

**NEW ZEALAND WIND ENERGY ASSOCIATION  
SUBMISSION**

**TO**

**THE HONORABLE NICK SMITH**

**ON**

**REFORM OF THE  
RESOURCE MANAGEMENT ACT 1991**

**19 DECEMBER 2008**



***new zealand  
wind energy association***

## Executive Summary

1. The New Zealand Wind Energy Association (**NZWEA**) supports the new Government's intention to make amendments to the Resource Management Act 1991 (**RMA**) in order to improve its processes and reduce its costs, delays and uncertainty. The scope of these reforms was foreshadowed in the Government's pre-election policy statements and has also now been identified in the Terms of Reference of an RMA Technical Advisory Group appointed recently to support the Government's programme.
2. NZWEA understands that the intent of this current stage of the process is to make changes that simplify and streamline the Act's processes. However we also note the Government's intent to provide greater central government direction on application of the Act. Accordingly in the context of this broader reform this submission also makes the following recommendations:
  - a. The establishment of a National Policy Statement on Renewable Electricity Generation that provides stronger guidance than the draft that forms the basis of the current Board of Inquiry process (NZWEA has made submissions to that Board that detail our recommended improvements);
  - b. The greater use of other national policy instruments such as National Environmental Standards to ensure more consistent outcomes (and in particular, and as a starting point, we recommend that NZS6808, the New Zealand Standard for wind turbine noise, be developed into an NES); and
  - c. That NZWEA and the wind energy industry work together with the proposed Environmental Protection Agency to develop these Standards and related non-statutory guidance.
3. With respect to the issues identified in the Terms of Reference, NZWEA seeks the following amendments to the RMA, which will complement the Government's broader policy direction:
  - a. A new provision in Section 104(3) to expressly preclude the consideration of alternatives in terms of efficiency or financial viability, and also matters related to the Electricity Act, since those matters are beyond the expertise and proper scope of inquiry of consent authorities under the RMA;
  - b. The amendment of Section 6(b) to read as follows:

The protection of outstanding natural features and landscapes identified in a district plan or proposed plan from inappropriate subdivision, use and development

This amendment serves to reduce uncertainty for investors choosing and investing in potential sites for wind farm projects;
  - c. New provisions to enable consent authorities to apply clear priority rules to applications which will or could generate reverse sensitivity effects. This will help to ensure fairness and reduce a source of uncertainty for potential investors in important infrastructure;
  - d. New provisions overriding the 'Hawthorn test' and setting out a more realistic approach to the assessment of the reasonably foreseeable future environment, or making the application of the Hawthorn test optional (as is the case with the permitted baseline test). These amendments are required to ensure that the approach taken under the RMA is realistic and does not unreasonably constrain the uptake of wind generation capacity (and so will also recognise the value of New Zealand's wind resource); and
  - e. The amendment of Section 104 to require consent authorities to have 'particular regard' to whole of-government submissions to ensure that the national interest in encouraging security of supply and uptake of renewable energy is accorded appropriate weight in the consenting process.
4. NZWEA is willing to engage further with the Minister, the Ministry and the Advisory Group to develop these recommendations in greater detail, including developing draft amendments to the Act or any other such steps that will enable the timetable the Government has indicated to be achieved.

## Introduction

5. This submission is made by the New Zealand Wind Energy Association (**NZWEA**).
6. NZWEA is a membership-based industry association that works towards developing wind as a reliable, sustainable, clean and commercially viable energy source. Our membership includes 78 companies involved in the New Zealand wind energy sector, including: all major electricity generator-retailers; Transpower and several lines companies; a number of major international wind turbine manufacturers; and a range of other companies with interests ranging from site evaluation through to operations and maintenance.
7. NZWEA's Mission and Objects are set out in the Association's Rules under the Incorporated Societies Act 1908 as follows:

### **Mission**

The mission of the Association is to promote the uptake of New Zealand's abundant wind resource as a reliable, sustainable, clean and commercially viable energy source.

### **Objects**

The objects of the Association are to achieve its mission ... by means of:

- (a) policy advocacy with local and central government officials and elected representatives, regulatory bodies, industry groups and other interested organisations to raise the awareness of, and develop the concept of Wind Energy in New Zealand;
  - (b) organising seminars, conferences and other promotional and educational events, and to distribute information, relating to Wind Energy in New Zealand;
  - (c) providing a forum for external and internal networking, discussion and co-operation amongst persons with an interest in Wind Energy in New Zealand;
  - (d) promoting the economic, environmental, social and other benefits of Wind Energy in New Zealand; and
  - (e) promoting research and development of Wind Energy technology in New Zealand.
8. Further information on NZWEA, its members and activities, and the New Zealand wind energy industry in general is available on the Association's website: [www.windenergy.org.nz](http://www.windenergy.org.nz).
  9. As with other major infrastructure developers, members of NZWEA have experienced difficulties in consenting projects under the Resource Management Act 1991 (**RMA**). The purpose of this Submission is to explain those difficulties and suggest possible solutions which will increase the efficiency and fairness of the consenting process, and ultimately result in optimal economic and environmental outcomes for the New Zealand energy sector. Where possible these recommendations have been aligned with the Terms of Reference for the 'RMA Technical Advisory Group' that were announced on 16 December 2008.

## Intended Outcomes of RMA Reforms

10. The Government has recently announced that it intends to review the RMA to ensure it facilitates an increase in New Zealand's productivity and economic growth and enables a flexible response to the current international economic crisis while ensuring sound and appropriate management of the environment. Those announcements also indicated an intention to improve the speed and efficiency of RMA processes.
11. NZWEA supports these objectives and the suggested process improvements that will help to achieve them. The purpose of this submission is to outline some of the wind energy industry's experience with the issues that have been raised and to recommend some measures that might assist the Government to achieve its objectives in undertaking this review.

## Wind Energy's Contribution to Productivity and Economic Growth

12. Electricity, and accordingly electricity generation, is widely recognised as an essential component of economic growth. This was clearly demonstrated this past winter where the New Zealand Manufacturers & Exporters Association estimated that the production cutbacks in response to power shortages would have come at a cost of \$3 billion to the economy<sup>1</sup>. The essential nature of electricity supply has also been identified in case law in a number of resource consent decisions.
13. The Government has identified that the demand for electricity is expected to grow at around 2% per year and that if New Zealand is to achieve a desired level of economic growth, it is vital that this demand can be met (i.e. "security of supply") at reasonable cost while at the same time ensuring that New Zealand meets its environmental responsibilities.
14. In order to meet these objectives the Government has set a target, supported by NZWEA, that 90% of New Zealand's electricity should be generated from renewable sources by 2025, while not letting this target get in the way of ensuring security of supply<sup>4</sup>.
15. Facilitating investment in wind energy, together with other forms of renewable generation, will be vital if these objectives of economic growth, reasonable cost and security of supply are to be achieved.. The key benefits of wind energy can be summarised as follows:

### ***Security of Supply***

Wind energy increases the diversity of New Zealand's energy sources, reducing our current reliance on rainfall into the hydro catchments. The issues of high spot prices and electricity shortages created by "dry years" reflect a shortage in New Zealand's energy supplies (i.e. a shortage of fuel) rather than insufficient generation capacity with which to meet demand. Wind energy is a much more consistent and reliable source of energy than rainfall, but also has excellent synergies with the storage capacity of the hydro system that enable the total level of both the available energy and the generating capacity to be increased.

### ***No fuel supply and price risk***

Wind energy utilises a 'free' fuel source that will never run out. Accordingly, and unlike fossil fuel generation, the cost of generation is known over the project's entire 20-25 year lifetime. The electricity market arrangements for wind energy also means that it will always displace the most expensive form of generation that would otherwise be dispatched into the market (generally thermal generation), thereby simultaneously lowering spot market electricity prices and reducing our Kyoto liabilities.

### ***No resource competition***

Unlike other fuel sources such as water, coal, and natural gas, wind has no competing uses that can increase costs or create challenges for resource allocation.

### ***Productive land use is retained***

The footprint of a wind farm typically only occupies around 1-2% of the land area and the remainder can be retained in important productive land uses such as farming and agriculture.

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<sup>1</sup> NZMEA press release, 18 July 2008.

<sup>4</sup> National's Energy Policy, 14/08/08. The target has also been referred to in the Hon Gerry Brownlee's press release of 16 December 2008 announcing the 'Thermal Ban Repeal'.

16. Unfortunately, as the Government has identified, the RMA has been a key barrier to generation investment in general, creating uncertainty and delaying decisions that need to be made quickly.
17. The position is compounded in respect of wind energy projects because the present consenting regime, with its emphasis on local decision-making, often leads to localised adverse effects being prioritised over the national interest.
18. The impacts of this uncertainty and delay were clearly seen in Meridian Energy's Project West Wind, where the delays in obtaining consent were estimated to have added several hundred million dollars to the cost of the project as a result of changes to the exchange rate and rising costs.
19. Accordingly NZWEA submits that changes to both the process and to the matters which are able to be considered on applications for consent, are required to remedy the situation.

### **NZWEA's Suggested Amendments**

20. The existing regime has lead to:
  - a. Unnecessary delay in processing applications for wind energy projects;
  - b. Consideration of inappropriate and irrelevant matters;
  - c. Inconsistency in decision-making; and
  - d. Uncertainty for investors.
21. The sources of some of these problems are explained further below, along with some suggested solutions that will complement some of the other measures that are proposed in the Government's Terms of Reference for the RMA Technical Advisory Group that will be providing input into the proposed RMA amendments. Except for the first point regarding the provision of a greater level of Central Government guidance into the RMA decision-making process (and the potential contribution of the wind industry to that guidance), we have attempted to align these solutions with the issues raised in the Terms of Reference.

### **A Greater Role for Central Government Guidance**

22. NZWEA agrees with the Government's intention to seek improvements that will streamline and improve the RMA's processes. However wind energy projects have also experienced uncertainty around the outcomes of the decision-making itself and not just the mechanics of the process.
23. As identified above, decision-makers considering wind energy projects have experienced challenges when attempting to weigh the specific local effects of a project against its local, regional and national benefits (where most focus is typically on the national interest in security of supply and meeting New Zealand's climate change obligations). Accordingly the provision of greater guidance to decision-makers on how they should balance these effects should help to reduce the uncertainty that is emerging in wind energy case law in this area and so contribute in a broad sense to the reform objectives around reducing costs, time and uncertainty.
24. In this respect, a National Policy Statement (NPS) on Renewable Electricity Generation could play an important role. A proposed NPS is presently part way through a Board of Inquiry process. However, NZWEA considers that this proposed NPS is insufficient for meeting the intended objective of providing guidance to decision-makers on the weight that should be given to the benefits of renewable electricity generation under the RMA. NZWEA and a number of its members have made submissions to that Board of Inquiry recommending improvements and are happy to discuss these further with you, the Ministry or the Advisory Group as appropriate.
25. In due course, that Board of Inquiry will make recommendations to you regarding the content and scope of a NPS for Renewable Electricity Generation. NZWEA suggests that it is important that you consider those recommendations in light of the Terms of Reference proposed for these

RMA amendments and their potential impact on the Government's targets around renewable energy and economic growth.

26. That NPS, and possibly these proposed RMA amendments may also require some supporting, non-legislative guidance in order for them to be implemented effectively. NZWEA also recommends that any guidance with respect to wind energy be developed in conjunction with the industry itself. The industry, given the long-term nature of the investment, is committed to undertaking development in the best practical manner and so is best placed, and willing, to establish robust guidelines. This is also discussed further with respect to the priority consenting process and the proposed EPA below.

### **Objective: To Restrict Trade Competition, Vexatious and Frivolous Objections**

#### *Consideration of Alternatives*

27. In a number of cases, local authorities and the Environment Court have taken the view that applicants for wind energy projects should be required to establish that there are no alternative sites which would generate less adverse environmental effects, or in some cases be more financially profitable, than the proposal in issue.
28. New Zealand's wind farms currently generate approximately 2.5% of the country's electricity. Studies conducted by a range of parties, by both Government and private parties, indicate that there is potential for wind to be used to generate up to 15% or even 20% of the 90% renewable generation that is envisaged by 2025 . Clearly there is scope for many more wind projects to be established in the future. However, it will not always be possible for the most 'desirable' wind farms (in terms of their wind energy characteristics) to be built first due to a variety of factors, including proximity to or capacity of existing infrastructure and the willingness of current landowners to make the land available.
29. Indeed, while the wind speed characteristics of a site (i.e. average wind speed, wind shear, etc.) are a critical component of a wind farm's viability, a wide range of other factors such as the site terrain, access to roads and other infrastructure such as ports and proximity to transmission lines (with sufficient capacity) and demand centres can also have important influences on the choice of site.
30. Accordingly, NZWEA considers that it is for investors to determine which sites are chosen for wind projects, and that consideration of efficiency and financial profitability are outside the expertise and proper role of consent authorities under the RMA.
31. NZWEA therefore agrees with the proposal to amend the definition of 'environment' in Section 2 of the RMA so that it will relate more closely to the biophysical environment and exclude consideration of these matters. We note, however, that the revised definition and its application within the RMA will need to be tested to ensure that this does not inadvertently prevent the recognition of some of the benefits of renewable energy that relate to 'economic wellbeing' (i.e. security of supply, reduced transmission losses, etc.).
32. NZWEA also seeks an amendment to Section 104(3) of the Act to expressly preclude the consideration of alternative renewable energy generation options in terms of efficiency or financial viability (in the same way, and for similar reasons, as the provision already excludes consideration of trade competition).

#### *Consideration of Other Matters outside the Scope of the RMA*

33. In addition to the discussion on alternatives referred to above, NZWEA has also noticed that decision-makers in some instances have been requesting information on projects that is more appropriately addressed through the Electricity Act. Matters relating to a wind energy project's ability to obtain access to the electricity transmission system, about the capacity of that system and the appropriateness of the pricing methodology used are all established through the market mechanisms outlined in that Act. It is a given that the developer will comply with that Act (otherwise their project will not be able to connect to the system and supply electricity) so its consideration under the RMA is redundant. If improvements to the supply and pricing

mechanisms are considered desirable, then such changes should be made through that Act, rather than through or factored into the RMA consenting process.

### **Objective: To Reduce Costs and Delays**

#### *Identification of Outstanding Natural Features and Landscapes*

34. NZWEA is also concerned that the current approach to the identification of outstanding natural features and landscapes leads to inconsistency and uncertainty.
35. On several occasions, local authorities have only asserted that a natural feature or landscape should be recognised as “outstanding” when responding to an application for resource consent for a wind farm project. This has the potential to increase complexity or uncertainty for an applicant who has otherwise been careful to scrutinise all relevant planning instruments for “fit with policy” before advancing a project through the consent process.
36. The identification of outstanding natural features and landscapes should be carried out during the preparation of district plans to ensure consistency of approach and an appropriate scale or point of reference. In addition, such a requirement is necessary to provide certainty for investors in identifying and assessing the suitability of potential sites for major infrastructure developments.
37. NZWEA therefore seeks provision in the RMA that any natural feature or landscape not recognised as ‘outstanding’ under the relevant district plan cannot be treated as such by the consent authority. One possibility in this regard would be to amend Section 6(b) to read as follows:

The protection of outstanding natural features and landscapes identified in a district plan or proposed plan from inappropriate subdivision, use and development.

### **Objective: To Provide Priority Consenting of Major Projects**

#### *Greater Use of Call in Provisions and the Establishment of an Environmental Protection Agency (EPA)*

38. NZWEA supports the Government’s intention that greater use be made of the Act’s call in provisions to enable major infrastructure projects to have priority through the consenting process and avoid the decision and timing uncertainty that can occur within the standard process. That applicants are allowed to request the call in of their projects means that they can also make their own assessment of the risks and potential benefits of either approach.
39. NZWEA and its members have experienced difficulties in the consenting process where decision-makers are unfamiliar with wind energy development and so struggle to understand and appropriately consider the specific benefits and effects. Accordingly, the Government’s proposed establishment of an Environmental Protection Agency (EPA) with the skills and expertise to assess these large and complex developments should ensure that consistent and appropriate assessment of the proposals is undertaken.
40. The new EPA will need to develop the skills and expertise to evaluate and consider a wide variety of projects encompassing a range of infrastructure types. The industry recognises that wind energy projects need to co-exist in their local community and environment for 25 years, or even longer, so it is important that they are developed appropriately. As the developers of these projects, the industry is also best placed and has the greatest level of expertise and experience to understand the practicalities associated with the development.
41. Accordingly, NZWEA recommends that the wind industry work directly alongside the new EPA to establish practical guidelines for undertaking and assessing wind energy developments. The resulting guidelines would ensure that the EPA receives the information it requires to assess projects, provide the industry with greater certainty and ensure consistent and timely decisions.
42. These guidelines could be established as National Policy Statements, National Environmental Standards or some other non-regulatory guidance and have the flow-on effect that they could

also be used to ensure the consistent assessment of smaller projects that do not meet the significance criteria for being assessed by the EPA.

*Priority between Competing Applications for Resource Consent*

43. Because applications for wind farm projects typically take local authorities a relatively long time to process, there is potential for the local environment to change before consent is granted, jeopardising the prospects of success.
44. For example, in the case of the Mill Creek wind farm, adjacent landowners applied for and were granted consent for residential developments which were incompatible with the project after it was announced and shortly before the application was lodged. Other applications have been lodged after the Mill Creek application was lodged. The scale and ease of processing these smaller proposals, the fact that wind farms generally take much longer to consent and the current case law that provides that the wind farm is not part of the receiving environment until it is consented all combine to create uncertainty and difficulty for the proponent of an otherwise nationally significant proposal.
45. While these applications may be driven by legitimate motives, they may also be deliberate attempts to derail the other consent application. . Once the application is approved, the 'reverse sensitivity' effects of the wind farm on these "subsequent" developments are then taken into account by the consent authority in making its decision on the wind farm. This can both create uncertainty, and is inconsistent with the priority case law where applicants are competing for the same resource. Here the parties are competing to establish in the same receiving environment and may be seeking consent for incompatible activities. There would seem to be no basis not to clarify and apply the law as it relates to competing applicants for the same resource to this type of situation.
46. NZWEA is particularly concerned with the potential for adjacent landowners to lodge this type of application in an effort to 'derail' wind farm projects in the future, and considers that amendments need to be made to the RMA to prevent this scenario.
47. As the Minister will be aware, the RMA does not currently provide for the prioritisation of competing applications for resource consent. However, the courts have dealt with the issue, and set down various 'priority rules' in case law.
48. To date, the 'priority rules' have only been applied in cases involving competition for access to the same resource (such as water or wind). However, NZWEA submits that the same principle applies here - where the resource is the land that lies below the valuable wind resource: Activities on adjacent land which generate reverse sensitivity effects can frustrate a wind farm project just as effectively as another wind farm proposal would.
49. In its recent decision in *Central Plains Water Trust v Ngai Tahu Properties Limited & Canterbury Regional Council* the Court of Appeal noted that:
  - a. There is a public interest that the law should not frustrate a proposed development in the course of undergoing statutory processes; and
  - b. There should be no risk of a major development being trumped or significantly interfered with by a later, smaller, simpler and inconsistent proposal.
50. NZWEA agrees with those statements and considers that the RMA should be amended to enable consent authorities to apply priority rules in circumstances where a project could be derailed if consent is granted to a later application which will generate reverse sensitivity effects. This will help to ensure fairness and again, reduce a source of uncertainty for potential investors.
51. Notably, such an approach would not necessarily delay other development, since there will be options available to avoid or mitigate reverse sensitivity effects (such as conditions requiring installation of acoustic insulation, and agreements to enter into no complaints covenants).

## **Objective: To Streamline and Simplify Processes**

### *Greater Use of Standards*

52. As discussed in relation to the priority consenting of major projects above, the greater utilisation of standard methods and measures will enable both the provision of consistent (and agreed and accepted) information to decision-makers and consistent and timely decision-making.
53. These standards could include National Environmental Standards or other non-regulatory measures and can be developed on a step-by-step basis rather than attempting to develop a single, overarching standard encompassing each particular type of development. As discussed above, these standards could be developed by the new EPA in conjunction with the relevant industry groups and other relevant stakeholders.
54. The greater use of standards should also reduce costs and the time required for making decisions by avoiding the re-litigation of issues that have already been carefully and thoroughly addressed. One clear example of this is the issue of sound from wind turbine generators and wind farms. This issue is addressed through a New Zealand Standard (NZS6808:1998) and so represents the consensus of the relevant experts. This has, however, not prevented the validity of the Standard being contested in two Environment Court hearings. In both cases the Standard was found to be appropriate, but further challenges appear likely. To try and address this, NZWEA, together with EECA, has funded a review of the Standard so that it reflects established good practice. That review should be completed during 2009.
55. NZWEA recommends that the Minister request that the Ministry for the Environment (or the new EPA if this has been established by this time), make it a priority for the updated NZS6808 to be adopted as a National Environmental Standard. This will ensure that it is used consistently in every application and prevent the ongoing costly and time-wasting re-litigation of this issue.
56. Clear definition of the information that is required to be presented with an application will also limit the ability of consent authorities to unnecessarily delay the consideration of projects with repeated requests for further information.
57. As discussed above, NZWEA and the wind industry are prepared and willing to work with the Minister, the Ministry for the Environment and/or the EPA to establish further standards and guidelines for wind energy development.
58. NZWEA also notes that the greater use of standards should enable a reduction in the costs and delays in the RMA process, which is one of the objectives identified in the Terms of Reference for the proposed amendments. By carefully defining the issues and measures, they should also reduce the opportunity for opponents to establish frivolous and vexatious objections.

### **Other Suggested Amendments**

#### *Identifying the Future Environment (and the Related Recognition of the Value of the Wind Resource)*

59. The Court of Appeal decision in *Queenstown-Lakes District Council v Hawthorn Estate Limited & T Bailey and Others* confirmed that consent authorities need to identify the 'reasonably foreseeable' future environment when considering applications for resource consent.
60. The Court took the view that what is reasonably foreseeable is limited to permitted activities, along with those consented activities which are likely to be carried out.
61. This approach is unrealistic where wind farms are involved, and actually prevents consent authorities from properly identifying what development is reasonably foreseeable.
62. This is because wind farms are unlikely to ever be provided for as permitted activities, since the nature and extent of adverse effects can differ widely (according to the number, size and position of turbines, among other things). Therefore, it can be expected that local authorities will wish to retain some discretion over the specifics of any wind farm project, even in those localities where they are most appropriate.

63. NZWEA considers that the RMA should be amended to provide for a more realistic approach to the assessment of the reasonably foreseeable future environment, or to make the application of the Hawthorn test optional (as is the case with the permitted baseline test).
64. Unless these steps are taken, incompatible development could be allowed to occur in areas best suited to wind farm developments, preventing the uptake of generation capacity for many years to come (if ever).

#### *Whole of Government Submissions*

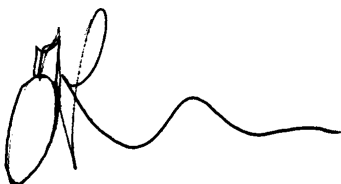
65. Whole of government submissions have been made in support of several wind farm projects. Unfortunately, those submissions have not been accorded any special status by consent authorities, despite their value in providing guidance on where the national interest lies.
66. NZWEA submits that Section 104 of the RMA should be amended to require consent authorities to have 'particular regard' to whole of government submissions where these are made. We also note that the Ministry of Economic Development has made a similar recommendation to the Government in their 'Vote Energy - Briefing to the Incoming Minister 2008'.

#### *Other matters*

67. NZWEA also supports, in principle, amendments to the RMA to address the following matters:
- a. providing applicants with a right to seek that local authority-level hearings be conducted by an Independent Commissioner or Commissioners chosen from a national database;
  - b. reducing the number of regional and district planning instruments where appropriate
  - c. introducing a test for standing, so that only those parties directly affected by a proposal have a right of appeal to the Environment Court; and
  - d. reducing the potential for vexatious objections, including empowering the Environment Court to require security for costs.

#### **Next Steps**

68. NZWEA recognises that the Government's intent is to table the first phase of its proposed in February 2009, and that accordingly that there is a tight timeframes for developing the proposed legislation.
69. NZWEA would welcome the opportunity to provide further input into the formulation of provisions to address these matters either to the Minister, the Ministry for the Environment or the Advisory Group. This could include the development of some potential amendments to the legislation for the relevant issues discussed in this submission, as appropriate.
70. I am available at any of the contacts provided below if you, or any other person engaged in the development of the amendments would like to discuss this submission further.



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