

Before the Board of Inquiry

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In the matter of: A submission on the Proposed National Policy  
Statement on Renewable Electricity Generation  
under the Resource Management Act 1991

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Submission by Resource Management Law Association of  
New Zealand Inc

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Dated: 31 October 2008

SUBMISSION ON THE PROPOSED NATIONAL POLICY  
STATEMENT ON RENEWABLE ELECTRICITY GENERATION

To:

The Chairperson

Board of Inquiry

National Policy Statement for Renewable Electricity Generation

c/- P O Box 10362

Wellington

- 1 This is a submission on the Proposed National Policy Statement for Renewable Electricity Generation (the proposal).
- 2 The specific provisions of the proposal that this submission relates to are:
  - 2.1 The Objective
  - 2.2 Policies 1-5 generally
- 3 The Association's submission is:
  - 3.1 The Resource Management Law Association of New Zealand Inc (the Association) was founded in 1991, and has a diverse membership of over 1,100 representatives of all aspects of resource management in New Zealand including local authorities, private practice, national government, and the courts. As a result the Association provides a unique perspective on matters such as the proposal.
  - 3.2 Together with the National Environmental Law Association of Australia Ltd, the Association has established the Environmental Law Roundtable of Australia and New Zealand to investigate opportunities (where practicable) for the harmonisation of environmental laws.

- 3.3 The Association is committed to the development of an effective and coherent body of environmental law.
- 3.4 The Association represents a potentially diverse range of viewpoints reflective of its membership. As such this submission does not seek to advance any particular policy platform but rather to ensure that the proposal contains clear and precise guidance to local authorities, and promotes best practice in the achievement of sustainable management outcomes with respect the generation of renewable energy.
- 3.5 The production and provision of electricity is essential for New Zealand's growth and development as a nation. In particular, renewable electricity generation is a key part of the Government's strategy for managing climate change, and long term energy security. Government has set a target that 90% of its electricity is to be generated from renewable sources. Accordingly, an effective National Policy Statement (NPS) on renewable electricity is a fundamentally important tool in achieving this goal.
- 3.6 Local authorities will be responsible for giving effect to the NPS in their regional and district planning processes and instruments. Therefore the achievement of the proposal's objective depends upon the clarity of the direction provided in the NPS.
- 3.7 The Association understands that the proposal cannot and should not be entirely prescriptive as each district and region will have different issues to address and manage, but it should seek to achieve a nationally consistent approach to issues common to all regions and districts. It considers the proposal as it stands may miss a unique opportunity to bridge the gap between the high level objective and effective local implementation. More specific guidance is needed to avoid multiple consideration of and excessive variation in approach to very similar issues, that may not ultimately achieve the intended outcomes.
- 3.8 The Association considers there is an opportunity to provide more direction to local government without being unduly prescriptive. Such additional direction could be provided on, for example:

- (a) The relevant issues that should be considered when councils change their plans to enable activities associated with the identification of sites and energy sources; and
  - (b) The type and nature of the issues that should be considered at a regional level (through an RPS) as opposed to those that should be considered at a local level (through a district or city plan)
  - (c) How local authorities are to weigh the matters that they must now have particular regard to (in Policies 1-3) as against other issues arising at the local level, but which are of potential regional or national significance (as to resource values for example)
  - (d) The matters discussed in paragraphs 3.9 to 3.19 below
- 3.9 The Association also considers more emphasis needs to be given to how the proposal will work in tandem with the existing NPS on Electricity Transmission.
- 3.10 Renewable generation will always require connection to a distribution or transmission network, and this connection is almost always likely to involve the construction of new circuits. Such connection is integral to the success of any generation project, and in most cases, it will be proposed by the proponent of the generation project.
- 3.11 Yet, the proposal currently only links decision making to electricity transmission in a limited sense through policy 2, in addressing issues of effect avoidance or mitigation. There is neither an express recognition of the need for such a connection (and therefore how that connection is to be considered), nor is there an express connection to the NPS on Electricity Transmission.
- 3.12 Further, given that the NPS on Electricity Transmission is only for the benefit of the owner and operator of the national grid, there is a lack of direction on how any transmission or distribution connection proposed by any other entity should be considered.

- 3.13 The Association considers there needs to be further consideration of these issues and clear direction in the proposal of the relationship with the existing NPS on Electricity Transmission, and of the need to recognise the importance of connection to a transmission or distribution network.
- 3.14 The Association also considers that the proposal could be more ambitious in relation to Policies 4 and 5, and direct that local authorities introduce planning provisions not only relative to issues of identification, assessment and research, but as to the renewable electricity generation activities themselves, and not just at the small or community scale. Planning instruments provide an opportunity to signal to the public and industry where activities of this kind are (or are not) likely to be seen as appropriate, and to provide for them (at an appropriate consent status) accordingly.
- 3.15 As things stand, renewable electricity generation activities may fall to be assessed as a non complying activity by default in many districts, for want of robust planning evaluation and frameworks involving macro level assessments of the kind that could be prescribed by the NPS, with guidance to local authorities as to how to make such assessments consistent with the objective of the NPS.
- 3.16 One of the most significant challenges facing RMA practitioners is making judgements between the competing matters set out in Part 2 of the RMA. The Association understands that the RMA doesn't give an NPS a pre-eminent role, and its interpretation will always be subject to Section 5 and other matters in Part 2 of the Act.
- 3.17 However, the Association considers it would be useful if the proposal could provide some guidance on how the proposal will fit with Part 2 matters. For example, guidance could be given on:
- (a) How those judgements are to be made; or
  - (b) how those matters in Part 2 are to be assessed; or
- 3.18 This is especially important given the direction in Policy 1 to attribute national significance to renewable electricity

generation, (at any scale). There will be situations where such significance needs to be evaluated against potentially conflicting section 6 matters of national importance (landscape, cultural and heritage values) and certain section 5 imperatives. As it stands, the local authorities will be left with the task of reconciling these imperatives without the benefit of national guidance.

3.19 Finally, the Association considers there is room for confusion over the timing for giving effects to this NPS. Policies four and five name a specific date (13 March 2012) by which a plan change must be notified. However, policies one and three do not name a date, and the explanatory note in the last paragraph implies that all the NPS provisions are to be implemented by March 13 2012. The timing for giving effect to the NPS and application of the objective and policies needs to be clarified.

- 4 The Association seeks the following changes to the proposal:
- 4.1 The Association generally supports the proposal;
- 4.2 The Association seeks amendments to the Policies:
- (a) To streamline process for giving effect to the proposal and to avoid unnecessary compliance costs for local authorities and other affected persons;
  - (b) To clarify linkages with the National Policy Statement on Electricity Transmission;
  - (c) To strengthen the recognition of the need to enable connection to the transmission or distribution network;
  - (d) To clarify linkages with the purpose and principles of the RMA;
  - (e) To give greater and more precise guidance to local authorities surrounding the evaluation of the matters that particular regard must be had to, and to broaden the scope of such guidance and prescription in the manner described in paragraphs 3.14 and 3.15 above. ;

(f) To clarify the required timeframe for giving effect to the NPS.

4.3 Such further, alternative, or consequential relief as may be necessary to give effect to this submission.

5 The Association wishes to be heard in support of its submission.

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