rather, these judgments should be left to local authorities.
- Federated Farmers considers that the consultation process for the proposed NPS is inadequate. Therefore, it is inappropriate to apply a finalised NPS to resource management matters in the absence of a more rigorous public process.
- Federated Farmers considers that the section 32 analysis is inadequate, as it does not include the status quo as an option, nor does it consider the impacts on New Zealand's farming sector.
- Although Federated Farmers does not endorse the ETS in its current form we believe that the scheme, plus a ban on thermal generation, already provides sufficient incentive for the renewables sector. It is inappropriate to provide one sector preference over another in the RMA process.

- Federated Farmers considers that the Proposed NPS should consider the impacts of new transmission infrastructure and that compensation measures should be explicitly provided for.
- Federated Farmers advocates that in the case of any upgrades to transmission lines, or building of new lines, that adequate compensation is provided to affected landowners, including the cost of lost opportunity. Further, lost opportunity costs for other resource users must be taken into account.
- Federated Farmers recommends that the effects of transmission lines must be taken into consideration and compensated accordingly.
- Federated Farmers recommends that consent making decisions be left to local authorities per the status quo.
- Federated Farmers supports small and community scale projects but does not consider that an NPS is the best way to provide for them.
- Federated Farmers does not consider it appropriate to elevate renewable energy projects to section 6 status.
- Federated Farmers recommends that section 166 not be extended to generators.
- Federated Farmers considers non-statutory guidance to be an appropriate option for the Ministry to pursue.

2. GENERAL COMMENT

- 2.1 Federated Farmers comments further below on the specific objective, policies and alternatives presented in the section 32 analysis of the Proposed National Policy Statement (Proposed NPS). However, here we would like to comment generally on the appropriateness of an NPS on this issue, the need to consider the impacts of necessary transmission lines and compensation for those landowners, the need to consider competing uses, the adequacy of public consultation, the adequacy of the section 32 report and the emissions trading scheme.

NPS Inappropriate

- 2.2 Federated Farmers generally does not support the establishment of National Policy Statements (NPS). In our view, National Policy Statements should be limited to matters that can be shown to have an equal applicability to all local authority environments. This is not the case for renewable energy projects. We believe it is inappropriate to provide overarching direction, through use of an NPS, on renewable energy projects.
- 2.3 If the NPS is finalised, existing local authority plans must give effect to the NPS. The RMA process, while seriously flawed in many respects, has over time provided guidance on the issue of renewable energy through resource consent decisions – both through the discretion of individual councils and Environment Court decisions. The RMA was set up to provide for local guidance – to ensure that local authorities have the discretion to take into account particular implications for that territory or region. This is particularly appropriate for renewable energy projects that have varying effects according to the area in which they are proposed. To override the local guidance that has been provided thus far through an NPS would be imprudent.

- 2.4 Further, there is nothing in the Proposed NPS to give guidance to local authorities who have to implement the objectives and policies in the NPS. The Proposed NPS does not give direction as to how to balance the “national interest” that has been proposed against their local interests and the private interests that policy statements and plans also are required to provide for. Rather, it seeks to elevate renewable energy projects to a level of “national significance”, seemingly with no regard for the balancing act that local authorities must undertake.
- 2.5 Further, Part II of the Resource Management Act is of general applicability, both in situations where there is a “national interest” component and situations where there is not. It is not necessary to issue an NPS on the matter of renewable energy in order for it to be considered under Part II of the Act. Already, section 7(j) of the Act directs that local authorities shall have particular regard to “the benefits to be derived from renewable energy”. Therefore, Federated Farmers considers that there is adequate provision for the “national interest”, in particular the balance to be achieved between the national interest and local and private interests, in the RMA as it currently exists.
- 2.6 Finally, Federated Farmers is concerned that the Proposed NPS in its present form, directs local authorities to give excessive recognition to renewable energy sources as a nationally significant activity. Federated Farmers questions the presumption that the issue of renewable energy sources should be raised to one of national significance – particularly if this is at the cost of other valued natural and physical resources.

Federated Farmers does not support the establishment of an NPS on renewable electricity generation. It is inappropriate for central government to provide “blanket” direction to local authorities on the issue, and to direct them to give excessive recognition to renewable energy sources as a nationally significant activity.

Compensation Issues Not Accounted For

- 2.7 Transmission lines must carry the energy produced to the areas in which it is primarily used. Transmission lines, much like any infrastructure, have an injurious affect on the land they occupy. They also have an impact on the surrounding land through the imposition of reverse sensitivities. Where these effects cannot be minimised the landowner ought to be fully compensated for the burden of transmission infrastructure on their land.
- 2.8 In this regard, the Federation has particular concerns about the lack of rigour in the establishment of an NPS. In particular, the NPS process under the RMA avoids the requirement to compensate affected private interests for the private property rights taken in the national interest. Whether the NPS is promulgated under sections 47 to 52 of the Act through a Board of Inquiry, or whether the Minister uses an alternate process, neither process examines the compensation aspect. This is contrary to provisions in the Public Works Act that specify compensation measures. Without a rigorous process to ensure that landowners are compensated fairly for private property interests, an NPS should not proceed.
- 2.9 Without provision for compensation, the Proposed NPS will take away private property rights. It is noted that there is a general presumption in law that private property rights are not taken away unless there is a clear indication in the legislation to the contrary. There is no such

indication in the provisions of the Resource Management Act that is relevant to the establishment of national policy statements.

- 2.10 Finally, the Proposed NPS will take away private property rights by restricting the ability of land owners from utilising that land as fully as they would be able to if the transmission lines were not present.

Federated Farmers considers that the proposed NPS will take away private property rights. Without a rigorous process to ensure that landowners are compensated fairly for private property interests, an NPS should not proceed.

Competing Uses

- 2.11 In general terms, more renewable energy projects could shift the balance for resources. By way of example, more water allocation to hydro projects limits water for irrigation. This has happened in many instances around the country. Large hydro projects frequently compete with available water for irrigation, at times to the detriment of irrigation for farming.
- 2.12 Although the Federation understands the need for more energy capacity, a need also exists for more water storage in New Zealand. We suspect there are also many other competing uses that should be considered. In our view, it is impossible for an NPS to provide adequate direction on such a major issue. Rather, these judgments should be left to local authorities. In short, this is another example of varying circumstances for which an NPS cannot provide blanket direction.

Federated Farmers considers that it is impossible for an NPS to provide adequate direction on competing use issues. Rather, these judgments should be left to local authorities.

Public Process Inadequate

- 2.13 Federated Farmers is also concerned that the process for the preparation and issue of a national policy statement does not offer adequate public participation. The process outlined in the RMA for preparation of national policy statements is less rigorous than those that are required for the consideration of a project of national significance, or those that are required for the preparation of a local authority policy statement or plan – for example, there are no appeal rights. Nevertheless, the objective and policies contained in the NPS are required to be included in all local authority policy statements and plans.
- 2.14 Federated Farmers considers it inappropriate that a planning instrument that hasn't been through a full plan preparation / resource consent hearing / notice of requirement hearing type of process should be applied to resource management matters in this way.

Federated Farmers considers that the consultation process for the proposed NPS is inadequate. Therefore, it is inappropriate to apply a finalised NPS to resource management matters in the absence of a more rigorous public process.

Section 32 analysis

- 2.15 Federated Farmers considers that the requirements of section 32 of the Resource Management Act have not been complied with. The "section 32 analysis" does not adequately show that the objective and policies in the Proposed NPS are the most appropriate way to achieve the purpose of the Resource Management Act, or that the objective and policies are the most appropriate for achieving the policies and objectives of local authority plans.
- 2.16 Most concerning is a complete lack of regard for the status quo. Nowhere in the document are the benefits of the status quo outlined. Rather, in the Executive Summary of the document, it is stated

Experience with the RMA, however, has raised concerns that renewable projects face particular hurdles under the current regulatory framework that could threaten the ability of generators to develop the additional generation capacity necessary to meet this target (90% renewable energy) by 2025.

- 2.17 This statement signals a predetermined analysis. It is clear that there was never an intention to consider the status quo as a viable alternative. Rather, the status quo was always viewed as the "problem". It was not our understanding that the purpose of the section 32 document was to promote the Proposed NPS. Rather, the purpose is to determine whether the proposal is the "most appropriate way to achieve the purpose of the RMA, or that the objective and policies are the most appropriate for achieving the policies and objectives of local authority plans. Ignoring the status quo as an option does not accomplish the section 32 directive.
- 2.18 Finally, Federated Farmers appreciates the importance of a reliable and renewable source of energy for the nation. However, it also considers that the collective activity of farmers is important to the nation. In other words, it is considered that, in the planning process, the positive and negative effects of renewable energy projects should be given no more or less consideration than the positive and negative effects of those of the nation's farming and other activities that the Proposed NPS might constrain.

Federated Farmers considers that the section 32 analysis is inadequate, as it does not include the status quo as an option, nor does it consider the impacts on New Zealand's farming sector.

Emissions Trading Scheme (ETS)

- 2.19 Our understanding of the Emissions Trading Scheme, as it applies to the electricity sector, is that the carbon pricing mechanisms within the scheme should be sufficient to encourage and support an increase in the proportion of renewable energy used by New Zealand. Although Federated Farmers does not endorse the ETS in its current form, we note that the scheme, in addition to the ban on thermal generation should give the renewables industry a sufficient 'leg up', without the sector gaining an unnecessary advantage in the RMA consenting process. In that regard, we also wonder why electricity generation is being given preference over any other activity in the RMA process. This does not make good planning sense, nor in our view does it achieve the overarching purpose of the Act.

Although Federated Farmers does not endorse the ETS in its current form we believe that the scheme, plus a ban on thermal generation, already provides sufficient incentive for the renewables sector. It is inappropriate to provide one sector preference over another in the RMA process.

3. SPECIFIC COMMENT – OBJECTIVES AND POLICIES

- 3.1 The Federation would like to provide specific comment on some of the objectives and policies set out in the NPS.

Objective

The objective in the proposed NPS is set out as follows:

To recognise the national significance of renewable electricity generation by promoting the development, upgrading, maintenance and operation of new and existing renewable electricity generation activities, such 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).

- 3.2 In the consideration of this objective in the section 32 report, several potential costs associated with a move to promote and increase the proportion of electricity generated in New Zealand from renewable energy sources are identified. One of these is the potential to increase pressure on the transmission network, leading to a need for more investment in transmission infrastructure. We are unsure whether this means that existing lines will be upgraded or whether new lines will need to be built. We assume that if 90% of New Zealand's energy by 2025 is to come from renewable energy that new transmission infrastructure will be needed. In either case – either new lines or upgrades to existing lines - compensation measures must be provided for affected landowners.

Federated Farmers considers that the Proposed NPS should consider the impacts of new transmission infrastructure and that compensation measures should be explicitly provided for.

Policies- General

- 3.3 The section 32 report also identifies several costs of the proposed policies, including costs to central government, local government, generators and local communities and non-government organisations.
- 3.4 We note that opportunity costs to farmers/landowners are conspicuously absent from this analysis. While we understand that many landowners choose to have renewable energy projects on their land, and are adequately compensated, landowners do not have a choice about whether a transmission line runs across his or her land. In the case of new transmission lines, compensation is provided for. However, for many upgrades to existing lines, landowners are not compensated. This must be taken into account in the analysis.
- 3.5 Further, opportunity costs may exist for the use of the resource by another party. For example, opportunity costs may exist for a neighbouring landowner, or an irrigator affected by a hydro scheme.

Federated Farmers advocates that in the case of any upgrades to transmission lines, or building of new lines, that adequate compensation is provided to affected landowners, including the cost of lost opportunity. Further, lost opportunity costs for other resource users must be taken into account.

Policies - Specific

Policy 1: Recognising the national significance of the benefits of renewable electricity generation activities.

The benefits of renewable electricity generation activities, at any scale, are of national significance. Decision-makers must have particular regard to the national, regional and local benefits relevant to renewable electricity generation activities. These benefits may include, but are not limited to:

- i. maintaining or increasing electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions*
- ii. maintaining or increasing security of electricity supply at local, regional and national levels by diversifying the type and/or location of electricity generation.*

3.6 Federated Farmers' view on elevating renewable energy projects to "national significance" status has been discussed in the *General Comments* section. However, we will say again that Federated Farmers considers it inappropriate to elevate renewable energy projects to a "nationally significant" status. Nothing in the Proposed NPS gives guidance to local authorities who have to implement the objectives and policies in the NPS. Rather, the Proposed NPS seeks to elevate renewable energy projects to a level of "national significance", seemingly with no regard for the balancing act that local authorities must undertake.

3.7 Federated Farmers considers that there is already adequate provision for the "national interest", in particular the balance to be achieved between the national interest and local and private interests, in the Resource Management Act as it currently exists. This is due to the fact that Part II of the Act does not distinguish between local and national interests, and because renewable energy projects are already given elevated status in section 7(h).

Federated Farmers considers it inappropriate to elevate renewable energy projects to a "nationally significant" status in the Proposed NPS.

Policy 2: Acknowledging the practical constraints associated with the development, upgrading, maintenance and operation of new and existing renewable electricity generation activities.

When considering measures to avoid, remedy or mitigate the adverse environmental effects of renewable electricity generation activities, consent authorities must have particular regard to the constraints imposed on achieving those measures by:

- i. the nature and location of the renewable energy source*
- ii. logistical or technical practicalities associated with developing, operating or maintaining the proposed renewable electricity generation activity*
- iii. the nature and location of existing renewable electricity generation activities*

- iii. *the location of existing structures and infrastructure including, but not limited to, roads, navigation and telecommunication structures and facilities, the local electricity distribution network, and the national grid.*

3.8 Federated Farmers notes that the Proposed NPS ignores a vital practical constraint. The impacts from necessary transmission lines that will accompany the project must be considered. Within this consideration must be an examination of appropriate compensation measures.

Federated Farmers recommends that the Proposed NPS should consider the impacts from necessary transmission lines, as well as appropriate compensation for those impacts.

Policy 3: Having regard to the relative reversibility of adverse effects associated with particular generation types.

When considering proposals to develop new renewable electricity generation activities, decision-makers must have particular regard to the relative degree of reversibility of the adverse environmental effects associated with proposed generation technologies.

- 3.9 This policy assumes that some renewable energy projects will be transitional, and that in the future technology may emerge that makes this more likely. In the interim however, we do not view it as appropriate to assume technology will bring about renewable energy sources whose effects can be erased and the land returned to its pre-development state.
- 3.10 Hydro projects and wind turbines are the most common renewable energy projects at this time. In most instances, adverse environmental effects of those projects cannot be reversed. While technically wind turbines can be removed, their effects will remain to a greater or lesser degree.
- 3.11 Further, any transmission lines that must be built will not be removed at the end of a project's economic life. Any lines must be taken into consideration in an evaluation of "reversibility" of effects.

Federated Farmers recommends that the effects of transmission lines must be taken into consideration and compensated accordingly.

Policy 4: Enabling identification of renewable electricity generation possibilities.

By 13 March 2012, local authorities are to notify, in accordance with Schedule 1 of the Act, a plan change, proposed plan or variation to introduce objectives, policies and, where appropriate, methods, into policy statements and plans to enable activities associated with:

- i. *the identification and assessment by generators of potential sites and energy sources for renewable electricity generation*
 - ii. *research-scale investigation into emerging renewable electricity generation technologies and methods.*
- 3.12 The Federation is of the view that it is inappropriate to "stack the deck" against local authorities, essentially requiring them to view renewable energy projects in a favourable light, regardless of adverse environmental effects. Further, we note again that it is inappropriate to elevate renewables to a "nationally significant" status, which raises questions of allocation and resource sharing decisions.

Federated Farmers recommends that consent making decisions be left to local authorities per the status quo.

Policy 5: Supporting small and community-scale renewable electricity generation.

By 13 March 2012, local authorities are to notify, in accordance with Schedule 1 of the Act, a plan change, proposed plan or variation to introduce objectives, policies and, where appropriate, methods, into policy statements and plans to enable activities associated with the development and operation of small and community-scale distributed renewable electricity generation.

- 3.13 Federated Farmers recognises that benefits exist for some small and community scale renewable electricity generation. Some of our members are currently developing small scale projects that are of benefit to them personally - and in many cases to the community. While we are supportive of these projects, we are unconvinced that an NPS is the most appropriate way to provide for them. Rather, the RMA process that allows local authorities to consider local issues, without overarching direction from central government, seems the more appropriate avenue to give weight to such projects.

Federated Farmers supports small and community scale projects but does not consider that an NPS is the best way to provide for them.

4. ALTERNATIVES TO AN NPS – SECTION 32 REPORT

- 4.1 Federated Farmers has several comments on the section 32 analysis of the proposed NPS.

Amending section 6 of the RMA

- 4.2 The RMA was amended in 2004 to require decision-makers to have particular regard to the effects of climate change (section 7(i)) and the benefits to be derived from the use and development of renewable energy (section 7(j)). At the time section 7 was amended, it was considered desirable to maintain the environmental preservation and protection emphasis of section 6.
- 4.3 Federated Farmers has discussed this concept in previous section. In short, the Federation does not consider it appropriate to elevate renewable energy projects to the status of a "matter of national importance" per section 6. This could result in projects with unacceptable adverse effects receiving consent.

Federated Farmers does not consider it appropriate to elevate renewables to section 6 status.

Amending section 166 of the RMA

- 4.4 Designations are a provision made in a district plan to give effect to a requirement made by a requiring authority. Section 166 of the RMA enables network utility operators that are approved as requiring authorities by the Minister for the Environment, to issue notices of requirement to designate land in district plans for their projects or works (instead of applying for land-use consents under section 9 of the RMA).
- 4.5 Approval as requiring authority enables a network utility operator, in addition to designating land, to apply to the Minister of Land Information under section 186 of the RMA: this can lead

to compulsory acquisition of land under the Public Works Act 1981 if need be, and the undertaking of emergency works under section 330 of the RMA. Including electricity generators in the definition of network utility operator would give the generator the power to make decisions on their requirements, following a recommendation from the relevant council.

- 4.6 Federated Farmers does not consider it appropriate to amend section 166 to include generators. Already the section 166 provision allows Transpower, through its status as a network utility operator, to compulsorily acquire land. Although network utility operators must adhere to the Public Works Act, this provision allows them to ignore certain factors that should be evaluated for compensation such as lost opportunity and loss of production. Skirting compensation measures in this way is not appropriate, and Federated Farmers does not wish to see that ability to do so extended to generators.

Federated Farmers recommends that section 166 not be extended to generators.

Modify the call-in process

- 4.7 The option of Ministerial call-in is currently available under the status quo. Call-in can reduce the time involved in granting consents as council hearings are avoided and appeals are only permitted on points of law. At present, the decision to call in a particular process is made at the Minister's discretion in accordance with the provisions of sections 141A and 141B of the RMA. These sections could be amended to introduce a threshold (installed capacity for example) above which all projects would be called-in.
- 4.8 Federated Farmers does not believe it is appropriate to modify the call-in process in this way. First, it is not clear where such a threshold should be set. Also, decisions on projects called in by the Minister are already made under the existing RMA decision-making framework. Therefore, it is more appropriate to leave those decisions to local authorities.

Federated Farmers recommends that consent making decisions be left to local authorities per the status quo.

Develop a national environmental standard or standards

- 4.9 National environmental standards (NESs) could be developed to ensure that applicants use established and consistent methods for measuring and assessing effects, and decision-makers apply consistent standards when considering the effects of renewable electricity generation proposals.
- 4.10 Federated Farmers is of the view that the development of national environmental standards unnecessarily curtails regional and district planning provisions.

Federated Farmers recommends that consent making decisions be left to local authorities per the status quo.

Develop non-statutory guidance

- 4.11 Non-statutory guidance could provide an alternative to individual provisions within the proposed NPS, as well as to the proposed NPS in its entirety.
- 4.12 **Federated Farmers considers this to be an appropriate option for the Ministry to pursue.**

Submissions made by the Minister solely or on behalf of the Crown

- 4.13 Submissions made by the Minister solely or on behalf of the Crown on particular applications and/or plan changes have the potential to assist decision-makers in the process of determining the national interest of a particular project.
- 4.14 Federated Farmers believes that the Ministry should make submissions on particular applications and exert its influence in that manner. That leaves decision making to local authorities, yet gives the Ministry an opportunity to weigh in on particular projects.

Federated Farmers recommends that consent making decisions be left to local authorities per the status quo.

Status quo

- 4.15 We have made comments about this in the *General Comment* section. However, we would like to add to these comments here as a specific portion of the section 32 analyses. We note again that the status quo is not included as an option in the evaluation of the objectives and policies. Rather, it is set out as a separate section – as an explanation of where renewable energy projects stand under the status quo. The explanation section considers several factors, including:
- i. The potential for inconsistent recognition through the RMA decision-making process of the nationally (and globally) significant benefits of renewable electricity generation capacity in New Zealand.
 - ii. The fact that until recently local authorities have not, in general, developed specific policies to address renewable electricity generation.
 - iii. The lack of policy guidance across much of New Zealand in relation to renewable electricity generation can hinder investment in future technology.
 - iv. The fact that costs and processes associated with resource consent acquisition can discourage investment in smaller-scale projects with limited adverse effects. Consenting existing renewable generation activities can be unnecessarily onerous.
 - v. Projects may be becoming increasingly difficult to consent.
- 4.16 None of these factors consider the benefits of the status quo. Rather, only the perceived costs of having a rigorous process in place to consider the environmental effects of renewables projects are considered.
- 4.17 We believe this is inappropriate and does not fairly consider the status quo as an alternative.

Federated Farmers recommends that consent making decisions be left to local authorities per the status quo.

5. CONCLUSION

- 5.1 Federated Farmers appreciates the opportunity to submit and looks forward to continued dialogue on this issue.
- 5.2 We wish to be heard in support of this submission.