

Regulatory Impact Statement

National Policy Statement for Renewable Electricity Generation

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry for the Environment. It provides an analysis of options to support the use of a National Policy Statement for Renewable Electricity Generation (NPS REG) to ensure the national significance of new and existing renewable electricity generation and the benefits relevant to renewable electricity generation (REG) are consistently recognised within the Resource Management Act 1991 (RMA) planning and consent decision-making framework.

As a paramount instrument under the RMA, the NPS REG acts upon local government planning and decision-making and not directly upon the market for electricity. The costs and benefits have been quantified to the extent possible as part of the Section 32 report requirements for preparing an NPS. The quantitative analysis of the evaluation was supplemented by qualitative analysis in the form of case studies comparing consenting processes and timeframes for renewable against non-renewable electricity generation projects. This increased the depth of the analysis and illustrated how consistency in the planning framework would remove undue regulatory barriers to REG.

The cost-benefit analysis provided useful interpretive information and formed an important part of the policy analysis. This was particularly in relation to the desire for a consistent approach to balancing nationally significant matters against the significant adverse effects they could have on the environment, whilst ensuring the NPS REG remains correctly positioned against the established hierarchy of Part 2 of the RMA. The scale of benefits relative to the costs informed the decision not to include policies requiring landscape assessment for wind energy. The overall effectiveness of the NPS REG is dependent on local government's ability to amend their plans and policy statements without undue delay or excessive cost.

The NPS REG will facilitate the uptake of smaller-scale distributed REG projects. Whilst changes to the Electricity Act 1992 provide network companies with the option of developing smaller-scale electricity generation, the NPS REG ensures the planning framework recognises and provides for smaller scale generation which in turn better enables entry of non-traditional market participants.

The NPS REG does not impose additional costs on business or consumers. While it will impose costs on councils in the short term, mainly due to the need to update plans, the additional policy guidance will reduce uncertainty for generation investors and improve the efficiency of decision-making processes.

The NPS REG does not over-ride common law principles and is completely within the mandate of an NPS under the RMA.

Mark Sowden, Director, Natural and Built Environment

11 March 2011

Background

Electricity generation in New Zealand has traditionally been dominated by renewable sources, mainly in the form of hydro and geothermal generation, supplemented with fossil fuel based thermal generation. In 2009 renewable sources provided 73% of electricity. However, with a strong reliance on hydro, there is a major element of risk in the electricity system in meeting current and growing demand caused by large annual rainfall variations. This is reflected in the cost and availability of hydro generation in a particular year.¹

With increasing levels of thermal generation used to meet that risk, greenhouse gas (GHG) emissions from thermal generation have increased significantly since 1990. For the energy sector as a whole, GHG emissions in 2009 were 35% above 1990 levels, an annual increase of around 1.6%. That same year GHG emissions from electricity accounted for approximately 19% of energy emissions which represented an increase of 72% above 1990 levels².

Increasing the proportion of electricity generated from renewable energy sources can be an efficient means to assist New Zealand to meet its international climate change obligations and the country's abundant renewable energy resources offer opportunities for low cost reductions in greenhouse gas emissions through the use of renewable electricity generation (REG).

Successive governments have considered that the benefits REG are of national significance and have seen a need to provide clearer policy direction to decision makers and stakeholders operating under the Resource Management Act 1991 (RMA). There have been a number of previous decisions and actions preceding and also relating to the development of a National Policy Statement for Renewable Electricity Generation (NPS REG):

- **2004** – amendment to section 7 of the RMA to add “the effects of climate change” and “the benefits to be derived from the use and development of renewable energy” as matters that RMA decision-makers must “have particular regard to”
- **October 2007** – the New Zealand Energy Strategy (NZES)
 - set a target that 90% of electricity generation to be from renewable energy sources by 2025,
 - identified the need for a NPS under the RMA as a key action to support achievement of the government's target
- **July 2008** - Cabinet agreed to publicly notify a proposed NPS and established a Board of Inquiry (BOI) [CAB Min (08) 29/7]
- **September 2008** – the proposed NPS REG was notified for public submissions
- **August 2009** – the BOI considered submissions
- **March 2010** – the BOI presented its report (including a revised NPS) to the Minister

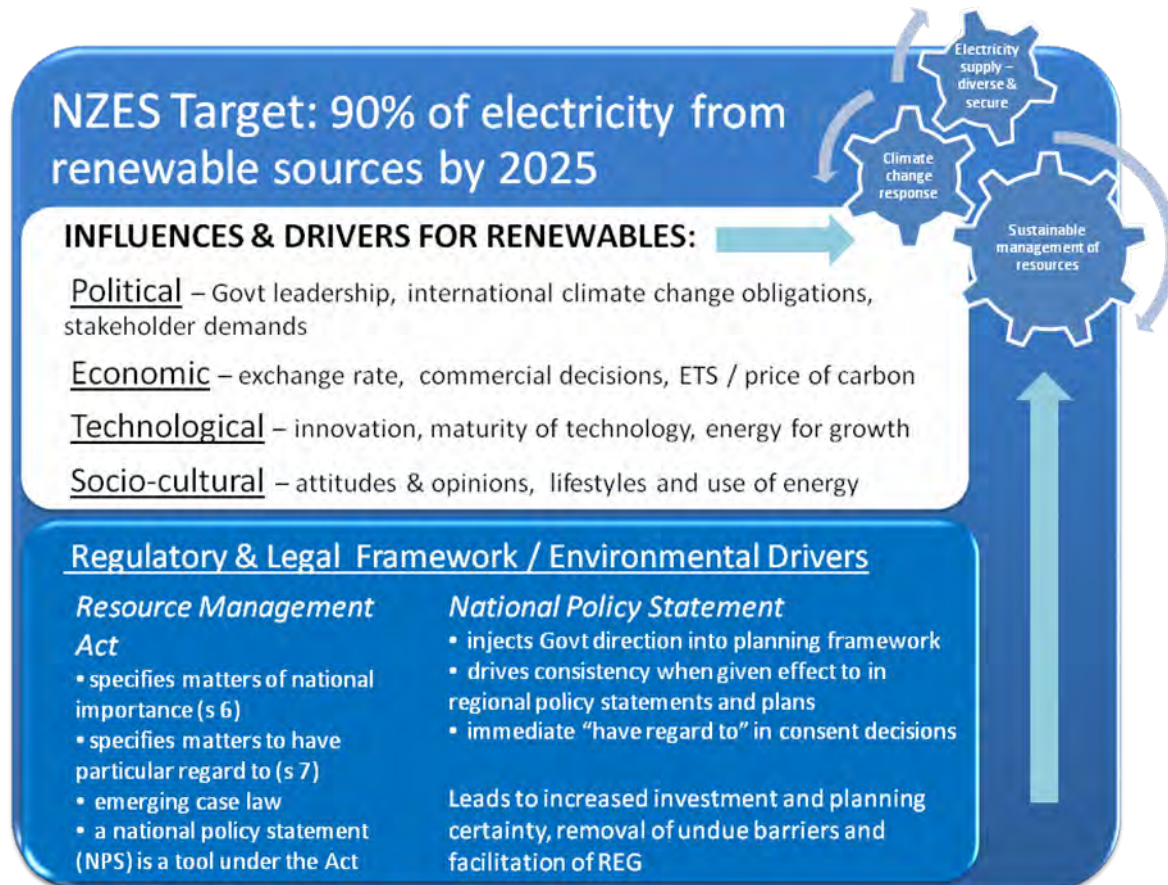
The Board of Inquiry into the NPS used the 90% REG target as the basis of their report. The 2010 review of the New Zealand Energy Strategy (NZES) reaffirmed the target that 90% of electricity generation to be from renewable energy sources by 2025, providing this does not affect security of supply. Although the amount of REG in New Zealand is increasing, there is still a high degree of uncertainty surrounding the likely timing and development of REG projects.

¹ *New Zealand Energy Greenhouse Gas Emissions* Ministry of Economic Development, 2010

² *Ibid*

There are a number of interrelated influences and drivers for the development of REG and these are, illustrated below.

Figure 1: Influences and drivers to achieve Government’s target for REG



The first order drivers are political, economic, technological and socio-cultural factors. For instance, the economic competitiveness of renewables depends on the price and availability of energy resources, especially gas, and the associated future price of carbon, which is expected to rise. The Government’s 90% renewable electricity target sets the strategic direction of the energy sector and will help to sustain New Zealand’s reputation as an environmentally responsible nation. This in turn supports New Zealand’s response to international climate change obligations. Within the electricity market, the Emissions Trading Scheme (ETS) provides a price signal related to greenhouse gas emissions to generators and electricity users and the economic competitiveness of new REG will be enhanced. This should stimulate the development of REG over fossil-fuel based thermal generation.

Next, the regulatory and legal framework for REG, embodied within the RMA, is a lower order but equally important influence on the development of REG. This influence is primarily through the local authority planning and resource consent framework and sits to the side of the electricity market.

A key finding of the Board of Inquiry was that inadequate policy guidance in the regulatory planning framework, in relation to the benefits of REG, plays out in variable provisions in local plans and policies and these benefits are still not adequately recognised in RMA decision-making. By their nature, these benefits can compete with other environmental values. Whilst the benefits of REG are often felt at the national level, the adverse environmental effects tend to be felt at the local level.

In relation to climate change impacts, New Zealand wishes to encourage the development of REG to reduce GHG emissions but the national significance of REG and its benefits has not been established in the RMA planning and consenting framework. Councils are charged with identifying local issues for

their regions or districts, and policies, objectives and rules to deal with those issues, but not with identifying or addressing national imperatives. Likewise, in consenting, consent authorities have not been given the policy directive that REG is nationally significant so are unable to weigh national significance against local environmental effects.

Also, there is a fundamental point of difference in the consenting processes faced by thermal and renewable electricity generation. For thermal generation, consent processes are generally focused on the development of the generation infrastructure and are separate from the extraction or transport of the energy source. However REG faces a more complicated process under the RMA as consenting processes must deal with the use of the resource as well as the development of the generation and transmission or distribution infrastructure. These additional requirements are often interwoven with high levels of public interest and investment decisions can be distorted.

The Section 32 Evaluation report identified that “despite government attempts to draw attention to and debate the merits of ensuring that the benefits of renewables receive national recognition, the development of REG – whatever its scale – has received uneven treatment by councils and other stakeholders who are either opposed or ambivalent to its development”³. The report goes on to state that uneven treatment adds costs to the consenting of renewables that may slow down the rate of REG development. It is also seen that changes in attitudes towards stricter limitation of environmental modification adds costs to the development of operation of REG and works against the aim of increasing the proportion of REG.

In summary, an ongoing lack of clarity in the planning framework has led to uncertainty in the marketplace. This has potentially discouraged investment and to some extent frustrated development opportunities into the future.

The Board reviewed a number of predictions of the contribution of REG by 2025 and found that the growth in demand for electricity is such that to match it with supply will require a significant increase in installed capacity; perhaps as much as 77% more renewable electricity generation will be needed to meet demand over the next 15 years. A significant increase in large-scale REG activities (over 10 megawatts), involving the use of wind and geothermal resources, is required.

As the highest level instrument available under the RMA, the NPS is considered to most fully address the inconsistency and barriers currently posed by the regulatory framework. An NPS directly injects Government direction into the planning framework and drives consistency when given effect to in regional policy statements and plans. An NPS also has immediate “have regard to” effect in consent decisions. This will lead to increased investment and planning certainty, the removal of undue regulatory barriers and further facilitate the development of REG at all scales.

³ NZIER and Harrison Grierson (February 2011), Section 32 Evaluation, p. 2.

Problem definition

The primary problem that the NPS REG seeks to address is that REG is being unduly impeded by variable provisions in local plans and policies. This has resulted in increased consenting costs and resource consent conditions that can reduce the efficiency of renewable generation and possibly require further generation capacity to be built. Specifically this means:

- There is potential for inconsistent recognition through the RMA decision-making process for the nationally (globally) significant benefits of renewable electricity generation capacity in New Zealand;
- Until recently, local authorities have not, in general, developed specific policies to address renewable electricity generation (this includes landscape and wind assessment plans);
- The lack of policy guidance across much of New Zealand in relation to renewable electricity generation can hinder investment in future technology;
- Costs and processes associated with resource consent acquisition can discourage investment in smaller scale projects that tend to have less significant adverse effects;
- Consenting of existing renewable generation activities can be unnecessarily onerous; and
- Projects may be becoming increasingly difficult to consent.

The secondary problem in relation to the NPS REG is the achievement of the Government's target of 90% of electricity to be generated from renewable energy resources by 2025 (in an average hydrological year), providing this does not affect security of supply. This is set out in the draft New Zealand Energy Strategy (NZES), released in July 2010, and the BOI used the target as the basis of their considerations. This is an ambitious target that will be difficult to meet under the present conditions of the regulatory framework.

Policy Objectives for the NPS REG

The first order policy objectives for the NPS REG are:

- A. Strengthen central government policy direction into the planning framework for REG activities under the RMA.
- B. Ensure consistent recognition of the following matters of national significance of REG activities in decision making processes under the RMA:
 - (a) the need to develop, operate, maintain and upgrade renewable electricity generation activities throughout New Zealand; and
 - (b) the benefits of renewable electricity generation.

A second order policy objective for the NPS REG is:

- C. Supporting the achievement of the Government's current target of 90% of electricity generation to be from renewable energy sources by 2025 by facilitating the development of new REG activities.⁴

⁴ This objective is that of the NZ Energy Strategy 2007, and confirmed by the Government in the draft NZES 2010.

Status quo

Forecasting the status quo

The Board's finding was that to meet the growth in demand for electricity and the Government's target for REG, installed REG capacity will need to significantly increase - perhaps as much as 77% more REG will be needed to meet demand over the next 15 years. A significant increase in large-scale REG activities (over 10 megawatts), involving the use of wind and geothermal resources, is required. This compares with relatively few consented renewable generation projects over the past 20 years.

The Section 32 evaluation notes that there will be increased levels of REG with or without an NPS. However, the costs of the status quo are likely to increase over time especially if the required increase in supply is met by thermal generation as New Zealand will incur greater international liabilities for carbon emissions.

Outline of the Regulatory Framework for REG under the RMA

Resource Management Act 1991 (RMA) documents and processes comprise the major part of the regulatory framework for REG. There is also some influence from documents and processes outside the RMA umbrella, such as the ETS and energy policy, where there is a link to RMA issues. The recently gazetted NZ Coastal Policy Statement 2010 takes into account the potential of renewable resources in the coastal environment (Policy 6).

The purpose of the Act, as set out in Part 2, is to promote the sustainable management of natural and physical resources and Part 2 contains a hierarchy of considerations. Matters of national importance, which "shall be recognised and provided" for, are set out in section 6, and other matters to "have particular regard to" are set out in section 7 of the Act. An NPS, as a tool under the Act, has to be read as subordinate to the Act and must conform to the Act's regime.

In 2004, "the effects of climate change" and "the benefits to be derived from the use and development of renewable energy" were added to section 7 of the RMA.

An NPS is a planning document issued under the RMA. As the highest level instrument available, NPSs have a broad scope and their purpose is to state policies and objectives for resource management matters of national significance relevant to achieving the purpose of the RMA, which is to promote sustainable management of natural and physical resources. An NPS has to be read as subordinate to the Act and must conform to the regime under the Act.

Regional, district and unitary councils give effect to an NPS through their Regional Policy Statements (RPS), district and regional plans and resource consent processes. In this way, an NPS injects Government direction into the planning framework and drives consistency when given effect to in RPSs and plans. There is also an immediate need to "have regard to" the NPS in consent decisions.

Regional, district and unitary councils are the main decision makers on applications for work (apart from call-in and direct referral processes which now go through the Environmental Protection Authority). The Environment Court also has a significant decision-making role as the majority of local government decisions on REG proposals are appealed to the Environment Court.

Although councils are increasingly introducing provisions for REG in their second generation plans, currently the plans and RPSs vary in whether and how they address it.

Case study examples of consent processes for electricity generation projects

To illustrate the **inconsistency** of the regulatory framework, the Table 1, drawn from the section 32 evaluation, shows a selection of resource consent case studies for electricity generation projects and how they have gone through the resource consent process. Even though there is a strong variance between the cases and strong conclusions cannot be drawn, the table usefully illustrates the status quo with a lack of consistency in planning frameworks contributing to large variations in processing and hearing times. Of the renewable examples, the wind and hydro examples proved to be more complex applications.

The Section 32 evaluation showed that there is a tendency for consent decisions to reduce or constrain the generation capacity for various reasons. While each of these cuts in generation (whether it be existing or proposed) are relatively small, the cumulative loss and the need to build further generation to offset these losses is a significant benefit forgone.

Table 1 : Resource consent case studies					
Case Studies	Council Process Time	Submission No	Hearing	Appeals	Appeal Length
Wairau Hydro Scheme	Approx. 37 months - Applications were lodged in July 2005 and final decisions released in August 2008.	1442	70 hearing days over a 6 month period	7 appeals were made.	Sept 2008 until November 2010.
Motorimu Wind Farm	Approx. 13 months - Applications were lodged in May 2006 and decisions released in June 2007	65	3 months to complete	1 Appeal by the applicant to increase the number of turbines	Appeal lodged July 2007 and heard between 7 th and 9 th May 2008. Decision September 2008.
Rotokawa Joint Venture Geothermal	Approx. 6 months - Application lodged 6 Nov 2009 and council decision issued 11 May 2010	12	3.5 days	No appeals	N/A
Rodney Power Plant (thermal) ⁵	Approx 20 months - Application lodged 13 July 2007, but resubmitted on 22 March 2008, the resource consent applications were granted Dec 2008 and plan change granted March 2009	188	2 weeks + 2 additional days	3 Appeals. 2 by applicant, 1 by submitter (resident)	Appeals lodged in January 2009. All were resolved without hearing in October 2009
Otahuhu C Combined Cycle gas fired station	Approx 8 months - Application lodged 24 Oct 2000 and the decision to grant the consents made on 19 Jun 2001	32	4 days	2 Appeals. 1 by the applicant and 1 by a submitter.	Court hearing held over 2 days in May 2002. Decision made 6 Sept 2002
Stratford Peaker Project, gas-fired ⁶	consents were lodged 5 Feb 2008 consents were granted 6 March 2008	none – applications were non-notified	no hearing	none	NA
Modified from source: NZIER and Harrison Grierson (2011)					

⁵ This process involved a plan change as well as resource consents.

⁶ Contact Energy used the air discharge consent from the original (now dismantled) Stratford power station

Regulatory impact analysis

Inter-relationship of this NPS to broader Resource Management reform

Although some of the issues encountered in the development of REG are common to many sectors, they are often very specific in application for REG. For example, reverse sensitivity effects, where changes in activities in an area can impact on the operation of a consented or existing generation activity, can be of particular concern for REG.

The scope of this NPS is limited and it does not include landscape assessment policies nor seek to weigh up matters of national significance against local environmental matters. Also, the NPS REG does not cover the allocation and prioritisation of fresh water. This is addressed in the NPS for Freshwater Management.

Alternative policy options

The consideration of alternative policy options under the RMA has two main components:

1. Setting up an effective regulatory framework, and
2. Reviewing how the resource consent process can more readily deliver permission for a REG proposal.

The alternatives considered in this assessment are:

- Amendments to the RMA (four suggested alternatives)
- Increase use of alternative consent paths (call-in types pathways)
- Enhanced status quo
- Designations
- Alternative national policy statements
- National environmental standards
- Non-statutory guidance
- The proposed National Policy Statement

Amendments to the RMA

Options to amend the RMA include:

a) Raise status of benefits of REG from section 7 to section 6:

Greater weight could be given to the benefits of REG in decision-makers considerations. Currently it sits in section 7 (j), with the status of to “have particular regard to”, but could be elevated to the status a matter of national importance by including it in section 6. Such matters must be recognised and provided for. However this approach does not resolve the question of how such benefits should be weighed against potential adverse environmental effects, especially those which are locally sited but are also matters of national importance under section 6.

b) Allocate resources preferentially to REG:

Resources (particularly water) could be preferentially allocated for renewable electricity generation over other competing uses. This would replace the current first in first served approach established by case law. Such a change would benefit hydro-electricity in particular. Benefits might also arise in terms of the use of marine energy resources and geothermal resources. Such a change will not benefit electricity generated from wind, which is expected to be a significant contributor to renewable electricity generation into the future.

c) Clarify environmental baseline for existing generation:

The environmental baseline could be clarified in assessing existing renewable electricity generation which requires 're-consenting'. Such a change would make the 're-consenting' process more efficient and avoid debate around the starting point for assessment. It would be particularly beneficial given the large proportion of current renewable electricity from hydro sources. This option however would not benefit new generation.

d) Recognise national significance under section 142 (call-ins) in consent decision-making

Matters to be considered in determining consent applications (Section 104) could be changed to make clear that the Minister's decision regarding the national significance of a project under section 142 must be given weight in the subsequent decision.

Increase use of alternative consent paths (call-in type pathways)

Greater use of the alternative resource consent paths available under section 100A of the RMA could be made, should they prove effective, particularly in reducing resource consent timeframes and also in ensuring appropriate weight is given to the benefits of REG. These mechanisms are still in their infancy and their ability to improve the consent process remains to be proven.

All of government submissions

More consistent use of all of government submissions on resource consent applications for REG projects would assist decision makers to weigh benefits and adverse effects. This approach is 'after-the-fact' in that the submission is made after the application(s) for consent is made. It would not influence the feasibility assessment work undertaken by the generator. The lack of supportive policy frameworks may be used as a reason not to proceed with a generation opportunity.

Designations

The exclusion of electricity generators from direct access to requiring authority status creates costs by requiring these parties to either seek requiring authority status via the alternative section 166(i) path or excluding these parties from the benefits available to requiring authorities. However, the main benefit that would result from expanding eligibility for requiring authority status would come from access to compulsory purchase provisions in the Public Works Act. However, there is still no overall policy guidance.

Alternative national policy statements

An NPS addressing other matters of relevance to renewable electricity generation, such as identification of highly valued landscapes, could be developed to provide clarity and consistency. This would be particularly useful in relation to wind energy projects for which the identification and assessment of valued landscapes can be a significant component of the resource consent costs. However an NPS on select environmental values would not address the recognition of the benefits of renewable electricity generation, the lack of policy frameworks at national, regional and district levels, or third party activities.

National environmental standards

National environmental standards (NES) are regulations issued under sections 43 and 44 of the RMA and each regional, city or district council must enforce the same standard. In some circumstances, councils can impose stricter standards.

NES could be considered for a range of issues such as:

- setting a consistent regulatory framework for establishing monitoring devices to confirm the capacity of renewable energy resources before development
- to establish nationally consistent activity status for renewable electricity generation activities
- a technical standard for landscape assessment methodology
- wind turbine noise assessment methodology.

The limitation of this option is that it does not provide national level policy guidance into planning and consenting frameworks.

Non-statutory guidance

Non-statutory guidance could support achievement of the objective of the NPS by:

- guiding councils on how to appropriately respond to sections 7(i) and 7(j) of the RMA which require decision-makers to have particular regard to the effects of climate change and the benefits to be derived from the use and development of renewable energy
- identifying the matters relevant to the use and development of REG
- training and up-skilling council staff
- guiding applicants and decision-makers on assessment methodologies and standards
- guiding councils' decisions as to the appropriate consent status for particular activities and appropriate assessment criteria.

An NES can provide detailed technical prescription to a range of matters including consent activity classification or technical methodologies (e.g. landscape assessment methodologies). However, non-statutory guidance is not an alternative to the policy guidance of an NPS as it cannot effectively address the problem identified with the status quo because it has no legal status in the RMA decision-making framework.

The role of non-statutory guidance is to complement an NPS through interpretation and understanding of what the policies mean. This helps to reduce council implementation costs by promoting consistent interpretation and implementation of the NPS policies.

The proposed National Policy Statement

As the highest order instrument available under the RMA, the NPS is considered to most fully address the issues with the status quo.

The proposed NPS addresses the lack of recognition of the national significance of REG activities and the benefits relevant to REG. It will reduce variability in RMA decision-making by directing regional policy statements and regional and district plans to have provisions for REG. It will go part way to addressing effects associated with third party activities, specifically those associated with reverse sensitivity effects. Because each regional and district council has to go through their own plan making process, and ultimately subject to Environment Court ruling, there is likely to be some variation in the actual provisions themselves, appropriate to the region or district.

It will have immediate effect on resource consent decision-making as they have to have regard to a NPS, which will bring some consistency to individual consent decisions, allowing for individual circumstances. Other benefits include increased certainty for investors, increased efficiency of process and support for the outcomes sought through the ETS and achieving government's target for REG.

Many of the alternatives, most obviously non-statutory guidance, would act as supporting measures for effective implementation and would strengthen the benefits that are likely to be obtained from the NPS. These could for example include model policies for inclusion in plans or national environmental standards related to landscape assessment methodology or wind turbine noise requirements.

Table 2, on the following page, summarises the alternatives against the policy objectives.

Table 2: Summary evaluation of alternatives for addressing the problems and their ability to achieve the policy objectives

Alternatives to the status quo	Brief description	Effect on REG	Main strength	Main weakness	Ability to meet objectives
Amend RMA	a) Raise status from section 7 to section 6 b) Allocate resources preferentially to REG c) Clarify env baseline d) Recognise s142 national significance in consent decisions	Could provide a clear signal on the importance of renewable energy generation	Clear and directive	Would not establish a policy framework that can be practically used at a regional or district level	A ✓ B ✓ C ~
Increase use of alternative consents paths	Under section 100A RMA (call-in pathways)	Gives appropriate weight to renewable generation	Could reduce consenting timeframes	Only benefit those project that are call-in	A ✓ B ✗ C ~
All of government submissions	Consistent use of all of government submissions	Assist in the consenting process	Could increase awareness	No clear national policy developed	A ✓ B ✗ C ✓
Designations	Change section 166 RMA (requiring authority status) to include electricity generators	Sets up a right and effectively by-passes the consenting process	Increases certainty	May encourage development at the expense of all other activities	A ✓ B ✓ C ~
Alternative national policy statement	To address landscape assessment and other matters relevant to REG	Could establish further clarity as where renewable generation could take place	Clear	Would not balance the benefits against the costs	A ✓ B ✗ C ✗
National environmental standards	Eg for monitoring devices, landscape assessment methodology, consistent activity status, turbine noise	Sets up a clear and consistent framework	Would increase certainty	Would not promote the national benefits of renewable energy generation	A ✓ B ✓ C ~
Non statutory guidance	Training council staff, assessment methodologies, appropriate consent status	May up-skill council staff dealing with consenting issues	Improves consistency	No statutory weight	A ✓ B ~ C ✗
National Policy Statement	States national significance, addresses reverse sensitivity, practical constraints, particular energy resources	Has the immediate impact of supporting renewables	Addresses the issue of the national significance of renewable electricity generation. Potential quantified net benefit of approximately \$5.6M	Objectives and policies subject to interpretation (minor risk now)	A ✓ B ✓ C ✓
✓ meets ✗ does not meet ~ neutral					
Modified from source: NZIER and Harrison Grierson (2011) ⁷					

⁷ NZIER and Harrison Grierson (February 2011) National Policy Statement on Renewable Electricity Generation. Evaluation under section 32 of the Resource Management Act with additional information on various policies.

Preferred option – National Policy Statement

Why is the NPS needed?

The NPS will improve, strengthen and clarify the planning framework and give greater central government direction. It will improve planning consistency and is expected to improve the efficiency of consenting decision-making for REG. This should lead to greater certainty for REG investors and facilitate increased levels of REG.

Why going further than the NPS would have unintended consequences.

NPS is the highest level policy instrument under the RMA. The only option to “go further” in terms of policy is to change the fundamental purpose and principles of the RMA itself. Such changes might include intentions of creating greater priority of matters of national importance over local environmental matters, or dealing with reverse sensitivity. However, any change to the purpose and principles of the RMA would apply to all activities, and not just REG. Such a proposal would be extremely broad ranging, costly and time-consuming. It is highly likely unintended policy consequences would eventuate. It is likely a raft of new litigation would be initiated as existing case law would no longer hold. It is unlikely it could achieve the more extended policy detail that is possible in a NPS.

The NPS option is preferred as an option under the RMA

The NPS option is the preferred RMA tool to remove undue regulatory barriers. The NPS will have a direct effect on the planning and consenting framework, has the ability to meet the policy objectives and has a potential quantified net quantifiable benefit of approximately \$5.6 million.

Alternatives to the NPS, most obviously non-statutory guidance, would act as supporting measures to strengthen the benefits that are likely to be obtained from the NPS. Work is underway to develop non-statutory guidance to be released as close as possible to the notification of the NPS. The guidance will be developed in an integrated manner with related guidance on other natural resource matters of concern.

Several other alternatives have benefits and could usefully be included in a package of supporting measures and the Ministry is working with key agencies, local council representatives and industry stakeholders.

Potential contentious issues and risks

The NPS as recommended by the Board of Inquiry was markedly different from the notified version in terms of structure, scope and level of prescription. Section 52 of the RMA allows the Minister to make changes to the NPS as notified “as he or she thinks fit” after considering the Board’s report and recommendations. The scope for change is however constrained by the scheme of the RMA and by principles of administrative law. The ability to make changes does not extend to making new policy beyond the scope of the Board process.

Wherever possible the Board’s recommendations and the structure of their proposed NPS REG were retained. Amendments have been substantial in some instances (e.g. changes to policies related to landscape assessment for wind energy) and minor in others (e.g. small changes to wording to improve workability in practice). Some of the policies were seen to create rules and were therefore beyond the scope of a national policy statement.

The NPS has been drafted with considerable care to ensure all policy changes that differ from the recommendations of the Board are within scope. However, given the extent of the changes it is not possible to rule out a challenge.

Next, stakeholder expectations of what the NPS can achieve have at times exceeded what is possible in the current regulatory and economic environment. Some stakeholders may think that the NPS is not strong enough whilst others may object that it provides too much direction and encouragement for REG.

These and a number of other potentially contentious issues, as shown below, are discussed more fully in the main body and Appendix 3 of the Cabinet paper:

- Change to policies recognising the benefits of REG / Part 2 of the Act
- Removal of policies for landscape assessment for wind energy
- Relationship to the NPS for Freshwater Management
- Removal of geothermal provisions
- Removal of reference to demand side management
- Transitional provisions
- Relationship to broader RMA reform

All issues and risks raised have been given due consideration in the development of the NPS REG and a common approach was used with agencies to identify and manage major risks. Accepted risk management definitions were used to identify four categories of risk: strategic, compliance, economic and operational. Next, an assessment was made of the likelihood and impact of the risk (i.e. low, medium or high). From there, solutions were sought to either manage the risk or find solutions to outstanding issues.

It is seen that all known risks have been adequately addressed.

Consultation

Consultation for the RMA process of notifying a proposed NPS

In October 2007, in accordance with section 46 of the RMA, the Minister for the Environment sought comments from relevant iwi authorities and a range of stakeholders on the notion of an NPS for REG. Further consultation followed in March 2008 with representatives of local government, electricity generators and other key stakeholders to obtain feedback on the potential scope and detail of the proposed NPS.

In May and June 2008, departments, local government and generators were consulted and the draft NPS was refined to increase clarity and to introduce explicit support for small and community scale REG. The first Section 32 report was used to shape the policies with key stakeholders.

The Proposed NPS was publicly notified on 6 September 2008. The Board of Inquiry appointed to hear submissions received 118 submissions and 25 further submissions. A wide range of issues were covered in submissions, including Part 2 considerations, scale and scope of REG activities, environmental benefits of REG activities, management of adverse environmental effects of REG activities, the need to categorise REG technologies and activities and enable research and investigation, definition of small and community-scale REG, and the implementation of the NPS. The *'Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Renewable Electricity Generation'* was presented to the Minister for the Environment in April 2010.

Consultation since receiving the BOI Report and Recommendations

Central government agencies have been involved on a regular basis to reach agreement on the current wording of the NPS. DoC, MED and EECA have had the greatest interest in the outcome.

As part of the development of the Section 32 report, a workshop conducted with a reference group of regional and district councils and Local Government New Zealand (LGNZ) in September 2010. This complemented one-on-one discussions with the major electricity generators and a small number of related industry stakeholders. All these conversations were held under formal undertakings of confidentiality.

In December 2010 further feedback on landscape assessment issues was gathered from a smaller reference group of regional and district councils together with LGNZ, to determine the feasibility and usefulness of proposed landscape assessment provisions. This group also provided feedback on a near final version of the NPS in February 2011.

Their latest overall response was that the NPS would not benefit individual councils very much and they preferred to see much more directive detailed policies and a stronger direction “to promote” rather than “to provide for”. The Ministry’s view is that the very prescriptive policies sought would be *ultra vires* and that “to promote” would bring distortions to other types of development. The Ministry also sees that it is reasonable to assume that, while the NPS will not have as much to offer to councils which have already had to deal with major REG developments, there are still major benefits in ensuring any undue regulatory barriers to REG activities are removed.

Conclusions and recommendations

The NPS REG is the preferred option and will be effective in achieving the policy objectives. Several other alternatives also have benefits and could usefully contribute by being included in a package of supporting measures for effective implementation of the NPS.

The overall effectiveness of the NPS policies, along with the intention to monitor and review the NPS in achieving the policy objectives, is shown in Table 3 below.

Policy / Intention	Elements of the policy Objective		Effect on		
	Recognition of the national significance of renewable electricity generation	Attainment of the current national target	Impacts on council plans	Impacts on resource consents & designations	Policy strength & clarity
A	✓	½ ✓	✓	✓	✓
B	Indirectly	✓	✓	✓	✓
C	Indirectly	Indirectly	✓	✓	✓
D	Indirectly	Indirectly	✓	✓	Strength eroded by changes from BOI recommendation
E1 - 4	Indirectly	Indirectly	✓	N/a	½ ✓ Some risk of inappropriate variation
F	Indirectly	Indirectly	✓	N/a	½ ✓ Some risk of inappropriate variation
G	Indirectly	Indirectly	✓	N/a	✓
H1& 2	✓	Indirectly	✓	N/a	✓
Monitor & review the NPS	Indirectly	Indirectly	N/a	N/a	½ ✓ strength eroded by 'should'

Source: Modified from NZIER and Harrison Grierson (2011)

Next, the NPS has a small but positive net quantifiable benefit of approximately \$5.6 million.

The benefits of the NPS stem largely from avoiding reductions in renewable generation capacity for large generators (\$13.2 million benefit). Other benefits relate to improved planning and consenting processes and these benefits fall to small generators (\$1 million benefit) and local government (\$360,000). Two potentially large unquantified benefits are reduced carbon emissions into the atmosphere and the Government's proactive stance by establishing the policy mechanisms to reduce greenhouse gas emissions in advance of an international agreement.

On the other side of the equation, the costs of the NPS are predominantly large costs to local government in changing plans and policies to give effect to the NPS (\$7.8 million cost) and increased plan advocacy costs for large generators (\$2.1 million cost). Other costs to Maori and local communities were identified but difficult to quantify.

In relation to environmental impacts, the report identified a potential small cost as local environmental adverse effects are likely to be small relative to the status quo where the number of projects undertaken "without" the NPS may only be slightly less than "with" the NPS. However, the costs of the

status quo are likely to increase over time as more REG capacity is developed with or without a NPS. As a result, the benefits of reducing undue impediments through an NPS may accrue over time.

Table 4, below, summarises these costs and benefits.

Table 4: Summary of the costs and benefits of the NPS REG		
Group/resource	Explanation	Costs/benefits
<u>Benefits</u>		
Environment	Potential small benefit of the reduction in greenhouse gases	Potential small benefit cannot be properly costed
Generators (large)	Large benefits mainly from increasing generation capacity	Potential large quantifiable benefit of \$13.2m
Generators (small)	Medium benefit from improve consenting and re-consenting processes	Potential quantifiable benefit of \$1m
Government	Some benefits will accrue from being proactive internationally	Potentially a large benefit but not properly costed
	Reduction in advocacy costs on renewable energy after 2016	Potentially a medium quantifiable benefit of \$1m
Consumers	A small benefit from reduced upward pressure on prices	Potential small benefit not properly costed
Land owners	A small benefit from renting of land for renewables use	Potentially a small benefit uncosted
Local government	A small benefit from more certainty associated with the Appeals/Board of Inquiry process	A small quantifiable benefit of \$360,000
<u>Costs</u>		
Environment	Potential small cost. Local environmental adverse affects likely to be small relative to the status quo	Potential costs cannot be properly costed, but likely to be small cost
Generators (large)	Increased plan advocacy	Potential large quantifiable cost of \$2.1m
Local government	Potential large cost associated with plan and policy changes	Potential large quantifiable cost of \$7.8m
Government	Potentially a small cost for guidance	Potential small quantifiable cost of guidance \$165,000
Local communities	Potentially a medium cost for local communities as the national significance of renewables is given more weight in the consenting process	Potentially a medium cost but not properly costed
Maori	Potentially a small cost since selected sites and water-bodies of significance may be affected by the national significance of renewables	Potentially a small cost but not properly costed
Net benefit		Potential net quantifiable benefit of approximately \$5.6 million
Source: NZIER and Harrison Grierson (2011)		

Implementation

Local authorities must give effect to a NPS by making amendments to regional policy statements (RPSs) and regional and district plans using the public consultation process set out under Schedule 1 of the RMA.

Ambitious but achievable implementation timeframes are set out in Policies H1 and H2. Regional councils, unless they have already provided for REG activities, are to give effect to the NPS within 24 months of the date on which it takes effect. At the next level down, local authorities are required to give effect to the NPS within 24 months, where the regional policy statement or proposed regional policy statement already provides for the policies, or within 12 months of the date on which the change or variation becomes operative, where a change or variation to the regional policy statement or proposed regional policy statement is required.

Next, an NPS has immediate effect on consent decision-making, even if the application was lodged prior to the gazettal of the NPS.

As previously discussed, non-statutory guidance and a package of supporting measures will be prepared to assist in implementing the NPS and this should reduce implementation costs and delays. For instance, the actual wording to be used in the RPSs and plans is not prescribed by the NPS, so it is possible councils could choose to include provisions which may be ineffectual. This is considered to be unlikely as this opens up the plan change process to legal challenge. Supporting measures, such as model policies, may be of benefit. Also, Quality Planning guidance for landscape assessment and REG will be finalised with input from stakeholders and local authority decision-makers.

Monitoring, evaluation and review

The Minister has the flexibility to review, change, or revoke a NPS at his or her discretion under section 53 of the RMA. The Minister has directed the Ministry for the Environment to review the NPS within 5 years of it taking effect. This is to ensure effective implementation, to track progress towards the Government's target for increased levels of REG and better inform policy development over time. A statement to that effect is included in the NPS.

This is extremely useful in that it clearly signals to local authorities that the implementation of the NPS will be reviewed and monitored by central government, and commits to an assessment of its effect. This mandate helps to signal and empower the information collection process which takes place using various mechanisms, such as two yearly reporting and the local authorities' duties under section 35 of the RMA.

This information collection framework fits with existing Ministry activities and will leverage existing energy data collection and information provision undertaken by other agencies, including the Ministry of Economic Development (MED) and the Energy Efficiency and Conservation Authority (EECA).