



JOINT SUBMISSION OF ELECTRICITY SECTOR ENVIRONMENT GROUP

Introduction

1. This submission is made by New Zealand's principal electricity generators,¹ collectively referred to as the Electricity Sector Environment Group (**ESEG**), to both the Natural and Built Environments Bill (**NBE Bill**) and the Spatial Planning Bill (**SP Bill**).
2. The ESEG broadly supports the reform objectives of the NBE Bill as recorded in the Explanatory Note, being (alongside the Spatial Planning Act (**SPA**) and a Climate Adaptation Act), to:
 - *protect and, where necessary, restore the natural environment, including its capacity to provide for the well-being of present and future generations:*
 - *better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure:*
 - *give effect to the principles of te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori:*
 - *better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change:*
 - *improve system efficiency and effectiveness and reduce complexity, while retaining local democratic input.*

¹ Meridian Energy, Mercury NZ, Contact Energy, Manawa Energy and Genesis Energy, together NZ Wind Energy Association.

3. ESEG shares the widespread concern to ensure that the Natural and Built Environment Act (**NBEA**) does not repeat the failure of the RMA to deliver on its desired environmental and development outcomes. The Explanatory Note states that the reform objectives will address “multiple problems” with the RMA.
4. The ESEG strongly supports the following statement then made in the Explanatory Note, namely that the Bill is expected to help (as one of three identified matters):
 - *enable renewable electricity generation, to affordably decarbonise the economy:*
5. Specific dimensions of the NBE Bill which the ESEG supports in this context are:
 - (a) Provision for mandatory national direction within a single comprehensive National Planning Framework (**the NPF**), which all NBEA plans and Regional Spatial Strategies will then need to “give effect to”, thereby creating greater coherence, certainty and alignment regarding infrastructure, planning and funding decisions.
 - (b) A square focus on both the biophysical and built elements of the environment,² with provision for the setting of environmental limits centred on specific natural environment domains.³
 - (c) A positive and enabling *outcomes* approach embracing well-functioning urban and rural areas along with infrastructure to support wellbeing; the specific system outcome directed at greenhouse gas emission reduction, and the requirement for strategic direction as to how the various system outcomes⁴ will be promoted, through the NPF.
 - (d) The inclusion of a scheme within the NBE Bill to manage adverse effects, including adoption of the effects management framework, and a mechanism for allowing limited exemptions to this framework and environmental limits.
 - (e) The setting of principles for resource allocation, and provision for adaptative management.
6. Conversely, at over 800 pages long, the NBE Bill is very large and complex, even unwieldy.⁵
7. The key dimensions of the Bill, as supported above, have the potential to deliver on the reform objectives.

² As proposed to be defined in s 7 of the NBE Bill, and in contrast to the broader definition of the environment under the RMA, which extends to include ‘amenity values’.

³ As listed in s 38.

⁴ As set out in section 5 of the NBE Bill.

⁵ In the sense of being too large and disorganised to operate effectively.

8. However, as currently drafted, the NBE Bill is considered to be unworkable. Without significant rationalisation and redrafting as sought in this submission, there is a greater potential for the reform objectives to be frustrated, or even defeated, than achieved or ultimately delivered.
9. Attached to this submission are two Tables setting out the detailed submission points and specific amendments to the Bills which the ESEG considers are essential to address this concern, and to better ensure that:
 - All reform objectives are able to be achieved;
 - The NBE Bill's purpose to protect the environment will also achieve the system outcomes, particularly as to well-functioning urban and rural environments, and the reduction of greenhouse gas emissions; and
 - From the outset, the NPF delivers clear and cohesive national direction as to how all elements of the compound purpose of the NBE Bill (as recorded in s 3) are to be reconciled and served through spatial strategies, NBEA plans, designations and consent approvals.

ESEG's Core Concern

10. ESEG's core concern addressed through this submission is to secure a resource management system that adequately prioritises decarbonisation of the New Zealand economy.
11. To that end, the NBEA, SPA and NPF must, in combination, resolve and address two fundamental policy drivers at national scale – decarbonisation to address climate change, and the setting of biophysical limits to address environmental degradation.
12. The ESEG submits that these two policy drivers can be reconciled, and indeed must be.
13. With this core concern in mind, the ESEG, along with its member entities, have participated closely and constructively in the reform process to date, including through making submissions on the Exposure Draft to this Select Committee.
14. The ESEG then commissioned a joint opinion by two King's Counsel (Mr Nolan and Mr Salmon) to clearly demonstrate that an exclusive and unyielding focus on environmental limits to protect biodiversity values, would effectively prevent or render unachievable, New Zealand meeting its international and domestic climate change mitigation commitments (please refer to **Appendix A** of the ESEG submission package).
15. We quote here from the Executive Summary of that opinion, as follows:

2. *The NBEA is intended to provide for environmental limits to protect the ecological integrity of the natural environment and human health.... In line with recent case law, the environmental limits may be interpreted as bottom lines, halting any proposed plan, resource consent application or notice of requirement that crosses them.*
3. *The setting of such limits is a legitimate policy direction: biodiversity, habitats and ecosystems are under stress. There can be no denying that stringent environmental limits will be needed to protect ecological integrity as proposed in the NBEA, and in turn halt and reverse the inexorable decline in biodiversity values within New Zealand.*
4. *At the same time however, the urgent need to cut greenhouse gas (“GHG”) emissions is equally beyond debate. It has been acknowledged by New Zealand in its ratification of the UNFCCC and the Paris Agreement, in government policy and in legislation. New Zealand has accepted the IPCC science and, pursuant to the Paris Agreement, has submitted an NDC to reduce net GHG emissions to 50% below gross 2005 levels by 2030.*
5. *Renewable energy projects are key to early GHG reductions needed to meet these commitments because the technology is mature, they are cost-effective and they are relatively politically palatable. The effects of renewable energy projects are also readily understood. For New Zealand, renewable energy is particularly critical because of the difficulties in addressing agricultural emissions⁶ and the country’s intended reliance on electrification to replace fossil fuels in key areas (eg transport, industry and heating).*
6. *The essential problem presented is that the NBEA as drafted would necessarily see environmental limits applying to renewable energy projects. The likelihood that many/most major generation projects will breach, or encounter arguments over compliance with environmental limits, coupled with the scale of each consenting task, introduces the potential for material delay or even prevention of a transition to renewable energy. The simple fact is that immutable environmental limits will mean a number of major renewable energy projects will not be able to be consented under the NBEA.*
7. *The same problem applies to the different language used in the outcomes in s 13A of the NBEA,⁷ as the outcome relating to climate change is less directive and, therefore, less forceful than it is for other outcomes relating to the natural environment. This will result in a further barrier to the approval of renewable energy projects when they are assessed on their merits.*

⁶ On 8 June 2022 *He Waka Eke Noa* released its proposal for pricing of farming emissions. *He Waka Eke Noa* proposes modest emissions pricing and targets (including a proposed price cap for agricultural emissions at a fraction of the price that would apply if agriculture was brought within the ETS).

⁷ Section 13A being the Exposure Draft equivalent of section 5 of the NBEA, as reported back from the Select Committee.

8. To fail to both accept and address this reality would be to accept that New Zealand will fail to meet its international climate change mitigation obligations, and deliver on the recently released Emissions Reduction Plan, either:
 - (a) altogether (worst case scenario), or
 - (b) without New Zealand incurring major additional costs, assessed at up to \$9 billion for more expensive generation and increased power costs for consumers, with associated additional greenhouse gas emissions to meet the electrification deficit through fossil fuel alternatives over an extended transition phase (best case scenario).
9. *The prospect that the NBEA might function to prevent achievement of emissions targets might seem to be the result of conflicting policy drivers. However we think the underlying policy concerns are aligned: the concerns of the proposed environmental limits (air, soil, waterways, biodiversity, habitats and ecosystems) are also under threat from unaddressed climate change. This threat is existential. (emphasis added)*

15. The ESEG commends the acknowledgment of the reality revealed in the KC opinion within the NBE Bill structure. As noted above, provision is now made for the management of adverse effects through the effects management framework, and the allowing of exemptions to environmental limits by the Minister, albeit in very confined circumstances.
16. More recently by letter dated 15 February 2023 the KC's (having considered the NBE Bill structure and provisions), have restated the important role of renewable energy projects, reiterated that the reduction in greenhouse gas emissions is neither sufficiently targeted or directive, and that there must be exemptions to proposed limits for renewable energy activities, where that is necessary to meet New Zealand's climate change obligations (please refer to **Appendix B** of the ESEG submission package).
17. The real challenge therefore as confronted in this submission is to make this overall scheme of the NBEA and SPA workable and coherent, and to enable environmental limits and the effects management framework to operate effectively alongside the system outcomes in particular, in order to sustain the wellbeing of present and future generations.

Overview of Submission Points Made

18. Against that background, the ESEG makes the various submission points and seeks the range of specific amendments to various provisions of the NBE and SP Bills detailed in the appended Tables.
19. By way of summary of the main points addressed in the Tables, the ESEG seeks amendments to the NBE and SP Bills so that:

- (a) The NPF would be required to give national direction as to *all* elements of the compound purpose in section 3 of the NBEA, including as to the management of adverse effects, alongside the setting of environmental limits and strategic direction on system outcomes. Direction as to how conflicts between environmental limits and system outcomes are to be resolved, will also be essential.
- (b) Infrastructure providers associated with urban development and renewable electricity generation are directly engaged as stakeholders in the process of preparing the first NPF, and regional spatial strategies and NBEA plans in turn, with robust objective, independent and expert processes, including a right to be heard for both spatial strategies and plans.
- (c) Greater clarity is achieved over the respective function and place of environmental limits and outcomes aimed at environmental protection and restoration. Specifically, environmental limits should be confined to protection of the natural environment domains expressed in s 38. By contrast, outcomes should be directed at protecting other resource values including landscape and cultural heritage, through the setting of policies and rules (but not environmental limits).
- (d) The system outcome relating to the reduction of greenhouse gas emissions is made significantly more ambitious, and directly sheeted to the Target and emission reduction plans set under the Climate Change Response Act 2002.
- (e) More express reference is made to (and focus placed on) infrastructure and the built environment within the NBEA, including to enable all renewable electricity generation activities to secure access to the designation provisions of the Act, as a means to deliver on the climate change mitigation outcomes.
- (f) Greater clarity is also achieved as to which activities require specific consent or designation approval as determined under the Part 2 of NBEA, relative to the provisions of the NPF and NBEA plans. Further, that existing use rights, resource consents and designations once obtained provide the requisite degree of resource use security needed to underpin renewable electricity generation, transmission, and distribution activities, without this being undermined by later condition reviews, or new NPF or plan rules.
- (g) The scheme of provisions addressing the management of adverse effects is substantially rationalised to clarify the application of the effects management framework; the scope for exemptions to that framework and environmental limits, and the criteria for setting limits and targets directed at protecting ecological integrity. Further, so that exemptions can be requested directly through the Minister, and not just by planning committees who will not have the national level perspective or concern in mind.

- (h) The unnecessary, cumbersome and confusing additional layer of regulation under the Bill directed at 'places of national importance' be deleted entirely, given those resources and values are adequately protected through environmental limits and system outcomes in any event.
- (i) The resource allocation principles and related provisions that better align with the NBEA purpose and system outcomes, with greater certainty and NPF direction required as to which specific processes and methods are to be applied in making allocation decisions under the NBEA. Further, that the critical place of existing renewable electricity generation assets in underpinning decarbonisation of the economy be better secured, through future allocation decisions regarding the renewable resources involved (wind, water, geothermal etc).
- (j) The workability of provisions of the NBE Bill regarding resource consenting and designations is improved (including as to notification, submissions and hearings), to achieve the stated system efficiency objectives of the reform.
- (k) The proposal to confine the duration of resource consents relating to the taking, damming or diverting of water to 10 years (except for a limited range of major hydro-electric schemes, and renewable electricity generation connected to the national grid) is abandoned, as would undermine the capacity of renewable generation more broadly, to support the decarbonisation of New Zealand's economy. In this respect, all renewable electricity generation should be treated equally.
- (l) The transitional provisions of the NBE Bill ensure that existing plan, consent and designation processes in train under the RMA remain unaffected until the first NPF is made operative, and in turn NBEA plans are completed for each region.

Conclusion

- 20. Stepping back, the ESEG would observe that we are at an historic moment in time. The impact of the NBE Bill needs to be considered alongside the broader set of reforms to our overall resource management and local government system in train at present, which will have profound implications for many generations to come.
- 21. Failure to deliver on the objectives of the reform is not an option.
- 22. The overriding purpose of this submission is to ensure the reform objectives are in fact realised, together with addressing both the global scale existential biodiversity and climate change crisis currently faced.

**SPATIAL PLANNING BILL
SPECIFIC SUBMISSION POINTS FOR ELECTRICITY SECTOR ENVIRONMENT GROUP**

Section	Support/ Oppose	Reasons	Relief Sought
7 Iwi and hapū	Oppose in part	While the principle set out in s 7 is not opposed at the general level, the specific requirement that all persons recognise and provide for the responsibility and mana of <i>each</i> iwi and hapū will prove problematic in practice, where issues of competing or overlapping jurisdiction or rohe/takiwā arise, and the respective iwi or hapū may have different aspirations or perspectives (including specific tikanga and kawa).	Amend s 7 as follows: <i>"All persons exercising powers and performing functions and duties in making decisions under this Act must recognise and provide for the responsibility and mana of <u>relevant each</u> iwi and hapū..."</i>
8 Definition of 'infrastructure'	Oppose in part	Relies on definition in s 7 of the NBE Bill. Please refer to reasoning for this change in the ESEG submission on the NBE Bill.	Add to the definition of 'infrastructure' in s 7 of NBE Bill to include: <i>"(j) <u>Infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002); and</u></i>
8 Definition of 'network utility operator'	Oppose in part	Relies on definition in s 7 of the NBE Bill. Please refer to reasoning for this change in the ESEG submission on the NBE Bill.	Amend definition of 'network utility operator' in s 7 of NBE Bill as follows: <i>(j) <u>Operates or proposes to operate a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002); and</u></i>
17 Content of RSS	Support in part	Regional Spatial Strategies (RSS) must provide direction on the key matters as set out in s 17, which currently includes: (d) areas that are appropriate for developing, using, or extracting natural resources, including generating power: The development and operation of renewable electricity generation as a key aspect to the decarbonisation of the economy warrants specific identification as a key matter in section	Amend s 17(1)(d) as follows: <i>(d) areas that are appropriate for developing, using, or extracting natural resources, including generating power:</i> Add new s 17(1) (da):

Section	Support/ Oppose	Reasons	Relief Sought
		<p>17(1), rather than this being subsumed within the matter relating to resource use and extraction.</p> <p>Under the 2022 Emissions Reduction Plan, a target of 50% of total final energy consumption coming from renewable sources by 2035 is set. This will require an unprecedented scale of new renewable electricity generation development. More than a trebling of development over the next 30 years (compared to the previous 30) will be needed to meet the 2050 target of the Climate Change Response Act 2002.</p> <p>It is notable in this regard that having set out the five key objectives of the Bill, the Explanatory Note then records that the Bill will address multiple problems with the current resource management system including to help:</p> <ul style="list-style-type: none"> • Enable renewable electricity generation, to affordably decarbonise the economy. <p>A specific and strongly worded outcome referencing all key components of the renewable electricity system and highlighting the scale of new generation required to decarbonise the economy through the development of renewable electricity is essential if this reform objective is to be achieved.</p>	<p><u>(da) areas that are appropriate for the development and operation of renewable electricity.</u></p>
24 General considerations	Oppose in part	<p>Section 24(2) requires that regional planning committees (RPC) must have particular regard to:</p> <p>(a) government policy statements;</p> <p>(b) any statements of regional environmental or community outcomes (s 645(1)(b) NBE Bill); and</p> <p>(c) any planning documents recognised by an iwi authority or 1 or more groups that represent hapū.</p> <p>Given the importance of needing to address climate change, the ESEG submits that RPCs must also have regard to any Emissions Reduction Plan and any National Adaptation Plan prepared under the Climate Change Response Act 2002.</p>	<p>Amend s 24(2) by adding new:</p> <p><u>(d) Any emissions reduction plan or national adaptation plan prepared under the Climate Change Response Act 2002.</u></p> <p><u>(e) Any New Zealand Energy Strategy and any national strategy relating to lifeline utilities</u></p>
35 & Schedule 4	Oppose	<p>Section 35 and Schedule 4 provide for hearings at the discretion of RPCs, and whereby if a hearing is held, this is to follow the procedures set out in subpart 3 of Part 2 of Schedule 7 of the NBEA. It would appear to then follow that there is also no appeal right on any RSS.</p>	<p>Amend section 34 and Schedule 4 to require a hearing to be held in relation to each RSS if a submitter requests to be heard.</p>

Section	Support/ Oppose	Reasons	Relief Sought
		<p>The ESEG is strongly of the view that a right to be heard is essential, if not generally, then at least for the 'interested parties' as defined in Schedule 4 (as sought to be amended below), and in relation to the 'key matters' set out in section 17 in particular (as sought to be amended above).</p> <p>RSSs will have a major influence on planning provisions for renewable electricity generation activities needed to underpin electrification of the economy under NBEA plans (with NBEA plans needing to be consistent with spatial strategies under NBEA section 104), and the capacity of the overall reformed resource management system to deliver on the reform objective set out above.</p> <p>They will also have a significant bearing on resource consent and designation processes and outcomes (refer s 223(2) (c) and 512 (2)(c) and (d) of the NBEA), including as to the assessment of issues of reasonable necessity and alternative locations for renewable electricity generation activities.</p> <p>The ESEG considers that, as a matter of natural justice, it would be manifestly inadequate for interested parties to only have an opportunity to present written submissions on an RSS (Schedule 4, clause 4).</p> <p>Strategic planning raises some unique and complex issues for renewable electricity generation activities, which do not arise (or to the same extent) for infrastructure generally.</p> <p>For example, the electricity market is highly competitive, with ever changing economic, technological, transmission and other constraints; necessitating flexibility over time. Information around these factors will not otherwise be available to those preparing RSS, and unlike existing electricity generation, transportation or social infrastructure (such as roads, schools and hospitals), it is difficult to predict where new renewable electricity generation assets will need to or be able to be established in advance. Such activities are necessarily also highly locationally constrained, needing to rely on the natural energy resources, as and where available in sufficient capacity and quality for the generation purpose.</p> <p>Poorly done, an RSS has the potential to foreclose on or preclude new generation opportunities on the assumption that everywhere such activities may need to be accommodated, can be spatially determined in advance. That will often simply not be the case.</p>	

Section	Support/ Oppose	Reasons	Relief Sought
		<p>In this context, it would also be difficult if not impossible to adequately explain to RPCs the implications of their provision for the range of key matters (and other matters in section 18) as affect future provision for renewable electricity generation activities under an RSS, including relative to areas that need protection, or conversely are appropriate for urban growth and development (needing to be supported by infrastructure), through written submissions alone.</p> <p>The information renewable electricity generators would need to furnish in an RSS process would be complex, and often need to be supported by opinion from experts, who RPCs should have the benefit of hearing from, and be able to ask questions.</p> <p>For all of these reasons, the ESEG submits that a hearing must be held in relation to each RSS if a submitter requests to be heard, or at least this should apply to interested parties as listed in Schedule 4 (clause 1), as sought to be amended below.</p> <p>As per the ESEG's submission on the NBE Bill, the ESEG has concerns about the membership of the RPCs. It is submitted that the RPCs must be made up on suitably experienced, skilled and knowledgeable persons, including having technical expertise on matters pertaining to electricity generation. Please see the ESEG's submission on this point.</p>	
Schedule 4, clause 1 Interested parties	Support in part	<p>Interested parties in relation to the preparation of a RSS currently includes:</p> <p><i>(i) private infrastructure providers and operators.</i></p> <p>It is not clear how the term “private” is to be interpreted in this context and the broader definition of network utility operators is preferred, so as to ensure that renewable electricity generators are included within the definition, and as such able to effectively participate in RSS processes from the outset.</p>	<p>Amend Clause (1)(i) as follows:</p> <p><i>(i) private infrastructure providers and <u>Lifeline and network utility operators</u></i></p>