

**Form 3**  
**Submission on proposal for national policy statement for  
renewable electricity generation**

*In accordance with section 49 of the Resource Management Act 1991*

**To** the Chairperson  
Board of Inquiry

This is a submission on the proposed national policy statement for renewable electricity generation that was publicly notified on 6 September 2008.

**Specific Provisions**

Our submission relates to all the provisions of the proposed National Policy Statement.

**Contents of submission**

Thank you for the opportunity to comment on the proposed national policy statement for renewable electricity generation.

We support the provision of the National Policy Statement in principle, subject to the specific matters detailed elsewhere in this submission.

**Summary**

We agree that electricity should be generated using renewable means where possible.

We understand the situation that has lead the NPS to be promulgated, namely;

- The requirements of the Kyoto Protocol in respect of reducing GHG emissions to 1990 levels, and that increasing renewable energy is one strand of meeting this target.
- The two primary challenges as posed in the Energy Strategy.
- The need to ensure that renewable energy generation is promulgated, to avoid extra costs to the country that will be incurred by the Emissions Trading Scheme.

We understand that the benefits of renewable electricity generation are difficult to balance with local adverse effects. Providing a nationally consistent approach to balancing these competing values is desirable.

In this respect the objective recognises the national significance of renewable electricity generation by promoting the development of renewable generation activities. This statement recognises the problem (the mismatch between national benefits and adverse effects) and tries to resolve it by promoting renewable electricity generation activities.

In our opinion however the NPS does not go on to deliver policy advice that will enable Councils to balance competing values in a nationally consistent

way. It is debatable whether the NPS in its current form will add anything to the current guidance in S 7 of the RMA and the Energy Strategy other than by reinforcing the desirability of renewable electricity generation. More clarity is required if the NPS is going to provide a meaningful and cost effective contribution to future plans and consent deliberations. Without more clarity it is considered that the proposed NPS will not improve on the current provisions of the RMA (in particular S7 (i) and (j)).

### **Preamble**

We note that the NPS on Electricity Transmission provides direct advice as to how that NPS is to be applied by decision makers under the Act, which is more detailed than the Explanatory note at the end of this NPS. Although it can be argued that this advice is implicit in the nature of a NPS and S104 of the RMA requires decision makers to consider NPSs, in our opinion the provisions that set out some direction and assists in the interpretation of that NPS are useful. Perhaps similar direction would be useful in this NPS. The advice reads:

*However, the national policy statement is not meant to be a substitute for, or prevail over, the Act's statutory purpose or the statutory tests already in existence. Further, the national policy statement is subject to Part 2 of the Act.*

*For decision-makers under the Act, the national policy statement is intended to be a relevant consideration to be weighed along with other considerations in achieving the sustainable management purpose of the Act.*

### **Objective**

The objective contains a reference to 90% of electricity generation being generated from renewable sources by 2025. In our opinion this should be removed as it is inappropriate, for two reasons;

- It acts as a target which in our opinion adds undue weight to the decision making process. It is likely that applicants will use this target as justification for a particular project. This is understandable but it will require an assessment on the part of the decision maker as to the likelihood of the target of 90% being met. This requires decision makers to consider other projects around the country and the likelihood that they will be consented. This creates confusion and is impossible to calculate.
- The target is based on the NZ Energy Strategy which may be altered in the future. If this was to occur the NPS will need to be amended as well, generating unnecessary cost and bureaucracy.

### **Policy 1**

Page 32 of the Section 32 states that the intent of the proposed NES is to clarify the RMA decision making framework, to foster consistent interpretation of S 7(i) and (j). It then states that the objective is to recognise the national significance of renewable electricity generation, and the wording of Policy 1 repeats this.

This raises the question whether there is scope for some confusion between

the *national significance* of renewable electricity generation and S6 Matters of *National Importance*. It is possible that the wording of Policy 1 may cause some decision makers to elevate Policy 1 to the status of a S 6 matter when the S 32 advises that it is not intended. As S6-8 of the Act operate in a loosely hierarchical nature, this will have implications for the outcome of decisions.

There is no directly stated requirement for plans to be amended to give effect to the policy. However it may have the practical effect of doing this. To give effect to Policy 1, for example for a restricted discretionary activity concerning a small renewable generation activity, the plan will have to nominate the potential benefits over which discretion is being reserved, in order to ensure that these are able to be taken account of in the decision making process<sup>1</sup>.

On p 19 of the S32 analysis, it is stated that '*the current RMA decision-making framework requires decision-makers to consider the benefits of renewable electricity generation but does not clarify the nature of these benefits nor provide guidance on the weight that should be afforded to them*'. In our opinion Policy 1 clarifies some of the benefits but does not provide guidance on the weight that should be afforded to them, over and above what is already provided for in S7(i) and (j) of the RMA.

## **Policy 2**

There seems to be some confusion in the S 32 as to the objective of this policy. On one hand it states it '*will in no way alter the existing requirement to address any potential adverse effects in a manner that promotes the sustainable management of natural and physical resources*.' Yet it also states that it seeks '*to tip the balance in favour of renewable electricity projects that, for reasons deriving from practical constraints, might otherwise fail to gain a commercially viable resource consent*.'

In our opinion the latter interpretation is sensible. If this is not the intent there seems little point in having the policy.

One of the potential costs of the policy may be, as noted in the S32, that applicants are encouraged to argue that it is not practical to avoid remedy or mitigate significant adverse effects. We agree with this. This is a common argument made by network utility operators and councils have little or no expertise in these matters and often have to take the applicant at its word. In a recent amendment to North Shore City Council's utilities rules, operators (particularly Transpower) were arguing for policies similar to these. While there is no direct requirement to amend plans to implement the policies, we would expect that there will be pressure from generators to introduce policies that complement Policy 2.

## **Policy 3**

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<sup>1</sup> According to *Auckland City Council v J Woolley Trust and SJ Christmas (2008) A09/07*, which stated that Part 2 is irrelevant if one is contemplating declining an activity classified as restricted discretionary but Part 2 is relevant if one is deciding to grant consent.

We understand the reasoning behind this policy but question whether it is necessary. Whilst we think that potential reversibility is an important component of a project, reversibility and temporary effects are established concepts that are relatively well understood under the RMA. Except, for example, in the case of a nationally significant river that is subject to a hydro proposal, these effects will generally be local effects that decision makers are used to dealing with.

#### **Policy 4**

In our understanding of the S32 analysis, this policy requires territorial authorities to take a proactive role in identifying and assessing potential sites and sources for renewable electricity generation and emerging technologies and methods, to enable generators to assess the viability of particular activities. We are unsure whether this is appropriate, and in our opinion both Part i and ii should be removed, or redrafted to make their intent clearer.

##### **Part i**

Our understanding of this part is that it envisages territorial authorities identifying areas that are particularly suitable for renewable electricity generation from particular sources, to enable easier assessment by generators as to whether renewable generation projects are viable. From the perspective of a territorial authority, this seems like a potentially large amount of work for potentially small benefits. A plan change to identify particular areas or activities suitable for renewable electricity generation will be resource intensive, with the only benefit to enable easier assessment by generators of possible renewable electricity opportunities. This appears to be a transfer of costs from the private sector to the public sector. This would be exceptionally difficult to justify on a S32 cost benefit basis and if our interpretation of this part is correct, it is not supported.

We are basing our analysis on the S32 explanation and think that the actual text of Part i does not make its intent clear. In our opinion if this provision is retained, it needs more clarity.

##### **Part ii**

We are unsure what '*enabling research scale investigation into emerging renewable electricity generation techniques and methods*' actually means. It is unclear how District Plans can enable research scale investigation into emerging technology in any meaningful way. See the comment below concerning District Plans being responsive rather than proactive documents.

The policy states that local authorities are required to introduce objectives, policies and if appropriate, methods, to enable certain activities. We are unsure of the meaning of the term 'methods'. This is a non defined term used in the RMA but S 75 (2) (b) states that a TA may include '*methods, other than rules, for implementing the policies of the district*'. Does this mean that it is not intended that rules are to be introduced? If this is the case, what kind of

methods are anticipated?

If it is not intended that rules are to be introduced, it seems that, aside from the odd policy relating to a particular area, generic objectives and policies encouraging and recognising the importance of the identification of renewable electricity generation possibilities are all that can be achieved. In this case this could be done as part of the NPS which will save the time and cost of amending plans.

If it is anticipated that rules are to be introduced, this seems at odds with the anticipated benefits described in the S32 document. These include fostering innovation and allowing smaller players to identify and investigate new technologies and sites. This may simply be structures like temporary wind gauges or the like, but without knowing what the activity is it is impossible to regulate the adverse effects and provide it with a suitable activity status. Like larger generators, plans are generally technology followers – they do not anticipate activities like innovative renewable electricity generation techniques (the barrier that plans pose to innovation is part of the reason why the policy is proposed). Because the content of plans lag behind technology and practice and because it takes such a long time to change plans, in our opinion meaningful support can normally only be provided to innovation at a generic policy level. This is particularly true with Part ii of the policy. In our opinion District Plans cannot ‘lead the market’ in this way.

We appreciate that in areas that are ideal for renewable electricity generation it is appropriate that identification and assessment of opportunities occurs. In areas like North Shore City however, it is unlikely, using current technology, that there is a lot of renewable electricity generation capacity that is available. There are no known large scale opportunities identified<sup>2</sup>, and, given current technology, potential for small scale generation such as private wind turbines are likely to be limited to small pockets of rural areas. This type of small scale opportunity is unlikely to require in depth assessment regarding identification and potential. In this event we consider that the policy needs to have some discretion in it as to whether new objectives, policies and methods are required in a given territorial area. Currently Policy 4 states that ‘*local authorities are to notify*’ the required changes. Perhaps the Policy needs to be amended to read ‘*local authorities are to notify, where appropriate*’. We consider that if there are no opportunities for generation, there is little point in making such changes.

The use of the word ‘enable’ could be problematic. It could be argued that this word grants wider scope to renewable electricity generation than is envisaged in the S32 analysis. Guidance as to the meaning of the word within the terms of the NPS would alleviate these concerns.

The S32 analysis comments that this policy in support of innovation should work to some degree to balance the potentially limiting effect of Policy 3 on new hydro development. We are unsure why this is the case.

In respect of the timing of the amendment of the plans, this is slightly awkward for North Shore City Council as the authority is due to release its second generation plan before 28 June 2012. Although it has not been decided how to approach the review, it is probable that any requirements of the NPS will be addressed as part of that review, and it is likely that the date of 13 March 2012 will be a few months earlier than is ideal for North Shore

City. However we note that there appear to be no sanctions for non compliance with the time limit, and waivers under S37 are also possible with NPSs.

### **Policy 5**

In respect to Policy 5 we have similar comments as identified under Policy 4 above with respect to rules and methods, and the use of the term 'enable'.

It would be essential for MfE or some other body to provide an up to date repository of information concerning renewable electricity generation techniques and providers. This would assist in preparing rules and associated provisions, and makes more sense than 86 regional councils and territorial authorities each doing individual research on the topic.

North Shore City does not provide for small scale renewable electricity generation activities in its District Plan. The District Plan review is planned for 2012 and it is expected that rules concerning solar panels, small wind turbines in rural areas, solar orientation and width of eaves will all be considered at that time.

### **Changes sought to the proposal**

As contained in the submission above

I wish to be heard in support of my submission.

- \* If others make a similar submission, I will consider presenting a joint case with them at a hearing.

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Signature of submitter (or person authorised to sign on behalf of submitter)

24/10/08 .....

Date

(A signature is not required if you make your submission by electronic means.)

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