

INTRODUCTION

1. In August 2008 the Proposed National Policy Statement for Renewable Electricity Generation ("Proposed NPS") was notified publicly under the Resource Management Act 1991 ("RMA") to allow submissions to be made to this Board of Inquiry ("Board").
2. The New Zealand Wind Energy Association ("NZWEA") promotes the responsible, sustainable and significant uptake of New Zealand's abundant wind resource as a reliable, renewable, clean and commercially viable energy source.
3. NZWEA made a written submission on the Proposed NPS on 31 October 2008 and a further submission on 19 December 2008.
4. NZWEA appreciates the opportunity to be heard in support of its submission and further submission.
5. NZWEA's case is structured as follows:
 - (a) opening submissions;
 - (b) evidence of Mr Fraser Clark, the Chief Executive of NZWEA; and
 - (c) evidence of Mr Robert Schofield, expert planner.

OVERVIEW OF SUBMISSIONS

6. NZWEA provided a comprehensive written submission on the Proposed NPS. Rather than address all the matters discussed in those submissions in detail, these opening submissions briefly address the key issues raised by NZWEA. The evidence of Mr Clark and Mr Schofield will add further detail and practical context to NZWEA's submission.
7. In summary, NZWEA's key submissions are:
 - (a) NZWEA strongly supports the concept of the Proposed NPS;
 - (b) there is a clear need for the Proposed NPS on renewable electricity generation;
 - (c) the objective aiming for 90% renewable generation provides a necessary and appropriate target;
 - (d) the Proposed NPS must provide clear, direct and prescriptive guidance;

- (e) the Proposed NPS must enable renewable electricity generation; and
- (f) the Proposed NPS needs to be implemented as soon as possible if its Objective is to be achieved.

8. These submissions are structured as follows:

- (a) background: renewable electricity in New Zealand and the importance and challenge of the 90% renewable generation target;
- (b) the legal role and effect of National Policy Statements: how the Proposed NPS could be a powerful tool in achieving the 90% renewable generation target;
- (c) NZWEA's overarching concern: ensuring the NPS will be a powerful tool in achieving the 90% renewable generation target;
- (d) nine general issues raised by NZWEA in its original submission, that are crucial in ensuring the effectiveness of the NPS:
 - (i) addressing the insufficient guidance to decision makers in the Proposed NPS;
 - (ii) recognising each type of renewable electricity generation;
 - (iii) enabling renewable electricity generation;
 - (iv) recognising that renewable electricity generation can only occur where the resource is found;
 - (v) protecting renewable electricity generation resources;
 - (vi) providing adequate guidance on section 7 matters;
 - (vii) the need for transmission linkages to enable renewable electricity generation to be transmitted;
 - (viii) consistent application of technical standards; and
 - (ix) the need for urgent action to give effect to the NPS; and
- (e) key further submissions made by NZWEA.

BACKGROUND

9. As stated in NZWEA's submission,¹ the significance of electricity generation to the social and economic wellbeing of New Zealand is undisputed. Mr Clark's evidence details New Zealand's continually increasing demand for electricity. As the High Court stated recently:

*"The question is not whether generating capacity should be increased but rather by what means and where."*²

10. It is clear government policy that as much as possible of that generating capacity increase should come from renewable sources³, as evidenced by:
- (a) the 2004 climate change reforms to the RMA⁴;
 - (b) the New Zealand Energy Strategy to 2050⁵ ("NZES"); and
 - (c) the New Zealand Energy Efficiency and Conservation Strategy⁶ ("NZECS").
11. A central theme of the NZES and NZECS is a commitment to the 90% renewable electricity generation target by 2025. That 90% target, which remains clear government policy,⁷ has in turn become the Objective of the Proposed NPS.
12. NZWEA submitted strongly in support of the 90% target as the Objective of the Proposed NPS. Achieving this target will not be easy. As Mr Clark sets out in his evidence, it will require a constant and significant (77%) increase in renewable electricity generation over the next 15 years. This is in stark contrast with recent trends: the Section 32 Report states that from mid 1991 to mid 2006 only 17% of new electricity generation capacity was renewable,⁸ highlighting the difficulties in consenting renewable generation as compared to thermal generation. This level of investment resulted in only a 15% increase in renewable generation over that period.⁹

¹ At paragraph 1.7

² *Upland Landscape Protection Society Inc v Central Otago District Council* (High Court, Dunedin Registry, CIV-2008-412-302, 16 September 2008, Fogarty J) at paragraph 64. The full quote is set out at paragraph 1.22 of NZWEA's submission

³ See paragraphs 4.6 and 4.8 of Mr Clark's evidence as to the present Government's position

⁴ Including the insertion of sections 7(i) and (j) into the RMA

⁵ October 2007. Though developed under the former Labour lead government the current National lead government has confirmed its commitment to the NZES and the 90% renewable electricity generation target, subject to ensuring security of supply, as set out in the evidence of Mr Clark.

⁶ October 2007. Prepared in accordance with section 10(2) of the Energy Efficiency and Conservation Act 2000

⁷ See the evidence of Mr Clark at paragraph 5.4

LEGAL ROLE AND EFFECT OF NATIONAL POLICY STATEMENTS

13. NZWEA considers that the Proposed NPS, if amended, has the potential to be a strong tool in assisting the consenting of renewable electricity generation generally, and meeting the 90% Objective specifically. Fundamentally, National Policy Statements are intended and required to state objectives and policies for matters of national significance in achieving the purpose of the RMA.¹⁰
14. National Policy Statements are the primary tool for distilling national environmental priorities down to the local level, so as to achieve consistent application of such priorities. As outlined above, achieving the 90% target is an important national policy goal. It represents an objective and transparent embodiment of the matter of national significance listed in the Proposed NPS, being "*the need to develop, upgrade, maintain and operate renewable electricity generation activities throughout New Zealand*". NZWEA strongly submits that this goal generally, and the 90% Objective specifically, are entirely appropriate as the subject of a National Policy Statement.
15. Under the RMA, National Policy Statements can potentially be powerful tools, and quite prescriptive, in both planning and decision making processes. Under section 55, regional and district planning documents must be amended to give effect to the provisions of a National Policy Statement, and local authorities must also take any other action specified in the National Policy Statement. The National Policy Statement may state that normal consultation processes need not be followed by the local authority in giving effect to the National Policy Statement, and may even require provisions to be included directly into plans.
16. National Policy Statements must be had regard to by resource consent decision makers.
17. This legal framework indicates how powerful the Proposed NPS will be. The recent draft Board of Inquiry report and decision on the Upper North Island Grid Upgrade reinforced the importance of National Policy Statements.¹¹

⁸ At page 2

⁹ See the evidence of Mr Clark at paragraph 5.4

¹⁰ See section 45 of the RMA

¹¹ Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project, draft produced under section 148 of the RMA, at paragraph [235]

18. The key issue, as discussed later in these submissions, and particularly in the evidence of Mr Schofield, is that to have practical effect, a National Policy Statement must be clear, direct and prescriptive. Its intent must be obvious to the local authorities applying it. NZWEA submits that the Proposed NPS does not presently meet this threshold, but that the changes suggested by NZWEA will remedy this.

NINE KEY ISSUES

19. In its original submission, NZWEA listed and discussed nine key issues with the Proposed NPS. All these issues relate to the use of the Proposed NPS as an important tool in reaching the Objective's 90% target. These issues are discussed briefly below.

Insufficient Guidance To Decision Makers

20. NZWEA submits that the policies within the Proposed NPS are too generic to provide meaningful guidance for planners and decision makers. This is a fundamental failing: the entire rationale for an NPS is to provide guidance in line with government policy, so that the policy-based Objective (the 90% target) can be promoted and achieved.
21. This position represents the loss of a significant opportunity for the national leadership and direction sought by stakeholders. In the recent *Motorimu* decision, the Environment Court "*assumed*"¹² that the Proposed NPS would provide such leadership, which it considered would be:
- "helpful in resolving issues such as the (supposed) national interest on the one hand and the adverse effects on neighbours of wind farms on the other."*¹³
22. Mr Schofield will discuss the application of the New Zealand Coastal Policy Statement, which demonstrates the problems with National Policy Statements that do not give clear direction. As Mr Schofield will also discuss, the pending issues with the Proposed NPS are foreshadowed by the recent Proposed Tararua District Plan which covers one of the most significant wind resources in New Zealand. That Plan barely mentions renewable electricity generation, yet in rejecting submissions that a renewable electricity generation policy framework (objectives and policies) should be included within the plan, the Council's Planning Report states:

¹² *Motorimu Wind Farm Limited v Palmerston North City Council* W67/2008 at paragraph [350]

¹³ *Motorimu Wind Farm Limited v Palmerston North City Council* W67/2008 at paragraph [335]

“...the provisions of the District Plan as proposed, already give effect to both the National Policy Statement on Electricity Generation [sic] and the Proposed National Policy Statement for Renewable Electricity Generation.”¹⁴

23. As sought in a number of submissions by Local Government New Zealand and local authorities,¹⁵ NZWEA submits that if the Proposed NPS is to have any real effect, it must provide substantive and directive guidance for all users of the RMA. NZWEA considers that the specific policies outlined in its submission, and addressed in the evidence of Mr Schofield, would provide such guidance.

Recognising Each Type Of Renewable Electricity Generation

24. The key renewable generation resources are:

- (a) hydro;
- (b) geothermal;
- (c) wind;
- (d) solar;
- (e) biomass; and
- (f) tidal, wave and ocean currents.

25. While these are all renewable electricity resources, and therefore share common benefits, even a glance at that diverse list indicates that each resource will bring its own unique RMA issues. The Environment Court recognised this fact in the *Motorimu* decision:

*“There is no national policy statement under the RMA which gives guidance in relation to the development of renewable energy in general, **nor on the development of wind farms in particular.**”*¹⁶

[Emphasis added]

26. NZWEA submits that the lack of specific policies dealing with each form of renewable generation is an important omission in providing meaningful guidance. As such, NZWEA seeks the inclusion of specific policies for

¹⁴ Tararua District Council, District Plan Review, Report on Submissions to the Proposed District Plan, No. 1: Renewable Energy, Wind Farms and Landscapes, at page 12

¹⁵ including Kapiti Coast District Council and North Shore City Council

specific types of renewable generation, to complement the current high level policies. The policies proposed in NZWEA's submission and addressed in the evidence of Mr Schofield would provide such guidance in respect of wind generation.

Enabling Renewable Energy Generation

27. NZWEA submits that the Proposed NPS must provide a clear statement that renewable electricity generation activities are in the national interest and are nationally significant. At present, despite the inclusion of section 7(i) and (j) in the RMA the Courts have been clear that these provisions have no more importance than other section 7 matters.¹⁷ Further uncertainty is caused by their lower ranking in the RMA hierarchy than section 6 matters. It is submitted that a clear national significance statement within appropriate policies of the Proposed NPS would help enable renewable electricity generation, which is crucial to "*enable people and communities to provide for their social, economic and cultural wellbeing*".¹⁸
28. While the "Matter of National Significance" as stated in the proposed NPS refers to renewable generation activities themselves (rather than solely the benefits derived from such activities), no policies reinforce that reference. This gap, and the policies to address it, are discussed in the evidence of Mr Schofield.

Renewable Electricity Generation Activities Are Resource Constrained

29. Sources of high quality renewable generation are finite, and generation activities can only occur where the resource is found. The inherent lack of flexibility in location is one of the most significant "consentability" issues for renewable electricity generation.
30. Issues with wind electricity generation illustrate this issue. To be economically viable, wind farms generally need to be located on ridges and/or near the coast, both potentially highly visible and sensitive locations (as addressed in the evidence of Mr Clark). The visual effects of such wind farms are difficult to avoid, remedy or mitigate. It is settled law that the RMA is not a "no effects statute" and projects can have significant effects

¹⁶ *Motorimu Wind Farm Limited v Palmerston North City Council* W67/2008 at paragraph [335]

¹⁷ *Motorimu Wind Farm Limited v Palmerston North City Council* W67/2008 at paragraph [361]

¹⁸ Section 5 of the RMA

and still be consented.¹⁹ However, in practice it is very difficult, especially at the council decision making and planning level, to argue that consent should be granted, or policies included to encourage activities, even though not all effects are avoided, remedied or mitigated.

31. Partly because of the finite nature of wind resources, more than one wind farm is often sought to be located on a ridgeline (or related ridgelines), leading to “cumulative effects” issues.²⁰ Recognition that resource constraints will lead to clusters of renewable electricity generation must be addressed if the objective of the Proposed NPS is to be met.
32. These inherent difficulties are, at present, largely unrecognised in decision making and planning processes. NZWEA submits that the Proposed NPS must provide planners and decision makers with guidance to deal with the resource-constrained nature of renewable electricity if the Objective is to be achieved. Doing so is a crucial component of enabling renewable generation.
33. Thermal generation activities are less location-constrained and generally cover significantly less area. It also utilises an external source – renewables rely on resource capture and generation. In practice this means that thermal generation is easier to consent than renewable generation.

Protection Of Renewable Electricity Generation Resources

34. NZWEA submits that the finite and location-constrained nature of renewable electricity generation also means that current and potential activities should be protected from neighbouring incompatible land uses.
35. The concept of “reverse sensitivity” is well recognised as an environmental effect under the RMA.²¹ While an important concept is that adverse effects should be internalised, there is no requirement that internalisation must be achieved.²² Internalisation of adverse effects is only required to the extent reasonable in the circumstances.²³ As reverse sensitivity is an adverse effect:

¹⁹ See the discussion in *Upland Landscape Protection Society Inc v Central Otago District Council* C85/2008 at paragraph [94]

²⁰ See paragraph 11.1 of the evidence of Mr Clark

²¹ *Winstone Aggregates v Papakura District Council* A49/2002 and *Independent News Limited v Manukau City Council* A103/03

²² *Catchpole v Rangitekei District Council* W35/03

²³ *Winstone Aggregates v Papakura District Council* A49/2002 and *Winstone Aggregates v Matamata-Piako District Council* W55/2004

“there is a duty, subject to other statutory directions, to avoid, remedy or mitigate it, so as to achieve the Act’s purpose.”²⁴

36. It is exceptionally difficult to consent renewable electricity generation if it is surrounded by incompatible land uses. NZWEA is not seeking to “ring fence” all potential renewable electricity resources from any other development. Rather, the aim is that planners and decision makers recognise the location constraints on renewable electricity generation and the effects other activities can have on the development of renewable resources. It is submitted that this is where the Proposed NPS can have a significant role.

Lack Of Guidance On Applying Section 7 Matters

37. The Proposed NPS fails to provide real guidance to planners and decision makers on section 7 matters.
38. For wind farm proposals, the status quo is that the meaning and application of section 7 matters are relitigated at every hearing. The Environment Court has provided useful commentary, but has not always taken a consistent approach. An example is section 7(i), and the two different approaches the Environment Court has taken to this provision in respect of renewable generation.²⁵
39. Rectifying this situation would provide increased certainty for all parties in planning for renewable generation activities, and avoid needless relitigation. As stated in the submission of North Shore City Council:

“More clarity is required if the NPS is going to provide a meaningful and cost effective contribution to future plans and consent deliberations.”²⁶

40. The evidence of Mr Schofield addresses how section 7 matters can be covered within the proposed policies.

Recognition Of Need For Transmission

²⁴ *Winstone Aggregates v Matamata-Piako District Council* W55/2004 at paragraph [3].

²⁵ Compare the approach of assessing the benefits of renewable electricity generation on climate change in cases such as *Genesis Power Limited v Franklin District Council* [2005] NZRMA 541 at paragraphs [224]-[226], *Unison Networks Limited v Hastings District Council* W58/2008 at paragraph [74] and *Motorimu Wind Farm Limited v Palmerston North City Council* W67/2008 at paragraph [357] against the approach taken that it relates to the effects of climate change on activities in *Upland Landscape Protection Society Inc v Central Otago District Council* C85/2008 at paragraphs [231] and [232]

²⁶ Submission by North Shore City Council, Page 2

41. NZWEA submits that the Proposed NPS needs to better recognise the importance of transmission to connect renewable electricity generation to the national grid or local distribution networks.²⁷ While transmission is included in the definition of renewable electricity generation in the Proposed NPS, there is no clear reference to transmission in any policy.
42. As will be discussed by Mr Clark, most renewable generation to date has been developed close to the existing transmission network. As significant renewable resources are identified in areas away from the existing grid, the need for transmission infrastructure associated with renewable electricity generation will increase. Transmission will become an even more important consentability issue (as addressed in the evidence of Mr Schofield).
43. In turn, the need for direction to planners and decision makers in reconciling the effects of transmission with the need for transmission will become more pressing.

Need For Consistent Application Of Technical Standards

44. NZWEA strongly recommends that a new policy mandating the use of consistent national standards (where developed and appropriate) be included in the Proposed NPS.
45. For wind farms the noise standard NZS6808 Acoustics – The Assessment and Measurement of Sound From Wind Turbine Generators²⁸ is an obvious example. Though it is presently being updated (without fundamental reform) it has been consistently accepted as the appropriate standard by the Environment Court. In a recent case, having heard from 7 noise experts, and following 25 pages of discussion on noise issues and the appropriateness of the standard, the Environment Court concluded:

*“The overwhelming weight of evidence was that NZS6808 provided an appropriate level of protection of both amenity and health.”*²⁹
46. This statement shows that the inevitable, costly and time consuming relitigation of thoroughly developed standards is not necessary. Yet despite this, there has been poor uptake of the standard in RMA planning documents. The Proposed Tararua District Plan, for example, lists a

²⁷ The National Policy Statement on Electricity Transmission relates only to the national grid owned by Transpower NZ Limited

²⁸ This standard is presently being reviewed and a decision on an updated standard is pending. The draft standard reflects refinement from lessons learnt in applying the existing standard.

²⁹ *Motorimu Wind Farm Limited v Palmerston North City Council* W67/2008 at paragraph [328]

number of noise standards, but not NZS6808. The rationale is that there are no policies or rules in respect of wind farms (a discretionary activity) so no reference to the standard is required.³⁰ This is from a plan which the planner states gives effect to the Proposed NPS in a District with one of the most significant wind resources in New Zealand.

47. NZWEA submits that a policy should be added requiring that where standards have been developed, planners and decision makers shall apply those standards. As discussed by Mr Schofield, such a policy would be in line with Policy 9 of the National Policy Statement on Electricity Transmission, and is the best method of ensuring a transparent and consistent use of standards across New Zealand.

9. NEED FOR URGENT ACTION TO GIVE EFFECT TO THE NPS

48. To meet the Objective of the Proposed NPS, renewable electricity generation must be at 90% of the total by 2025 - only 16 years from now. As discussed in detail by Mr Schofield, appropriate planning regimes will be a key tool in achieving the Objective.
49. Those planning regimes need to be implemented quickly: as already stated the 90% target is ambitious and, for the reasons stated in Mr Clark's evidence, if it is to be achieved New Zealand needs to act now. However, plan changes are not a fast process. A survey of plan changes in Auckland and Franklin found the average period of time from preparation until decisions being released to be close to three years.³¹ In a Report to the Minister for the Environment³² officials note:

"Of the 692 plan changes received since January 2006, 534 (77%) were yet to be made operative as at 25 January 2009."

50. NZWEA submits that requiring plan changes to be notified only by 13 March 2012³³ is not realistic. Given this proposed date, it is likely that around half of those plan changes would not be operative by March 2015. It is only then that the planning framework will adequately promote renewable electricity generation in line with the Proposed NPS and full benefit can be achieved for resource consent applications.

³⁰ Tararua District Council, District Plan Review, Consideration of and Recommendations on Submissions to the Proposed District Plan, Addendum Report, page 18

³¹ From RMA Schedule One Processes, Preliminary Analysis of Options for Future Amendments, November 2008, MfE at page 13

³² Security for Costs and Plan Change Statistics, 30 January 2009

³³ Policies 4 and 5 of the Proposed NPS

51. Local Government New Zealand submitted that any shorter time frame, as sought by NZWEA, would be “*ludicrous*”.³⁴ Unfortunately, due to timing, the period sought by NZWEA will for all practical purposes be about the same date as contained in the Proposed NPS. NZWEA recognises the constraints on councils, but submits strongly that a shorter time frame is necessary if the Objective is to be achieved. One approach adopted in the evidence of Mr Schofield, is that the policies within the Proposed NPS provide detailed guidance to be used by decision makers in the interim period while the planning documents catch up. The benefits of this are:
- (a) assistance to decision makers during the interim period before plan incorporation; and
 - (b) assistance to planners in incorporating the Proposed NPS into the planning documents.
52. A shortened time frame can be made more feasible with the additional use of central government direction and guidance, including:
- (a) a detailed decision by this Board of Inquiry (see the evidence of Mr Schofield);
 - (b) MfE Guidance Notes;
 - (c) dispensing with the need for the normal consultative procedure on plan changes (as provided for by section 55(2A)); and
 - (d) requiring direct incorporation into plans where appropriate (as also provided for by section 55(2A)).
53. Local Government New Zealand supported NZWEA and others on the need for further guidance.³⁵ This is addressed in the evidence of Mr Schofield. With a combination of central government direction, local government focus, and, crucially, clear and direct policies in the NPS itself, the Proposed NPS can be quickly and consistently translated into effective planning regimes.

KEY FURTHER SUBMISSIONS MADE BY NZWEA

Effect On Part 2 Of The RMA

³⁴ Submission by Local Government New Zealand, Page 4

³⁵ Submission by Local Government New Zealand, Page 3; further submission by Local Government New Zealand in support of Northpower Limited, North Shore City Council, Environment Bay of Plenty and Local Government New Zealand.

54. NZWEA made a further submission opposing a number of submitters³⁶ who raised concerns that the Proposed NPS would override Part 2 of the RMA.

55. It is submitted that this simply is not possible. The recent draft Board of Inquiry report and decision on the Upper North island Grid Upgrade commented:

“Subject to Part 2, the NPS is to be applied by decision-makers under the Act, but not as a substitute for, or to prevail over, the RMA’s statutory purpose or statutory tests. It is a relevant consideration to be weighed along with other considerations in achieving the sustainable management purpose of the Act. The objectives and policies of the national policy statement are intended to guide decision-makers in considering requirements for designations for transmission activities and in making decisions on resource consents.”³⁷

56. The Proposed NPS does not, and can not, state or imply that relevant Part 2 considerations should not be taken into account. The purpose of the Proposed NPS is to state the objectives and policies in respect of renewable electricity generation activities in New Zealand as a matter of national significance.³⁸ This issue is addressed in the evidence of Mr Schofield.

Policies On The Adverse Effects Of Renewable Electricity Generation

57. NZWEA opposes several submissions³⁹ that seek policies or riders to list potential adverse effects of renewable electricity generation activities. The “Matter of National Significance” for the Proposed NPS is the need for development of renewable electricity generation activities. It is submitted that the policies should reflect and support this intention and the objective of 90% renewable electricity generation by 2025. As discussed in the evidence of Mr Schofield, the adverse effects of renewable electricity generation are already well captured in Part 2 of the RMA (and section 6 in particular) and in planning documents (for example, landscapes, noise levels, rural amenity issues).

³⁶ Taranaki Regional Council, Todd Energy, Fish and Game New Zealand, Royal Forest and Bird Protection Society, Wellington City Council, NZ Petroleum Exploration and Production Association and Auckland Regional Council

³⁷ Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project, draft produced under section 148 of the RMA, at paragraph [221]


³⁸ Section 45(1) of the RMA

³⁹ Including Waitakere City Council, Waikato Raupatu Trustee Company Limited, Ngati Kahungunu Iwi Incorporated, Auckland Regional Council, New Zealand Historic Places Trust, Port Nicholson Block Settlement Trust and Local Government New Zealand

CONCLUSION

58. NZWEA strongly supports the development of the Proposed NPS. It has identified nine key issues which, if addressed, it considers would enable the Objective of the NPS to be met. The significance and importance of the Proposed NPS, and the opportunity it provides, cannot be underestimated if New Zealand is to continue its current and historical dominance of renewable electricity generation. Renewable electricity generation is of such vital importance to the social and economic wellbeing of New Zealand that it is an appropriate issue for the development of a National Policy Statement.
59. NZWEA submits that its suggested amendments to the Proposed NPS will allow it to be a document that has practical effect and benefit both planning documents and the decision making process.

DATED at Wellington this 30th day of June 2009



David Allen and Thaddeus Ryan

Counsel for the New Zealand Wind Energy Association