



## COVERSHEET

<b>Minister</b>	Hon Dr Megan Woods	<b>Portfolio</b>	Energy and Resources
<b>Title of Cabinet paper</b>	Strengthening National Direction on Renewable Electricity Generation and Electricity Transmission	<b>Date to be published</b>	11 May 2023

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
February 2023	Strengthening National Direction on Renewable Electricity Generation and Electricity Transmission	Office of the Minister of Energy and Resources
8 February 2023	Strengthening National Direction on Renewable Electricity Generation and Electricity Transmission CAB-23-MIN-0012.01 Minute	Cabinet Office
27 March 2023	Additional Item: Strengthening National Direction for Renewable Electricity Generation and Electricity Transmission: Consultation Document CAB-23-MIN-0104 Minute	Cabinet Office

### **Information redacted**

**YES**

Any information redacted in this document is redacted in accordance with MBIE's and MfE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of confidential advice to government, legal professional privilege, and free and frank advice.

**In confidence**

Office of the Minister of Energy and Resources

Office of the Minister for the Environment

Cabinet Business Committee

**STRENGTHENING NATIONAL DIRECTION ON RENEWABLE ELECTRICITY GENERATION AND ELECTRICITY TRANSMISSION**

**Proposal**

- 1 This paper seeks Cabinet's approval to undertake public consultation on proposals to strengthen a package of existing national direction instruments (and consider a new one) on renewable electricity generation and electricity transmission, under the Resource Management Act 1991 (RMA).
- 2 The objectives of the proposals are to:
  - 2.1 provide more enabling policy direction for renewable electricity generation (REG) and electricity transmission (ET) projects to significantly increase generation output to support New Zealand's renewable electricity and emissions reduction targets
  - 2.2 better manage competing interests with other national direction instruments and Part 2 RMA matters
  - 2.3 provide for Māori interests for the consenting of REG and ET projects, and incorporate the principles of te Tiriti o Waitangi
  - 2.4 provide clearer, nationally consistent and more efficient consenting pathways for developing and upgrading REG and ET projects.

**Relation to Government priorities**

- 3 The proposal implements the Labour Party's 2020 manifesto commitment to develop a new National Policy Statement for, and remove regulatory barriers to, REG. It complements the commitment to transition New Zealand to a clean, green carbon neutral country and to provide for the wellbeing of current and future generations.
- 4 In 2019, Cabinet directed the Ministry of Business, Innovation and Employment (MBIE) to identify workable policy options to revise the National Policy Statement for Renewable Electricity Generation to be more directive, and to consider the development of new National Environmental Standards on

renewable electricity [CAB-19-MIN-0334]. Cabinet provided funding for this work in Budget 2020.

- 5 In 2020 the New Zealand Government declared a climate emergency in recognition of the significant impacts of climate change. In response to the climate emergency, the Government has set:
  - 5.1 legally binding domestic emissions reduction targets, with a primary target of net zero emissions of greenhouse gases (GHG), other than biogenic methane, by 2050<sup>1</sup>
  - 5.2 an aspirational target of 100% renewable electricity by 2030 and a target for 50% of total energy consumption to be from renewable sources by 2035.
- 6 In addition, the first Emissions Reduction Plan (ERP) was released in May 2022. Reviewing national direction tools for new renewable generation and electricity infrastructure forms part of action 11.2.1.
- 7 A comprehensive reform of the resource management system is currently underway, with a focus on outcomes, including reducing GHG emissions and giving greater emphasis on better enabling development within environmental limits.
- 8 Increasing renewable electricity generation enhances energy independence and avoids the fluctuations in cost of fossil fuels like oil and coal. A highly renewable, secure and reliable electricity generation and transmission system is critical to a number of other government priorities including:
  - 8.1 the Government's economic strategy (updated in June 2022), which is to build a high wage, low emissions economy that gives economic security in good times and bad. The proposal enhances energy independence and energy security, and reduces reliance on global energy markets which have been impacted by a more volatile geopolitical landscape.
  - 8.2 Industry Transformation Plans, which rest on our ability to power the economy
  - 8.3 The visions and objectives of *Lifting Connectivity in Aotearoa: Government Statement of Intent for Improving Digital Connectivity*.

### Executive summary

- 9 Rapid and efficient investment in renewable electricity and the national grid is needed for New Zealand to reach its emissions reduction targets and renewable electricity goals.
- 10 The National Policy Statements for Renewable Electricity Generation 2011 (NPS-REG) and Electricity Transmission 2008 (NPS-ET) were developed before emissions reduction targets were incorporated into New Zealand law,

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<sup>1</sup> Climate Change Response Act (2002)

and are no longer fit for purpose to support the pace of infrastructure development that is required.

- 11 While the Government intends for the resource management reform bills to be passed by mid-2023, significant investment in REG and ET projects needs to occur under the current RMA for around 7-10 years before the new resource management (RM) system becomes fully operative.
- 12 The proposals are intended to have the greatest impact on wind and solar generation and associated transmission. This is where future investment is concentrated and are the main activities that need to be facilitated in the near future to help meet our climate change goals.
- 13 The proposals do not impact new or existing hydro generation to not preclude conversations with Māori on allocation of resources in relation to the Natural and Built Environment Bill (NBE Bill). Introducing new policy direction on protecting existing hydro generation capacity requires considerable cross-portfolio and detailed discussions with Treaty partners.
- 14 The proposals to be consulted on would amend national policy statements and environmental standards under the RMA to recognise the need for strengthened national direction to influence consent decisions on renewable electricity infrastructure during the transition period. It is intended that the policy intent will be translated into the National Planning Framework (NPF) which will provide national direction for the new RM system. When translated into the NPF, the policy intent will need to be aligned with the new te Tiriti o Waitangi clause in the NBE Bill.<sup>2</sup>
- 15 The proposals covered in the consultation document comprise:
  - 15.1 Priority amendments to the NPS-REG and NPS-ET, with options that includes exempting REG and ET from provisions of the New Zealand Coastal Policy Statement 2010 (NZCPS) and proposed National Policy Statement for Indigenous Biodiversity (NPS-IB) in certain circumstances.
  - 15.2 Amendments to the National Environmental Standard for Electricity Transmission Activities 2009 (NES-ETA) and a proposed new National Environmental Standard (NES) for small and community-scale REG and upgrading and repowering existing wind and solar generation.
- 16 Amendments to the NPS-REG and NPS-ET are considered a priority as they will have the greatest impact on meeting the objectives. Whether work proceeds on proposals relating to National Environmental Standards (NES) need to be considered alongside other Government priorities and the work programme of the Ministry for the Environment (MfE) and Te Waihanganga in developing infrastructure standards for the NPF.

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<sup>2</sup> The NBE Bill requires that the principles of te Tiriti o Waitangi must be given effect to, whereas the equivalent provision in the RMA only requires those principles to be taken into account

- 17 In developing the proposals, MBIE and MfE officials held early engagement workshops and hui involving the electricity industry and other professional groups, local government, and iwi/Māori.
- 18 Overall, there was strong support to strengthen national policy direction on REG and transmission infrastructure. However, there were mixed views on how to manage interactions between REG and other national direction instruments. On this issue, two options are included in the consultation document.
- 19 One option provides a more enabling consenting pathway for REG that would prevail over existing protections in the NZCPS and proposed NPS-IB (but not the National Policy Statement for Freshwater Management 2020 (NPS-FM)) where certain legal tests are met and the effects of the activities are managed in accordance with the requirements of the proposal in certain circumstances.
- 20 Drafting the proposed NPS for consultation based on this option requires a *vires* review by the Crown Law Office to ensure consistency with Part 2 of the RMA and further analysis regarding how it would interact with other national direction. This includes any interactions with national direction which is yet to be finalised, including the NPS-IB.
- 21 This paper seeks approval to publicly consult on the consultation document in Appendix One. The consultation document will be released in February 2023. Public consultation will take place over six weeks, from late February to the end of March 2023. Due to timeframes, delegated approval is sought for final changes to the consultation document and for the release of accompanying consultation drafts for the proposed (amended) NPS-REG and NPS-ET, prior to public consultation commencing.

## Background

- 22 The first ERP sets out the strategies, policies and actions to enable New Zealand to meet the aspirational target of 100% renewable electricity by 2030 and for 50% of total energy consumption to be from renewable resources by 2035.
- 23 The replacement of fossil fuels with renewable electricity lies at the heart of NZ's decarbonisation strategy. It is necessary to meet our climate response goals and deliver a low-emissions economy. Rapid and efficient investment in renewable electricity and the national grid is therefore both a key challenge and key opportunity for the country.
- 24 The Electricity Authority stresses the critical role the entry or expansion by competitors in the renewable electricity generation market plays in encouraging competition and keeping a check on the exercise of market power.<sup>3</sup> More competition will help take inflation pressures off New Zealanders.
- 25 The scale of the investment required is significant:

<sup>3</sup> Electricity Authority (2022). Promoting competition in the wholesale electricity market in the transition toward 100% renewable electricity

- 25.1 Industry forecasts, including Transpower's *Whakamana i Te Mauri Hiko*, point toward a 60-80% per cent increase in electricity demand by 2050.<sup>4</sup> This degree of growth is unprecedented in New Zealand's history.
- 25.2 The Electricity Authority's Market Development Advisory Group estimates that 400-500MW of new supply or demand response is needed every year to 2050<sup>5</sup>, but with a particular need to ensure adequate capacity is in place to manage the transition over the remainder of this decade. This new supply would require a growth in generation equivalent to the Clyde Power Station, or nearly three West Wind projects (at Mākara) per year.
- 26 A recent survey indicates that investment is now roughly 2.5 times the average rate achieved in the last decade<sup>6</sup>. There is also a substantial amount of actively pursued renewable generation that could be in service by 2025 – roughly 8,000 GWh/year.
- 27 This growth in generation needs to be supported by ongoing significant investment in transmission. Transpower note that the importance of obtaining approvals under the RMA for interconnection projects will increase as demand for grid capacity grows in response to peak demand increases, the need for balancing supply and demand across regions as intermittent generation grows, and electricity becomes more relied on as an energy fuel source.
- 28 New Zealand will need to consent and develop an unprecedented amount of wind and solar generation, along with the national grid developments to support this growth in generation. The purpose of this consultation is to ensure planning settings are fit for purpose to meet the challenge faced.
- 29 RM reform is expected to improve consenting for REG and ET, for example through comprehensive direction in the NPF, spatial planning and plan development. However, RMA decision-making will continue for 7-10 years under the proposed transition period. Action on these proposals is required now to ensure New Zealand meets its emissions reduction targets, as we need to significantly increase our use of renewables.

### Problem definition

- 30 The NPS-REG and NPS-ET were developed before emissions reduction targets were incorporated into New Zealand law. As a result, the settings in the NPS are not adequate to enable the extent of development needed. This issue has been recognised by the Productivity Commission, the interim Climate Change Committee, the Climate Change Commission, Te Waihanga, and the Electricity Authority.

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<sup>4</sup> Transpower (2022). Transpower seeks investment to power New Zealand's energy transition. [News release](#) 5 December 2022.

<sup>5</sup> *Ibid*

<sup>6</sup> Survey commissioned by the Electricity Authority referred to in its report *Promoting competition in the wholesale electricity market in the transition toward 100% renewable electricity market* (2022).

- 31 Findings of independent government commissions, government evaluations of the NPS-REG (2016) and NPS-ET (2019) and recently commissioned reports have found that resource consenting processes for REG and ET are unnecessarily time-consuming, costly, uncertain and litigious:
- 31.1 **Time:** it can take several years to gain resource consent. A small sample of consents for wind projects analysed by Te Waihangā identified that, on average, it took almost two years for smaller projects (<200MW) and four years for larger projects (>200MW).<sup>7</sup>
  - 31.2 **Cost:** the cost of consenting is rising, with application requirements becoming more complex and councils taking longer to make decisions. On average the consenting process makes up 5.5% of the cost of infrastructure projects but accounts for more than 20% for projects under \$1 million.<sup>8</sup>
  - 31.3 **Policy uncertainty and litigation:** a REG project may encounter unforeseen policy issues at the consenting stage, for example where an outstanding natural landscape is not mapped in the district plan but is identified through the consenting process.<sup>9</sup> This creates complexity, resulting in highly litigious processes.
- 32 One of the underlying causes of these issues, is that the current NPS-REG and NPS-ET have not been effective in informing RMA plans and consenting decisions in part due to a lack of clear policy direction on how to provide for REG and ET when there are conflicts with other values and in part due to lack of resource to support implementation deadlines being met by local government and for guidance to promote the policy direction.
- 33 Another underlying cause is that there is currently no national direction and consistent identification of certain matters of national importance under the RMA, including outstanding natural features and landscapes, significant indigenous vegetation and significant habitats of indigenous fauna outside of the coastal environment.<sup>10</sup> This is relevant to the example noted for outstanding natural landscapes.
- 34 In addition, weak direction in the NPS-REG and NPS-ET relative to other NPSs and lower order plans has meant that the national benefits of this infrastructure are not always given sufficient weight in decision making.
- 35 This has been exacerbated by case law (the King Salmon decision) which made clear in 2014 that more specific and directive provisions prevail over more general provisions. The NPS-REG and NPS-ET pre-date King Salmon and do not contain as directive language as other national direction instruments. The NPS-REG and NPS-ET therefore lack direction on how interactions and competing values are to be addressed.

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<sup>7</sup> New Zealand Infrastructure Strategy (2022)

<sup>8</sup> *Ibid*

<sup>9</sup> 4Sight Case Studies Report for MBIE (2021)

<sup>10</sup> The proposed National Policy Statement for Indigenous Biodiversity intended to be gazetted in 2023 covers the areas outside scope of the New Zealand Coastal Policy Statement 2010.

- 36 The challenge, then, in resetting the NPS is to ensure they appropriately balance adverse effects with the national benefits of reducing emissions to support the pace of infrastructure development that is required.

*These issues also relate to upgrading and repowering existing wind and solar renewable electricity generation...*

- 37 Existing sites provide efficiencies in generation output and may result in fewer new adverse environmental effects compared with new sites. However, these benefits are not adequately recognised and enabled through the NPS-REG and lower order RMA plans.
- 38 Any loss in existing REG output compromises achievement of emissions reduction and electrification targets, and would need to be made up by new generation elsewhere, with greater economic and environmental costs

*... and small and community-scale wind and solar generation*

- 39 Small and community-scale wind and solar generation provide a range of benefits including avoiding reliance on fossil fuel generation, greater resilience and telecommunications connectivity in rural areas. However, small and community-scale generation can face disproportionate resource consent requirements and costs relative to their adverse effects. In addition, the current definition in the NPS-REG may not appropriately reflect small and community-scale infrastructure.

*... and providing for the operation, maintenance and upgrading of the national grid*

- 40 Issues identified in the 2019 evaluation of the NES-ETA identified that it may not be fit-for-purpose to support New Zealand's renewable electricity and emissions reduction targets, and it could better enable routine maintenance activities with minor environmental impacts.
- 41 Other problems with the existing instruments include:
- 41.1 Grid-connected battery storage of REG is anticipated to become an important technology for the energy system as fossil fuels are phased out. Battery storage is not adequately covered by the current instruments.
  - 41.2 High-voltage electricity lines not owned or operated by Transpower (i.e. lines that are identical to transmission lines but are owned by another party such as an electricity distributor or a REG developer) are not included in the instruments, which can make these more challenging to be consented.
  - 41.3 Long lapse periods for resource consents (the length of time a person can hold on to a consent without developing the land) can be a barrier to accelerated REG build. The consultation document seeks



stakeholder views on the appropriate lapse period for REG resource consents.<sup>11</sup>

## Key proposals

- 42 The proposals included in the consultation document intend to address the issues identified above through:

### *Priority amendments to the NPS-REG and NPS-ET*

- 42.1 Stronger and more directive provisions on the importance of REG and ET activities in meeting renewable electricity and emissions targets, with greater emphasis on national benefits and providing for the specific requirements and needs of these activities.
- 42.2 Specified consenting pathways (“gateway tests” and effects management approaches) for REG and ET activities to be considered when these have potential adverse effects on significant natural environment values, including the option of prevailing over protections in the NZCPS and proposed NPS-IB in certain circumstances, and a new effects management approach for outstanding natural features and landscapes and historic heritage.
- 42.3 Prioritising the national significance of REG over effects on local amenity values in decision making, so long as these effects have already been mitigated where practicable.
- 42.4 Greater clarity for upgrades and consenting pathways for new development of the ET network.
- 42.5 Introducing specific consenting requirements for REG and ET activities to consider Māori cultural values in decision making to help meet te Tiriti o Waitangi obligations.
- 42.6 Recognition of the efficiencies that can be achieved by upgrading and repowering wind and solar generation, including utilising existing structures and infrastructure within the site’s same or similar built footprint.
- 42.7 Recognition of and provision for the significant cumulative contribution of small and community-scale REG in meeting targets and providing local benefits.

### *Consideration of other issues that may impact the NPS-REG and NPS-ET*

- 42.8 Broadening the scope of national direction on renewable electricity to apply to other current and new REG technologies, including grid

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<sup>11</sup> The Electricity Authority’s wholesale competition issues paper recommended MBIE and MfE to investigate the evidence for, and merits and feasibility of, applying pro-competitive conditions on consents for renewable generation (eg use-it-or-lose it)”, which could encourage greater competition in the electricity market.

connected battery storage and high voltage electricity network assets (not owned by Transpower), and investigating the need for applying pro-competitive conditions on REG consents.

### *National Environmental Standards*

- 42.9 Improving the workability and scope of national standards for ET, and introducing new national standards for REG relating to upgrading and repowering existing wind and solar generation and the development of small and community scale wind and solar projects.

### *Out of scope*

- 43 The consultation document does not specifically address renewable energy more broadly, eg. biomass or biogas, or offshore renewable energy. Separate public consultation on offshore renewable energy commenced on 15 December 2022 (CAB-22-MIN-0564 refers).

### **Managing competing interests on significant natural environment and amenity values**

- 44 There are invariably competing interests RMA decision makers need to navigate when assessing consent applications and their effects on significant natural environment values.<sup>12</sup> The proposals in sections 1.2 and 1.5 of the consultation paper deal with matters of national importance under Part 2 of the RMA and clarify interactions with the NZCPS and other NPSs (except for freshwater values, which is covered in section 2.2 and discussed in the next section).
- 45 New Zealand's five largest electricity generators have told us this topic is the most important issue for the purposes of being able to deliver needed new REG under resource management laws as conflicts between 'significant natural environmental values' and REG are inevitable. However, we have also heard, including through agency consultation, that these interactions are sensitive and contentious.
- 46 The consultation paper presents two options on how these interactions and competing values could be addressed. Both options seek to provide clear direction for decision-makers to recognise that meeting New Zealand's emissions reduction targets and budgets will require the development of some REG projects that have unavoidable adverse effects on significant natural environment values. For example, in areas containing Outstanding Natural Landscapes where the renewable energy resource may be greatest.
- 46.1 Under Option 1, the consenting pathway would be aligned with relevant existing national direction provisions such as the NZCPS and proposed NPS-IB. This means that REG and ET projects would still need to comply with the strong 'avoidance policies' and 'effects management

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<sup>12</sup> This collectively refers to certain matters of national importance under the RMA, including the coastal environment with natural character value, outstanding natural landscapes and features and significant natural areas.

hierarchy' provisions in these other instruments. However, Option 1 would provide slightly more enabling 'gateway tests'<sup>13</sup> for REG and ET in order for the effects management hierarchies in the NPS-FM and proposed NPS-IB to apply.

- 46.2 Tests that require significant national or regional benefits for both NPS-FM and proposed NPS-IB will be met by default for REG and ET due to their importance in helping meet national renewable electricity and emissions reductions targets. The practicable alternative location test for the proposed NPS-IB, will be easier for applicants to demonstrate compliance with.
  - 46.3 Option 2 provides a more enabling, specific consenting pathway for REG and ET. This pathway would take precedence over the equivalent effects management clauses in other national directions. It has been further split into sub-options so that Option 2A covers only interactions with the proposed NPS-IB, and Option 2B covers interactions with both the proposed NPS-IB and NZCPS (noting that it does not propose a specific pathway in relation to the NPS-FM, see next section).
  - 46.4 Option 2 will still ensure robust management of adverse environmental effects but not the same level of ecological protection in all instances. Proposed national direction based on this option requires *vires* review by the Crown Law Office and would need to be carefully developed to assess how it would interact with the outcomes sought through other existing and proposed national direction and the sustainable management purpose of the RMA.
  - 46.5 Splitting Option 2 into sub-options 2A and 2B will allow more detailed feedback on the specific barriers for REG project developers, as well as on specific environmental and iwi/Māori interests and in relation to the coastal environment.
  - 46.6 Further, if the refined proposals have the effect of amending the NZCPS, the Marine and Coastal Area (Takutai Moana) Act 2011 requires the Minister of Conservation to seek and consider the views of customary marine title groups recorded on the marine and coastal area register.
- 47 The proposals in sections 1.3 and 1.5 of the consultation document deal with amenity values under Part 2 of the RMA. Policy direction is proposed to recognise that changes in amenity values are not necessarily an adverse effect and that adverse effects on local amenity values may be required to reflect the importance of REG and ET, subject to mitigation.
- 48 Stakeholder feedback on these issues, as well as further supporting analysis during and once consultation closes, will enable officials to better assess the risks, impacts, costs and benefits to inform final policy decisions and the section 32 evaluation report required under the RMA.

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<sup>13</sup> A gateway test is a threshold a project must meet to be considered for consent.

## Hydro-generation, freshwater allocation and the National Policy Statement for Freshwater Management 2020 (NPS-FM)

- 49 We are not proposing any changes to the policy direction in relation to hydro-generation, freshwater allocation, or the NPS-FM at this time because of proposed NBE Bill allocation decisions for freshwater, the implementation of the NPS-FM and related to Tiriti o Waitangi matters discussed below.<sup>14</sup>
- 50 Introducing new policy direction on protecting existing hydrogeneration capacity is cross-portfolio and requires extensive discussions with Treaty partners, and any changes to this now could pre-empt discussions with Māori on allocation in the proposed NBE Bill.
- 51 In addition, the NPS-FM and the NBE Bill recognise the national importance of the five largest hydro-generation schemes, which make up around 86% of existing grid-connected hydrogeneration.<sup>15</sup>

## National Environmental Standards

- 52 The NES-ETA 2009 establishes nationally consistent rules and standards for the operation, maintenance, upgrading, relocation, or removal of 'existing transmission lines'. The consultation paper seeks feedback on changes to the NES to further recognise and provide for REG and ET.
- 53 It also seeks feedback on the development of a NES for REG particularly relating to small and community scale REG to provide an appropriate and efficient approach for these activities. These projects typically have comparatively low and well-known environmental effects, which can generally be effectively managed through standards and mitigation requirements. Standards are also proposed for upgrading and repowering existing wind and solar generation to make the most of existing infrastructure.

## Implementation

- 54 The proposed amendments to the NPS-REG and NPS-ET would have legal effect under the RMA once they take effect until changes under the NBE Bill are fully implemented (in approximately 7-10 years).
- 55 We are also seeking feedback on whether the revised NPS should be drafted to enable local authorities to fast-track amendment of their regional policy statements and plans under section 55 of the RMA (without requiring a plan change) to give effect to the changes.<sup>16</sup> Final policy decisions on this question

<sup>14</sup> Regional councils must implement the NPS-FM by 31 December 2026.

<sup>15</sup> The NPS-FM 2020 exempts the five largest hydro-electricity generation schemes from national bottom lines as long as an improved target is set for water attributes (Clause 3.31). The NBE Bill also exempts these schemes from short-term transitional consents.

<sup>16</sup> Section 55(2) of the RMA sets out that a local authority must amend their regional policy statement, regional plan or district plan, if a NPS directs so:

- a) to include specific objectives and policies set out in the statement; or
- b) so that objectives and policies specified in the document give effect to objectives and policies specified in the statement; or
- c)

will be informed by a detailed assessment of the benefits of this implementation approach relative to the potential risks of not following the usual public consultation process for RMA plan development, including the statutory engagement process with iwi authorities.

- 56 We also propose non-statutory planning guidance to assist development and consenting of new wind and solar generation, and seek public comments on the need for further institutional support.

### Early engagement

- 57 Early engagement in September and October 2022 occurred with the electricity industry, other professional groups, local government, and iwi/Māori, and has informed the development of the proposals. Feedback from the electricity sector has been supportive. Local government were broadly supportive of the intent of the proposals but raised concerns about any additional workload resulting from implementation of any strengthened amendments.

- 58 The primary intent of the proposals is to influence consenting decisions during the transitional period, rather than require plan changes.<sup>17</sup> However, as noted above, the consultation paper seeks feedback on whether local authorities should fast-track changes to their regional policy statements and plans to reflect the new NPS. In addition, it is intended that government will issue implementation guidance.

- 59 Iwi/Māori highlighted the importance of their involvement during consenting processes for the development of REG and ET projects. The consultation paper seeks feedback on options for iwi/Māori involvement in REG and ET consenting processes and our final policy proposals will be informed by further engagement. Iwi/Māori also highlighted the need for the protection of Māori sites of significance and cultural values. There was strong support for community energy generation at a local scale to allow marae and whānau to provide for energy needs and self-sufficient communities. Iwi/Māori organisations who were available to engage with us were:

59.1 Te Arawa Lakes Trust

59.2 Te Rūnanga o Ngāi Tahu

59.3 Raukawa Charitable Trust

59.4 Waikato-Tainui

59.5 Te Korowai o Ngāruahine Trust.

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<sup>17</sup> Under the existing RMA settings, local authorities will be required to have regard to relevant provisions in the NPS-REG and NPS-ET when considering resource consent applications for REG or ET activities.

### Proposed consultation process

- 60 We propose that public consultation on the consultation document, a short summary document, and consultation drafts of the proposed (amended) NPS-REG and NPS-ET take place over a six-week period between February and March, 2023. Releasing drafts at the same time as the consultation document will help expedite having the amendments gazetted within this government term.
- 61 Consultation is proposed to follow the ‘alternative’ process under section 46A(3)(b) of the RMA which is led by officials (rather than a Board of Inquiry). This will involve giving the public and iwi authorities notice of the proposal and providing them with opportunity to make a submission. Well-targeted consultation with key stakeholders and a comprehensive public engagement process can ensure the same opportunity for public comment on the proposed provisions of the amendments to the NPSREG and NPSET, and the same quality of evidence and information can be obtained from external parties to inform the development of the final NPSs.
- 62 Officials will conduct workshops with local government, large and small generators, Transpower, interested distribution companies and non governmental organisations (NGOs). Kanohi-ki-te-kanohi (face to face) hui will be held with interested iwi/Māori including customary marine title groups.
- 63 Section 46A(3)(b) and (4)(a) of the RMA requires that the “proposed national direction” is notified. Legal professional privilege

### Considerations of the principles of te Tiriti o Waitangi and impacts of the proposals on Māori

#### *Te Tiriti of Waitangi Impact Analysis*

- 64 Te Tiriti o Waitangi obligations are currently not provided for in the package of existing national direction instruments on REG and ET. Officials have carried out a preliminary assessment of the impacts on Māori, and consistency of the proposals with te Tiriti o Waitangi and relevant Treaty Settlement legislation. The assessment was carried out in accordance with the guidance set out in Cabinet Circular CO(19)5 and following early engagement with iwi/Māori.
- 65 The RMA provides for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga and for the protection of historic heritage from inappropriate subdivision, use, and development and the protection of protected customary rights as matters of

national importance. The RMA also has specific provisions in relation to managing the use, development and protection of natural and physical resources, having particular regard to kaitiakitanga, and taking into account the principles of te Tiriti o Waitangi when exercising functions and powers under the RMA.<sup>18</sup>

- 66 The RMA has requirements to engage with tangata whenua when preparing RMA planning documents and provisions to establish joint management agreements between iwi authorities and local authorities. However, there is inconsistency in how these requirements are met and the Waitangi Tribunal has identified weaknesses in how the RMA is implemented.
- 67 Given the importance of provisions in the RMA relating to Māori cultural values, and the fact that the Waitangi Tribunal has found that these provisions themselves need strengthening in order not to breach te Tiriti, a specific approach for Māori is proposed as some of the proposals in the consultation document may affect aspects of the natural environment or taonga that Māori have additional rights to, and protections guaranteed under, te Tiriti o Waitangi.
- 68 There are some significant concerns about effects on Māori cultural values and historical grievances associated with existing hydro and geothermal generation schemes which are reflected in several Treaty Settlements<sup>19</sup>. The proposals do not impact new or existing-hydro generation and there are no specific changes proposed to the status quo for geothermal generation<sup>20</sup>. Preliminary te Tiriti o Waitangi impact analysis shows that the proposals in the consultation document will not impact Treaty Settlement legislation.
- 69 The proposals may have positive impacts on Māori groups that have completed settlements and a greater opportunity to develop their own REG in their rohe. The proposals have the risk of negative impacts on Māori groups that have insufficient protection in plans and other statutory documents for RMA s6(e) and 6(f) matters in their rohe. As noted above, if any of the proposals have the effect of amending the NZCPS, the views of customary marine title groups will be sought and considered by the Minister of Conservation.
- 70 To address these issues, the proposals include options to:
- 70.1 Recognise conflicts between REG and ET and Māori cultural values
  - 70.2 Recognise the role of Māori as kaitiaki and te Tiriti o Waitangi
  - 70.3 Provide specific consent requirements to consider Māori cultural values for consents in relation to REG and ET

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<sup>18</sup> Sections 6, 7 and 8 of the Resource Management Act (1991).

<sup>19</sup> Including, for example, the Waikato River iwi Settlement Acts, Ngāti Rangi Claims Settlement Act, Ngāti Manawa Settlement Act, and Whanganui River Settlement Act.

<sup>20</sup> Feedback from industry indicates that the existing geothermal classification provisions in the Bay of Plenty and Waikato Regional Plans, are generally working well in practice to both protect and enable the use of geothermal systems.

- 70.4 Better enable small/community scale REG, which includes providing for Māori to realise their aspirations
- 71 Further analysis will continue throughout the policy development process and will be informed by further engagement with iwi/Māori, including Post-Settlement Governance Entities.
- 72 To assess how all proposals may impact on iwi/Māori, a criterion 'te Tiriti o Waitangi principles' forms part of the options analysis. Given that there have been few opportunities for engagement by Māori in the proposals to date, it is expected that further consultation and feedback from Māori will further inform this assessment, and further changes to the proposals may be necessary as a result.

### Next steps and integration into the National Planning Framework

#### *NPS-REG and NPS-ET*

- 73 Following public consultation and analysis of submissions, officials will provide us with a report and recommendations on the submissions and the subject matter of the national direction, required under section 46A(4)(c) of the RMA. Based on these recommendations, we will make initial policy decisions on the NPS-REG and NPS-ET to enable drafting instructions to be issued to amend the drafts that were consulted on.

- 74 Confidential advice to Government [REDACTED] Section 32 of the RMA requires new proposals to be examined for their appropriateness in achieving the purpose of the RMA, and the policies and methods of those proposals to be examined for their efficiency, effectiveness, and risks in achieving the objectives. A section 32 evaluation report will be provided to Cabinet at this stage.

- 75 Gazettal of the changes will take place as soon as possible after Cabinet approval.

- 76 Confidential advice to Government [REDACTED] Consultation on the NPF will be led by a Board of Inquiry (BOI) and will take around one year to complete.

#### *NES-ETA*

- 77 Confidential advice to Government [REDACTED]



*A possible new NES-REG*

78 Confidential advice to Government

The relative benefit of introducing this NES under the current RM system will also be considered by officials.

**Financial Implications**

79 In Budget 2020, \$3 million was allocated until 2023/24 for RMA national direction to facilitate development of renewable energy projects. This budget is expected to cover amendments to the NPS-REG and NPS-ET and to progress work on the NESs, through rephasing beyond 2023/24.

**Legislative Implications**

80 This consultation has no direct legislative implications, however the outcomes may necessitate or result in amendment to other national direction. However, drafts of the proposed (amended) NPS-REG and NPS-ET, are intended to be released alongside the consultation document. Drafting of the proposed NPSs is well-advanced and Crown Law will provide a vires review before release. We seek delegated authority to approve the drafts of the proposed NPSs for release alongside the consultation document.

**Impact Analysis**

*Regulatory impact analysis*

81 The Treasury's Regulatory Impact Analysis team has determined that the proposal to release the consultation document on strengthening electricity national direction on REG and ET under the Resource Management Act 1991 is exempt from the requirement to provide a Regulatory Impact Statement (RIS). The exemption is based on advice that the consultation document includes the key features of an interim RIS.

82 A joint Quality Assurance Panel (the Panel) from the Ministry of Business, Innovation and Employment (MBIE) and the Ministry for the Environment (MfE) has reviewed the consultation paper and considers that it does not meet the RIA requirements at this stage. Officials will continue working to address the issues raised by the panel. The Minister of Energy and Resources and the Minister for the Environment have agreed that the consultation document can only be released once it has met the RIA requirements.

83 A full RIS will be completed at a later date to inform Cabinet's final decisions on this proposal once it returns from consultation.

*Climate Impact Panel Assessment (CIPA)*

84 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as there won't be any direct emissions impacts. However,

strengthening the policy direction on renewable electricity generation and electricity transmission output to help meet New Zealand's emissions reduction targets and budgets through giving greater weight to the national significance of REG and electricity transmission (ET) in RMA decision-making will likely result in impacts on carbon emissions. These impacts will be quantified and disclosed to Cabinet as appropriate as this work is advanced.

### Communications

- 85 The consultation document and drafts of the proposed (amended) NPS-REG and NPS-ET will be published on MBIE's website with a plain language summary document. MfE's website will include link to this material. Officials will email known potentially interested parties, including Post-Settlement Governance Entities, large and small generators, Transpower, interested distribution companies and NGOs to inform them of consultation. Local government and iwi authorities will be notified as per the process set out under the RMA.
- 86 In line with the requirements of section 2AB of the RMA, a short summary of the online notice will be published in at least one newspaper circulated in the whole area affected by the topic of the notice.<sup>21</sup>


### Proactive release

- 87 Officials intend to release this Cabinet paper following Cabinet decisions within 30 business days, making any redactions that are appropriate under the Official Information Act 1982.

### Human Rights

- 88 There are no human rights implications arising from this paper.

### Agency consultation

- 89 MBIE and MfE officials have provided the following agencies with a draft copy of this Cabinet paper for comment: the Department of Conservation, Te Arawhiti, Te Puni Kōkiri, the Ministry for Primary Industries, the Ministry for Housing and Urban Development, the Ministry for Culture and Heritage, the Treasury, the Electricity Authority, the Energy Efficiency and Conservation Authority, Te Waihanga Infrastructure Commission, the Department of Internal Affairs, the Department of the Prime Minister and Cabinet, and other portfolios within MBIE and MfE.
- 90 There was overall support for existing RMA national direction instruments for renewable electricity to be strengthened. Free and frank opinions
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<sup>21</sup> Resource Legislation Amendments 2017 – Fact Sheet 13 (MfE)

## Recommendations

The Minister of Energy and Resources and the Minister for the Environment recommend that the Cabinet Environment, Energy and Climate Committee:

### *Background*

- 1 **note** that Aotearoa New Zealand has an aspirational target of 100% renewable electricity by 2030 and a target for 50% of total energy consumption to be from renewable sources by 2035
- 2 **note** that development of a new National Policy Statement for Renewable Electricity Generation (NPS-REG) and the removal of regulatory barriers to renewable generation is a 2020 manifesto commitment and a key action of the first Emissions Reduction Plan
- 3 **note** independent government commissions have recommended that existing Resource Management Act 1991 (RMA) national direction instruments for renewable electricity be strengthened
- 4 **note** Cabinet has previously directed MBIE to identify workable policy options to revise the NPS-REG to be more directive, and also to consider the development of new National Environmental Standards on renewable electricity [CAB-19-MIN-0334] and provided funding for this work in Budget 2020

### *Policy*

- 5 **note** that two of the options in the consultation document directly affect the wording and operation of the proposed National Policy Statement for Indigenous Biodiversity which awaits its final Cabinet approvals
- 6 **note** further analysis of the impact of option 2 affecting the New Zealand Coastal Policy Statement and proposed National Policy Statement for Indigenous Biodiversity is required before the policy on renewable energy and transmission can be finalised for gazettal


### *Proposed consultation*

- 7 **agree** to release the consultation document in Appendix One between February and March 2023 on proposals for strengthening RMA national direction on renewable electricity generation and electricity transmission, subject to the document meeting RIA requirements
- 8 **agree** to allow the Minister of Energy and Resources and the Minister for the Environment to make further detailed policy changes in keeping with the decisions in this Cabinet Paper and to finalise the options in the consultation document prior to it being released for public consultation
- 9 **agree** to allow the Minister of Energy and Resources and the Minister for the Environment to make editorial, design, and/or technical changes to the consultation document prior to publishing

IN CONFIDENCE

- 10 **agree** to allow the Minister of Energy and Resources and the Minister for the Environment to release the drafts of the proposed amended NPS-REG and NPS-ET with the consultation documents after further refinement of the drafting and the Crown Law Office has completed a *vires* review.
- 11 **note** that if the refined proposals have the effect of amending the NZCPS, the RMA requires that any recommendations to the Governor-General on changes to the NZCPS are issued by the Minister of Conservation
- 12 **agree** that if the refined proposals have the effect of amending the NZCPS, any decisions under recommendations 8 to 11 will be made in consultation with the Minister of Conservation
- 13 **note** that if the refined proposals have the effect of amending the NZCPS, the Marine and Coastal Area (Takutai Moana) Act 2011 requires the Minister of Conservation to seek and consider the views of customary marine title groups recorded on the marine and coastal area register
- 14 **note** that officials will work with Department of Conservation officials to seek the views of customary marine title groups on the refined proposals if they have the effect of amending the NZCPS
- 15 **note** that a short summary document will be published alongside the consultation document to assist consultees in their review of the consultation document in Appendix One

*Further policy decisions and implementation*

- 16 **agree** following public consultation and analysis of submissions, the Minister of Energy and Resources and the Minister for the Environment will make further policy decisions on the proposed amendments to the NPS-REG and NPS-ET so the drafts can be amended and finalised ready for Cabinet approval
- 17 **invite** the Minister of Energy and Resources and Minister for the Environment to report back to LEG and Cabinet in **Confidential advice** seeking approval to gazette the revised NPS-REG and NPS-ET in accordance with section 52 of the RMA and any further policy recommendations
- 18 **note** Confidential advice to Government  

- 19 **note** that existing funding is available until 2023/24 and is expected to cover the proposed priority amendments to the NPS-REG and NPS-ET and to progress work on the NES
- 20 **authorise** the Minister of Finance and the Minister of Energy and Resources jointly to transfer any remaining funds in the multi-category appropriation *Policy Advice and Related Services to Ministers (MCA)*, as necessary to implement the proposed policies.

IN CONFIDENCE

Authorised for lodgement

Hon Dr Megan Woods  
Minister of Energy and Resources

Hon David Parker  
Minister for the Environment

**I N C O N F I D E N C E**

**Appendix One: Consultation Document – Strengthening National Direction on Renewable Electricity Generation and Electricity Transmission**

**I N C O N F I D E N C E**