

Greater Wellington Regional Council: submission

To: Board of Inquiry

Submission on: Proposed National Policy Statement for Renewable Electricity Generation

1. Introduction

Greater Wellington Regional Council welcomes the opportunity to comment on the proposed National Policy Statement for Renewable Electricity Generation (NPS).

Greater Wellington supports the intent of the proposed NPS. However, a number of matters need to be addressed by the Board of Inquiry to ensure that the NPS will add value to decision making under the Resource Management Act 1991 (the Act).

The first part of this submission provides general comments. The second provides specific comments on the objective and policies. To assist the Board of Inquiry with understanding Greater Wellington's submission, an outline of the type of changes required (with text struck out and new text underlined) is appended

Greater Wellington supports the Local Government New Zealand submission on the proposed National Policy Statement – Renewable Electricity Generation.

2. General comments

2.1 Scope of the National Policy Statement

Greater Wellington notes that the proposed National Policy Statement only relates to renewable electricity generation. It does not provide national policy direction on the wider issue of 'energy generation' from renewable resources. As such it does not address activities such as hot water solar panels, geothermal steam piped for heating, or biomass plants for the production of liquid fuels or heat. We note that the New Zealand Energy Efficiency and Conservation Strategy 2007 referred to an 'NPS on Renewable Energy' and understood that the reason for the focus on 'renewable energy' was in order to increase New Zealand's resilience, and reduce proportional dependence on electricity as an energy source. Greater Wellington is unsure why the scope has been limited to electricity.

Greater Wellington notes that the title of the NPS is 'Renewable Electricity Generation'. The same term is then used in the objective and policies. Electricity, or its generation, is not renewable. The resources – such as water, solar and wind - from which electricity is generated, are renewable. The Act defines 'renewable energy' as 'energy produced from solar, wind, hydro, geothermal, biomass, tidal, wave, and ocean current sources', and we believe that the terms used in the NPS and the Act should be consistent. Greater Wellington

therefore submits that the NPS refer to ‘electricity generated from renewable energy resources’.

2.2 Clear direction

First and foremost, the objective should be clear and robust. Policies in the NPS should then provide unambiguous direction. The proposed NPS, however, contains a number of policies that do not make it clear how they are to be given effect to and/or appear to deal with matters outside the scope of resource management decision making. For example, policy 2(ii) appears to require authorities to assess a matter that is beyond any normal assessment of environmental effects; it is unclear what is intended by the phrase ‘to enable’ in policies 4 and 5; and the term ‘decision-makers’ in policies 1 and 3 applies to local authority functions that an NPS would have limited relevance to (i.e. section 30(ca)). Greater Wellington strongly recommends that the outcomes expected, and/or the process required, be detailed in the policies so that it is clear how local authorities should give effect to the policies.

The Board of Inquiry also needs to ensure that the policies in the proposed NPS amount to more than simply repeating the Act. A national policy statement should add value. There is little point in simply repeating or paraphrasing the wording of Act with no further guidance or direction. A national policy statement is the place to provide further detail about the government’s expectations. As currently drafted, Greater Wellington considers that policies 1 and 3 do little more than repeat section 7(j) and 3 of the Act.

It is also difficult to see what the proposed NPS will actually achieve over and above what already exists, or could reasonably be expected to be provided for. For reference, attached is a copy of the draft Regional Policy Statement for the Wellington region, March 2008. This includes policies which require the benefits of renewable energy generation to be given particular regard when making decisions (policy 37) and recognised in plans (policy 8), seeks the protection of regionally significant infrastructure - including facilities that generate electricity (policy 9) and promotes small scale renewable energy generation activities (policy 12). A key question for the Board of Inquiry should be ‘what else is required?’ and ‘where can national direction assist?’ Greater Wellington’s suggestions in response to these questions are outlined in specific comments below.

2.3 Process for changing plans

Greater Wellington is concerned about the requirement (in policies 4 and 5) to notify by 13 March 2012 any changes to Greater Wellington’s plans. Greater Wellington will commence the review of its regional plans in 2009 (Regional Freshwater Plan, Regional Plan for Discharges to Land, Regional Soil Plan and Regional Air Quality Management Plan) and 2010 (Regional Coastal Plan). As with a number of other regional councils, we are considering combining our plans into a single regional plan. Any revised regional (combined) plan may not be publicly notified until after March 2012. As a result Greater Wellington would be required to change each operative plan, at that point, to meet a 2012 requirement. This would incur unreasonable additional costs for Greater Wellington. Greater Wellington submits that a more appropriate approach would be to require councils

to commence the process to amend plans, to implement the policies, on or before the date on which a council commences the review of its plans.

Greater Wellington also believes that consideration should be given to the use of section 55 (2A)(b) of the Act, where a national policy statement can direct that specific provisions be included in a document, without notification or hearing. Greater Wellington strongly advocates the use of Section 55(2A)(b), where appropriate. As currently written there is likely to be inconsistent interpretation of policies 4 and 5 and local authorities will not be able to simply insert provisions into plans. However, with clearer direction as to how the policies are to be given effect to, Greater Wellington considers that the use of section 55(2A)(b) could be appropriate for these policies.

If direction is being set by central government, it is essentially out of Greater Wellington's control, and we should not be required to adhere to First Schedule processes. We do not want to become involved in costly litigation processes because we are giving effect to a policy in a National Policy Statement. There is a conflict between the obligation of councils to 'give effect to' a national policy statement, and the 'no-predetermination' assumption inherent in the public processes of the First Schedule process of the Act.

2.4 Duplication of implementation

There are two policies in the proposed NPS (4 and 5) that require implementation through both regional policy statements and plans. This appears to be an unnecessary and costly duplication of effort. Regional policy statements and plans have different functions and the policies need to target these differing roles. Regional policy statements can be effective in providing regional direction and ensuring consistency across a region. Plans outline what activities are to be controlled and how.

2.5 Cost of implementation

Greater Wellington acknowledges that there are costs associated with the functions of regional councils under the Act. However, the costs of giving effect to the proposed NPS may be significant.

Costs will be associated with the need to change our Regional Policy Statement and plans. We would like to re-emphasise our earlier comments about the 2012 notification timing, the duplication of costs in giving effect to policies through both regional policy statements and plans, and the costs of using the first schedule process to do so.

2.6 Section 32 report

In accordance with section 32 of the Act, an evaluation must be carried out which examines the extent to which an objective is the most appropriate way to achieve the purpose of the Act, and having regard to their efficiency and effectiveness the policies and methods are the most appropriate for achieving objectives.

Greater Wellington has a number of concerns about the section 32 evaluation for the proposed NPS. Some of the key concerns are:

- The objective is not described as a resource management matter. The focus is on a government electricity target. Section 3 of the report presents alternatives to the status quo. Section 32 of the Act, however requires that the evaluation determine that an objective is the most appropriate ‘to achieve the purpose of the RMA’. Section 3 does not do this. In addition, section 5 of the report does not ask if the objective is the most appropriate to achieve the purposes of the Act, as no alternatives to the objective are provided.
- The analysis assumes that only one plan change will be necessary for each regional council. In its current form, the NPS is likely to require plan changes to three of Greater Wellington’s plans (Regional Policy Statement, Regional Coastal Plan and Regional Freshwater Plan).
- The analysis of ‘risks of acting or not acting’ (sections 4 and 6) does not include an examination of the level or certainty of information that is available and how that influences acting or not acting. The discussion simply focuses on acting or not acting which is not the correct test. The requirement in section 32(4) (b) is qualified by ‘if there is uncertain or insufficient information’.

2.7 Implementation plan

Greater Wellington requests that the final NPS be accompanied by an implementation plan specifying the priorities for implementation and further guidance on responsibilities. The implementation plan should also specify what central government is going to be doing to implement the NPS.

Greater Wellington seeks that any implementation plan be developed as a collaborative process with local authorities.

3. Specific comments on the objective and policies

3.1 Objective

As noted earlier, the section 32 report includes an examination as to how the objective is ‘appropriate’ and looks at alternatives to having a National Policy Statement. However, it does not address whether the objective is the most appropriate to meet the purposes of the Act.

Greater Wellington is also concerned that the proposed objective includes both policy elements (seeking recognition and promotion) and a national target for electricity generation. An objective should clearly describe the resource management outcome sought to be achieved. Policies should then outline how the objective is to be achieved.

Greater Wellington seeks further analysis as to whether the objective is the most appropriate to achieve the purpose of the Act. If the objective is considered to be appropriate, then Greater Wellington seeks:

- that the policy elements be removed from the objective; and
- that the national energy target be replaced with a list and description, of the resource management outcomes sought be achieved.

Greater Wellington notes that the section 32 report describes a number of resource management outcomes that could be included in the objective. This includes, reducing New Zealand's dependency on fossil fuel based thermal generation, increasing security of electricity supply, increasing diversity and resilience in electricity generation, reducing greenhouse gas emissions and addressing climate change.

3.2 Policy 1

Greater Wellington notes that the first sentence in policy 1 makes a statement, but it does not provide any direction as to how it is to be applied. Greater Wellington recommends that the statement be included in the "Matter of national significance" as important context.

Policy 1 requires that particular regard be given to the national, regional and local benefits of renewable electricity generation. Local authorities can determine regional and local benefits. It is however not possible at a regional or local level to quantify benefits for the nation. It is noted the section 32 report states one of the key problems as inconsistent recognition of the nationally significant benefits. Greater Wellington considers that policy 1 would add value if it clearly focused on, and described, these national benefits. The benefits listed in the proposed NPS need to be clarified, tightened and could potentially be added to.

Policy 1 (and policy 3) refers to 'decision-makers' which is defined as 'all persons exercising functions and powers of the Act'. As noted earlier some functions under the Act do not relate to decision making. The policy should state the type of decisions where the benefits need to be considered.

Greater Wellington notes that the term 'at any scale' has been included in the policy. This means that a small water turbine in a small stream or one solar photo-voltaic panel on a roof top of a house will be of national significance. Greater Wellington questions whether such activities, in isolation, are of national significance.

If the benefits are 'not limited to' as described in policy 1, then local authorities will need to be informed about what additional national benefits exist. Local authorities cannot be expected to determine these, at a local level, for the entire nation.

Greater Wellington seeks the following changes to policy 1:

- move the first sentence to the 'Matter of national significance';

- delete reference to decision-makers and instead list the type of decisions where policy 1 must be given particular regard (e.g. review of regional policy statements and plans, designations and resource consents);
- limit the scope of policy 1 to ‘national’ benefits;
- delete reference to ‘any scale’; and
- clarify and tighten the benefits, and assess whether other national benefits should be added.

Greater Wellington also seeks that the Board of Inquiry consider how additional national benefits will be communicated to local authorities.

3.3 Policy 2

The intent of this policy needs to be made clearer. As currently written it can be interpreted several different ways. One interpretation is that the policy requires local authorities to restrict what conditions are imposed on resource consents. Another is that it requires recognition that renewable resources are usually fixed and that access to, and use, therefore gives rise to effects which are difficult to avoid, remedy or mitigate. Particular concern also arises around clause (ii) and whether the intent is to require recommending officers and decision makers to assess matters beyond environmental effects.

Greater Wellington seeks that the intent of policy 2 be clarified and that clause (ii) in its current form be deleted.

3.4 Policy 3

Greater Wellington is unclear how policy 3 will add any value when resource management decisions are made. Reversibility is an effect which can already be considered when assessing effects in accordance with section 3 of the Act.

Greater Wellington seeks that policy 3 be deleted.

3.5 Policies 4 & 5

As noted earlier, Greater Wellington has a number of concerns about the timing (March 2012), mechanisms (regional policy statements and plans) and intent (meaning of ‘to enable’) in policies 4 and 5.

Greater Wellington notes that the section 32 report states that the intent of ‘to enable’ is to remove unnecessary regulatory barriers and limit the scope of discretion when considering resource consent applications. If this is the intent, then the reference to regional policy statements is not appropriate. Regional policy statements can not include rules that restrict the matters a council considers.

To be effective and achieve the intent described in the section 32 report policy 4 should describe the type of ‘identification’, ‘research’ and ‘investigations’ activities (in their various environments) of concern and outline the barriers to be removed, or matters to which a council’s discretion should be restricted to. Similarly, policy 5 should outline small and community scale activities and the barriers, or matters to which a council should restrict its discretion to.

Greater Wellington notes that in clarifying the intent of policies 4 and 5, a National Environmental Standard would be a more effective mechanism to describe the activities and matters to be which discretion should be restricted to.

Greater Wellington seeks that:

- the reference to regional policy statements be removed from policies 4 and 5;
- policies 4 and 5 list the specific activities to which a council should limit its discretion over to achieve the intent of “enabling”, and describe the matters to which discretion should be restricted to,;
- the reference to notification in accordance with Schedule 1 of the Act, by 13 march 2012, be removed and replaced with reference to section 55(2A)(b) of the Act.

Greater Wellington also seeks that the Board consider whether a National Environmental Standard could be a more effective mechanism to achieve the intent of policies 4 and 5.

4. Involvement in hearing

Greater Wellington Regional Council wishes to be heard in support of its submission.

If others make a similar submission, Greater Wellington would consider presenting a joint case with them at a hearing.

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31 October 2008

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Appendix 1: Guidance on type of changes required to the proposed National Policy Statement for Electricity Generation

Please note that the following changes are intended to provide guidance as to the kind of changes required to the NPS to address Greater Wellington's concerns.

National Policy Statement for ~~Renewable~~ Electricity Generation ~~ed~~ from Renewable Energy Resources

Matter of national significance

The matter of national significance to which this national policy statement applies is the need to ensure that: ~~develop, upgrade, maintain and operate renewable electricity generation activities throughout New Zealand~~

- *the benefits of activities that generate electricity from renewable energy resources are recognised and provided for as a matter of national significance; and*
- *by 2025, ninety per cent of New Zealand's electricity will be generated from renewable energy resources*

Objective

To recognise the national significance of renewable electricity generation by promoting the development, upgrading, maintenance and operation of new and existing renewable electricity generation activities, such that 90 per cent of New Zealand's electricity ~~is~~ will be generated from renewable energy sources by 2025 (based on delivered electricity in an average hydrological year). in ways that:

- ?
- ?

Policy 1

The benefits of renewable electricity generation activities, at any scale, are of national significance. ~~Decision makers~~ When considering an application for a resource consent, notice of requirement, or a change or variation to a policy statement or plan, local authorities must have particular regard to the national, regional and local benefits relevant to of renewable activities that electricity generatione electricity from renewable energy resources activities-s. These ~~b~~Benefits may include, but are not limited to:

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

iii. avoiding, reducing or displacing greenhouse gas emissions; and

iv. ?

v. ?

Policy 2

~~When considering an application for a resource consent and assessing any actual or potential effects on the environment measures to avoid, remedy or mitigate the adverse environmental effects of renewable of allowing activities that electricity generation electricity from renewable energy resources activities, consent local authorities must have particular regard to the imposed on achieving those measures by practical constraints to avoiding, remedying or mitigating adverse effects. Practical constraints include, but are not limited to:~~

- i. the nature and location of the renewable energy resources
- ii. ~~logistical or technical practicalities associated with developing, operating or maintaining the proposed renewable electricity generation activity~~
- iii. the nature and location of existing renewable electricity generation activities for generating electricity from renewable energy resources
- iv. the location of existing structures and infrastructure including, but not limited to, roads, navigation and telecommunication structures and facilities, the national grid and the local electricity distribution network,.

Policy 3

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

Policy 4

~~By 13 March 2012, local authorities are to notify, in accordance with section 55(2A)(b) Schedule 1 of the Act, a plan change, proposed plan or variation to shall introduce objectives, policies and, where appropriate, methods, rules into policy statements and into district plans to enable activities that restrict a councils discretion, when processing a resource consent for the use, erection, placement or removal of anemometers, to the following matters associated with:~~

- i. ~~the identification and assessment by generators of potential sites and energy sources for renewable electricity generation;~~
- ii. ~~research scale investigation into emerging renewable electricity generation technologies and methods.~~
- iii. ?

By 13 March 2012, local authorities, in accordance with section 55(2A)(b) of the Act shall introduce rules into regional plans rules that restrict a councils discretion, when processing a resource consent for the use, erection, placement or removal of? to the following matters:

- i. ?
- ii. ?

Policy 5

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

By 13 March 2012, local authorities, in accordance with section 55(2A)(b) of the Act shall introduce rules in (specify whether district and/or regional) plans to restrict a councils discretion, when considering resource consent applications for small scale distributed electricity generation from renewable energy resourcesⁱ, to the following matters:

- i. ?
- ii. ?

ⁱ The specific small scale and community activities need to be specified