Submission on the Natural and Built Environments and Spatial Planning Bills

New Zealand Wind Energy Association

5 February 2023

Committee Secretariat
Environment Committee
Parliament Buildings
Wellington

By email: en@parliament.govt.nz

Introduction

1. The New Zealand Wind Energy Association (NZWEA) welcomes the reform of the resource management system and appreciates the opportunity to make a submission on the Natural and Built Environments Bill (NBE Bill) and Spatial Planning Bill (SP Bill).
2. The Association would like to present to the Environment Select Committee in support of its submission.
3. As an introductory comment, the Association acknowledges the importance of resource management system reform and the complexity of ensuring policy and target alignment across the energy, environmental, and climate change domains if New Zealand is to achieve social, economic and environmental wellbeing whilst also being a responsible global citizen. Further commentary on the Governments emissions reduction target and electricity sector growth forecasts is contained in appendix 1.
4. In particular, the Association recognises that climate change is a critical issue for the resource management system reform to address, being at the intersection of preventing environmental degradation resulting from inappropriate infrastructure development while enabling responsible development to mitigate and adapt to the environmental impacts of climate change.
5. NZWEA has two priority areas that its work programme is focused on and which have influenced its responses to the draft bills. These are:
    - Resource management system reform and ensuring the RMA's replacement better enables the onshore and offshore wind industry to consent new renewable electricity generation to support achievement of the 2050 net zero carbon emissions target.
    - Sustaining the energy trilemma [1] in the transition of the sector to a higher level of renewable electricity generation particularly in a dry year situation when combined with a projected significant growth in demand.
6. The Association has therefore submitted on most recent consultations relating to these domains and is a member of the Electricity Sector Environment Group (ESEG) [2] which

[1] The 'energy trilemma' refers to a country's ability to provide a secure supply of energy, that is affordable and environmentally sustainable.

has submitted on the NBEA Exposure Draft and undertaken a further major policy review in June 2022 that has been shared with Ministers and Officials. A Summary of this policy work, undertaken by Derek Nolan KC and Davey Salmon KC, is included as appendix 2.

7. Indeed NZWEA and the ESEG's perspective has recently been reinforced in a recent letter from the Rt Hon Simon Upton, Parliamentary Commissioner for the Environment to the Hon Dr Megan Woods, Minister for Energy and Resources:

Charting the course of a decarbonised energy system is of the highest environmental – and economic – significance. There is no doubt that economic and environmental trade-offs will need to be made. [3]

New Zealand is on the cusp of the greatest energy system transformation for generations. How we produce, transmit and consume energy will be a key factor in whether the country meets its climate change commitments over the next three decades. [4]

8. In this submission NZWEA focuses on a number of key aspects of the draft Bills with a specific focus on onshore and offshore wind energy noting that the ESEG's submission will expand on these points as well as suggesting additional drafting changes which the Association supports.

Summary

9. The Association supports the reform objectives in particular an increased focus on outcomes and a more strategic approach to long term planning with comprehensive national direction and greater recognition of the importance of decarbonisation to address the impacts of climate change and support for renewable electricity generation.

10. In the Association's submission on the Exposure Draft of the Natural and Built Environments Bill in August 2021 it was noted that without more information on the form of or process for developing the national planning framework (NPF), the nature and extent of environmental limits or the impact of the SPA and Regional Spatial Strategies(RSS's), it was not possible for the Association to form a view as to the extent to which the reform objectives, including the provision of infrastructure services, would be achieved.

11. The Randerson review highlighted that one of the key challenges with the current RMA was the lack of clear national direction. While the draft Bill's provide more information there remains significant work to develop the NPF and environmental limits.

12. The ability of the NPF to provide clear and cohesive national direction and how all elements of the compound purpose of the Bill are to be reconciled and served will determine whether the resource management reforms are successful and the appropriate balance between better protecting the environment and enabling infrastructure development is achieved.

13. The Association considers that infrastructure providers as associated with the provision of housing, urban development and renewable energy generation should be directly

[2] The Electricity Sector Environment Group comprises New Zealand's principal electricity generators – Meridian Energy, Mercury NZ, Contact Energy, Genesis Energy and Manawa Energy together with the New Zealand Wind Energy Association.
[3] Parliamentary Commissioner for the Environment Letter to the Minister of Energy and Resources, cover letter 20 December 2022 para 5.
[4] Parliamentary Commissioner for the Environment Notes on considerations for developing New Zealand's energy strategy 20 December 2022, para 1.

engaged in the process of preparing the first NPF and that it should be developed as a priority and included the contents of a revised National Policy Statement for Renewable Electricity Generation.

14. The resource management reforms are far reaching and complex, there are new concepts and there is also uncertainty as to the transitional arrangements and in-practice effect of a substantive new resource management system including the effectiveness of Regional Planning Committees (RPC's) in developing RSS's. The Association also notes that having the resource management system across multiple pieces of legislation and both RSS's and NBE Plans requires a high degree of legislative alignment to avoid duplication.

15. The transition period is of particular concern given wind energy projects, particularly offshore wind has a long development and construction lifecycle.

16. Also of concern is appropriately ensuring the recognition of existing use rights for infrastructure assets of national significance such as those for electricity generation and transmission where investment decisions are based on a forecast long operating life.

17. What is paramount, given the importance of achieving climate change targets to also provide environmental protection, is that the environmental statutory framework acknowledges the decarbonisation imperative and that this is achieved even though at times it will conflict with other environmental limits or system outcomes.

18. The Association recognises that progress in support of renewable electricity generation has been made since the NBEA Exposure Draft was published. However concerns remain that the need for infrastructure development, particularly renewable electricity generation, has not been provided for effectively in the proposed resource management system given the inherent conflicts that exist within the system outcomes.

19. The Association considers that binary environmental limits and the requirement to manage all adverse effects (other than trivial effects) according to the effects management framework will inhibit existing renewable electricity generation being reconsented and new generation will not be able to be consented at sufficient scale and pace. To enable the electricity sector to decarbonise the energy sector and contribute fully to addressing the impacts of climate change and meet the Governments net zero target will require deliberate and targeted exemptions.

20. Aotearoa New Zealand has recently seen a high level of interest in offshore wind development by globally significant entities. Most offshore wind farms will also fall within the jurisdiction of the EEZ Act. NZWEA considers it important to ensure that policy, particularly in relation to climate change and renewable energy, is equally applicable to developments under the EEZ Act as it is under the NBE Act.

21. The changes proposed by the Association in the following section and the ESEG submission, including directive infrastructure enabling policy clarity in the NPF, appropriate management of conflicts with environmental limits and effectiveness of RPC's in setting RSS's will be paramount to the success of the reform of the resource management system.

Submission Points

22. The Association supports the reform objectives in particular an increased focus on outcomes and a more strategic approach to long term planning with comprehensive national direction and greater recognition of the importance of decarbonisation to address the impacts of climate change and support for renewable electricity generation:

Enhanced strategic focus	▪ The Resource Management Review Panel highlighted the importance of a long term and integrated strategic approach and clear national direction. ▪ The intention of the two Bills is to ensure a focus on outcomes and a move to a plan-led model of development with comprehensive national direction. ▪ Mandatory national direction which all NBEA plans and Regional Spatial Strategies will then need to "give effect to" will create greater coherence, certainty and alignment regarding infrastructure, planning and funding decisions. ▪ The Association supports this direction however notes that the direction must be enabling of infrastructure and the response to climate change that New Zealand has to achieve, while being protective; where there is conflict the national direction must specify the circumstances under which appropriate development will be able occur. Key strategic aspects of the reform such as the NPF, which are essential to the success of the new resource management system, are yet to be developed. ▪ The instruments and concepts are new, there will be considerable implementation risks and costs particularly during the transition period.
Improved prioritisation of decarbonisation and support for renewable electricity generation	▪ Of fundamental importance is the need to enable decarbonisation to address the impacts of climate change. ▪ To do so requires the resolution of two competing policy drivers – enabling infrastructure development such as renewable electricity generation and ensuring biophysical limits are set to address environmental degradation. ▪ It is widely recognised that the current RMA and national direction for renewable electricity generation have not been effective in enabling new development. Refer appendix 3 for further commentary on the current NPS-REG. ▪ Given a significant expansion in renewable generation capacity (along with associated transmission and distribution infrastructure) is required for New Zealand

	to transition key sectors away from fossil fuels in order to meet our domestic and international emissions reduction commitments [5] it is essential that responsible development is enabled even though it will conflict with other environmental limits. ▪ 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 environmental limits is essential to the effective support of renewable electricity generation. ▪ The Association supports the NBE Bill's requirement that the NPF provide direction on "enabling renewable electricity generation and its transmission".[6] ▪ Given the criticality of addressing the impacts of climate change in New Zealand, we recommend that this language is strengthened to require that infrastructure which mitigates climate change, such as renewable energy generation and green fuels production, is facilitated and enabled as a priority matter. ▪ NZWEA also supports the inclusion of renewable energy generation consent renewals in the fast-track consenting process [7] and the proposed longer take and discharge consent durations for renewable generation. ▪ The Association also supports RPC's not having regard to effects on scenic views from private properties. [8] ▪ Aotearoa New Zealand has recently seen a high level of interest in offshore wind development by globally significant entities. The Association recognises that policy set-out in the NPF will be a relevant consideration for the portion of offshore developments which fall within the jurisdiction of the NBE Act. However most offshore wind farms will also fall within the jurisdiction of the EEZ Act. NZWEA considers it important to ensure that policy, particularly in relation to climate change and renewable energy, is equally applicable to developments under the EEZ Act as it is under the NBE Act

[5] Towards a productive, sustainable and inclusive economy – Aotearoa New Zealand's first emissions reduction plan.

[6] NBE Bill, clause 58(e).

[7] NBE Bill, clause 316(d).

[8] SP Bill, clause 25(3)(a).

23. However the current drafting combined with, as yet developed key aspects such as the NPF, create considerable risk that one of the key challenges identified with the current RMA of *the need to urgently reduce carbon emissions and adapt to climate change* [9] will not be achieved. Commentary on the Bills and areas where the Association consider changes are required are as follows:

NBE Bill

Clause 3 - Purpose	▪ The Association recognises the importance of the purpose in the implementation and interpretation of the NBE Bill but notes that the use of the word "compromising" has no equivalent in the RMA and is untested through RMA jurisprudence and therefore submits that an alternative such as "sustaining" should be used. ▪ It is essential given the need to enable responsible infrastructure development that the purpose supports a clear focus on providing for development and the built environment as well as providing environmental protection. ▪ NZWEA also submits that it is key to the success of the reforms that the NPF provide clear and coherent direction as to how each of the purpose elements is to be applied and reconciled by all persons exercising functions, powers and duties under the Act.
Clause 4 Tiriti o Waitangi	▪ NZWEA considers it important to clarify that clause 4 applies to persons exercising the powers and functions of the Crown and does not dilute the obligations of the Crown to Māori through the devolution of those obligations to all persons who have duties under the NBE Bill. ▪ The equivalent provision of the RMA states at its commencement "In achieving the purpose of this Act…" that should also apply to the NBEA clause.
Clause 5 Outcomes	▪ The Association supports the focus on outcomes but notes that significantly different language is used to describe the identified outcomes. ▪ Currently the wording of the outcomes is considerably more directive and absolute when it comes to "protection", "restoration" and "conservation" of natural and cultural values; whereas for climate change and natural hazards the verb is less directive and equivocal "reduction". ▪ To ensure balance and conflicts between competing

[9] Our Resource Management System Overview page 6 – why the resource management system reform is needed..

	outcomes are able to be resolved NZWEA submits that the language should be reviewed to ensure all outcomes are equally directive as well as the inserting of a clause that there is no prioritisation or hierarchy between the outcomes. ▪ The Association also notes that the ESEG submission will include wording changes to clarify interpretation and application. In particular the Association considers the outcome relating to the reduction of greenhouse gas emissions [10] should be more ambitious with references to New Zealand's legal commitments in Emissions Reduction Plan and international obligations.
Clause 6 Decision making principles	▪ The Association broadly supports the decision-making principles but notes as currently expressed, the decision-making principles only apply to the Minister and Regional Planning Committees. ▪ NZWEA submits the principles should be applied to all persons exercising functions, duties and powers under the Act.
Clause 7 Definitions - Infrastructure	▪ NZWEA considers the infrastructure definition as proposed in the NBEA Bill will only apply to generation that is renewable and connected to the national grid. ▪ Embedded/distributed generation plays an important role in ensuring security of supply particularly in remote locations. In addition given the quantum of new generation required and the impacts of climate change generation not connected to the national grid will have an increasing significance. ▪ The definition of infrastructure should therefore either be revised to incorporate all renewable electricity facilities or a new definition for an electricity generator added which includes connection to a local distribution network.
Clause 7 Definitions – Network Utility Operator	▪ As currently drafted the definition of 'network utility operator' does not include electricity generators. This limits the ability for renewable generation developers to become requiring authorities and access the ability to use designations. ▪ NZWEA considers that renewable electricity generation is in the nature of a public good and delivers public benefit outcomes in supporting the electrification of the economy and addressing climate change.

[10] NBE Bill, clause 5(b)(i) and (ii).

	▪ Accordingly, the Association submits that all renewable electricity generators should be defined as a "network utility operator" such that generators can use the more streamlined ministerial decision-making process for approval as a requiring authority.
Clause 33 – Purpose of national planning framework	▪ The NPF is central to the successful delivery of the reform objectives with the NBE Bill placing considerable reliance on the NPF to set direction for RPC's and other decision makers. ▪ The Association considers that the NBE Bill should include more upfront direction for the contents of the NPF and Regional Spatial Strategies and the importance of ensuring the impacts of climate change are addressed. ▪ NZWEA also considers that the clause should provide direction as to how conflicts between environmental limits and outcomes are to be resolved, rather than simply "helping" to resolve such conflicts and require it to provide direction as to the management of effects.
Clause 36 Resource allocation principles Also referencing clauses 87 (Directions on allocation method) ,88 (Use of market-based allocation method) and 128 (How plan may require or permit use of market-based allocation method)	▪ NZWEA supports the NBE Bill including resource allocation principles and notes that sustaining access to the renewable resources to support electricity generation is essential to achieving a low emissions economy. ▪ The NZ electricity system currently has a high level of dependence on the flexibility of hydro generation to manage peak demand and variability of other renewables particularly wind and solar. This dependence will only increase as more wind and solar generation is commissioned. ▪ At present access is not sufficiently supported in the resource allocation framework and the Association considers that resource allocation principles in clause 36 should include an additional principle that links to the promotion of system outcomes. ▪ NZWEA also considers it is imperative for the efficient integration of additional wind generation that provision be made to ensure applications for consent renewals for an 'allocated' resource are not assessed against a 'zero base' (i.e. the environment without the current consent) and instead that there is recognition of the expectation of continued allocations. ▪ In summary the resource allocation principles should reflect the critical place of renewable electricity generation in underpinning decarbonisation of the energy sector.

Clause 38 Environmental Limits and Clauses 44 – 46 Exemptions	▪ NZWEA supports the NBE Bill provisions to enable environmental limits to address adverse impacts on biodiversity, habitats and ecosystems that have been compromised by human activity. ▪ A key feature of renewable energy projects is the location of the natural resource. Wind energy, given resources are location specific, has limited scope for site variation, invariably has an environmental impact which has historically been addressed with recourse to mitigation, compensation or offsetting and balancing positive and adverse effects to achieve the best outcomes overall. ▪ NZWEA welcomes the provision of exemptions and recognises this is a significant policy change from the Exposure Draft of the NBEA but considers that the proposed exemptions and exclusions are not consistent, and not certain enough for investment decision-making. ▪ For example the process for obtaining an exemption from environmental limits is most constrained. With the only way to provide for an exemption from a limit is upon the request of an RPC. ▪ The Association considers that it will be important to have a more defined process for obtaining exemptions and for the NPF to include exemptions from the outset and provide direction on how conflicts between environmental limits and system outcomes are to be resolved.
Clauses 47 – 53 Targets	▪ The Association has highlighted the significance of targets. NZWEA therefore submits that careful thought must be given, with input from the scientific community, as to the overall workability and appropriateness of the provisions of the NBE Bill in addressing the setting of environmental limits and targets sheeted to ecological integrity.
Clause 58 – National planning framework must provide direction on certain matters	▪ The Association supports the NBE Bill's requirement that the NPF provide direction on "enabling renewable electricity generation and its transmission".[11] ▪ Given the criticality of addressing the impacts of climate change in New Zealand, we recommend that this language is strengthened to require that infrastructure which mitigates climate change, such as renewable energy generation and green fuels production, is facilitated and enabled as a priority

11 NBE Bill, clause 58(e).

	matter.
Clause 75 Direction to review consents and permits	▪ Section 75(1) would enable the NPF to direct that "all of the following" or "a specified class of" land use, coastal permits, water permits and discharge permits are reviewed within a specified time period. ▪ NZWEA questions whether the resource management system would have the capacity to cope with such a direction.
Clause 205 – Public Notification	▪ The Association supports the NBE Bill's intention to improve the approach to resource consent notification. ▪ NZWEA considers that the notification provisions in the NBE Bill could be improved to ensure there is clearer direction on the nature and scale of developments that require public notification. In particular clause 205(2) of the NBE Bill, which makes "*relevant concerns from the community*" a matter for local authorities to take into account as this does not provide sufficient guidance for decision-makers.
Clause 206 – When to require limited notification	▪ The Association considers clause 206 provision "*any person who may represent public interest"* is not consistent with the purpose of limited notification, which is to ensure that persons who are directly and individually affected by a proposal have an opportunity to submit.
Clause 215 – Hearing of applications	▪ Clause 215 enables a consent authority to make hearings discretionary (regardless of whether an applicant wishes to be heard). ▪ Given the scale and complexity of renewable energy projects the Association submits that electricity generators should have the right to be heard.
Clause 269 – When sections 270 and 271 apply and when they do not apply	▪ The Association notes that clause effectively displaces the operation of priority for existing consent holders under clauses 270 where allocation frameworks are in place. ▪ NZWEA considers this could have significant implications for sustaining existing electricity generation assets and submits that given the importance of preserving existing capacity and flexibility the clause should not apply to these activities.
Clause 275 – Duration of certain resource consent activities	▪ The Association notes that a maximum 10-year consent duration will significantly limit new investment and impair existing investments.
Clause 276 – When section 275 does not affect duration	▪ It is widely recognised that hydro generation is a most cost-effective option to manage the variability of wind

of resource consent	and solar generation. As new wind and solar generation is built the importance of sustaining hydro generation capacity and ensuring operating flexibility will be key to an efficient decarbonisation of the electricity sector. ▪ NZWEA supports the principle of clause 276's exemption from the proposed maximum 10-year duration on some consents.[12] ▪ Section 276 is therefore key given the restricted duration of clause 275 however several amendments are required. o Clause 276(1) requirement to seek a determination from the consent authority is removed as unnecessary and inappropriate. o Non-grid connected generation facilities should be included as embedded generation will become increasingly important as the electricity network responds to consumer demands and generation facilities should not be treated differently purely due to the point of the supply network that they connect to. ▪ The Association also notes the potential for green hydrogen and derivative products to play a critical role in replacing fossil fuels both in New Zealand and globally with access to water being a key consideration in assessing project viability. ▪ Long term certainty of water allocation or discharge rights is critical to ensure these projects are de-risked and bankable. NZWEA recommends that clause 276(3)(c) of the NBE Bill is updated to include facilities for the production of green fuels, including green hydrogen.
Clause 281 Decisions on review of consent conditions	▪ Section 281 allows consent authorities to cancel resource consents for various reasons, including if a land use consent cannot comply with rules that give effect to any parts of the NPF relating to the natural environment, or (for regional permits) a relevant environmental limit is breached. ▪ NZWEA considers the provision creates a material degree of uncertainty over the security of tenure surrounding an existing resource consent granted under the RMA and is opposed.
Clause 316 – Activities eligible for specific housing	▪ NZWEA supports the provision of a 'fast-track'

[12] NBE Bill, Clause 275 and 276.

and infrastructure fast-tracking consenting process	consenting process for new wind and solar projects as an enabler of new development, particularly given the high level of new generation required. ▪ However given the projected growth and importance of electricity system balance and security of supply the Association considers new hydro or geothermal electricity generation activities should also be able to apply to use this consenting process.
Clause 326 – Final decision on application	▪ Given the development process for renewables including new large scale offshore wind farms the Association considers the proposed 2-year consent lapse period for fast-track consents is unnecessarily restrictive. ▪ In particular supply chain and other logistical issues are expected to become more challenging given the expected global acceleration of decarbonisation efforts.
Schedule 1 Transitional, savings and related provisions	▪ A key concern with the NBE Bill as drafted is the lack of clarity regarding the transitional regime under the legislation. NZWEA understands the intention is to deal with transitional arrangements in subsidiary documents but has a preference that the NBE Act includes a clear "up front" framework for commencement and key transitional matters. ▪ The Association also has concerns that Clause 1 which states that "*Every RMA document in force immediately before the commencement of this clause continues in force according to its terms subject to this Act"* could provide scope to dispute the status of an existing RMA consent once the NBE Act provisions are in force. ▪ NZWEA highlights the importance of sustaining existing consents to ensuring the security of current electricity supply and meeting future demand projections where new generation is planned. ▪ The Association also notes that the NBE Bill provides for existing national direction under the RMA to remain in force once the NBE legislation commences (clause 2) and that there is a process to make interim amendments to existing national direction. ▪ It is widely recognised that the National Policy Statement for Renewable Electricity Generation is ineffective and is currently being reviewed. The Association submits that improvements to the NPS-REG, in keeping with more recent national direction, should be incorporated to ensure it provides crucial

	support for renewable generation in a manner that is more directive.
Schedule 7 Preparation, change and review of natural and built environment plans Clauses clauses 21, 34(3)(c), 36(2)(c) and 87(5)	▪ NZWEA generally supports the provisions of the NBE Bill addressing the purpose, scope and content of NBE plans. ▪ The Association notes the complexity in identifying sites for renewable electricity generation and has concerns that there are significantly limited opportunities for electricity sector involvement in the plan making process. Opportunities to assist with achieving outcomes for climate change involving renewable electricity generation therefore may not be identified. ▪ Also the Association has concerns with provisions requiring all evidence supporting a submission be provided at the same time as the submission. ▪ The timeframe proposed may be unworkable given complex planning issues and availability of expert evidence required to support the submission. There are often constraints on available experts and difficulty securing key experts and NZWEA considers the requirements to lodge supporting evidence with submissions should either be removed or amended to allow evidence to be lodged within a reasonable timeframe.
Schedule 8 Provisions relating to membership, support, and operations of regional planning committees	▪ The Association considers the membership and processes for establishing and populating RPCs do not sufficiently weight the importance of planning expertise. ▪ Given the of importance of well-developed RSS's as a core premise for the resource management reforms it is essential that RPC appointments should be based on independence and expertise.

SP Bill

Clause 5 Tiriti o Waitangi	▪ Refer to comments on the NBA Bill Clause 4
Clause 7 Iwi and hapū responsibilities in relation to te taiao	▪ Reference to "each" iwi and hapu may prove challenging and the Association recommends this be changed to "relevant" iwi and hapu.
Clause 8 Interpretation	▪ Refer to comments on the NBA Bill Clause 7 to address infrastructure definition concerns.
Clause 24 General considerations: instruments	▪ Given the importance of action to address the impacts of climate change on the environment the Association considers adding in the National Adaptation Plan and

	Emissions Reduction Plan as matters to which must have particular regard.
Clause 35 Process may include hearings and schedule 4	▪ The potential for regional spatial strategies (RSS) to be an enabler of development is recognised, particularly if the consenting pathway is simplified for infrastructure development within identified areas. ▪ However, given the complexity of renewables development and ever-changing technology, an overreliance on RSS to provide for renewable electricity generation would create a significant risk, particularly if areas are narrowly defined and generation development outside of identified areas was limited. ▪ The Association notes that there is no mandatory requirement for hearings and that even if hearings are held it does not require an independent hearings panel process. ▪ As there are no appeal rights on RSS there is a risk that this could result in poor decision making and give rise to challenges at the NBE Plan hearing stage. ▪ There is also no step in the process that would allow a party or landowner affected by a request from another party to be aware of or comment on that matter. ▪ The Association submits that there should be a requirement for hearing on all RSS's and reviews with limited rights of appeal to make it consistent with the process for NBE plans.
Schedule 4 Preparation of regional spatial strategies: key process steps	▪ The key process steps in schedule 4 lack detail and will not ensure basic natural justice requirements are achieved. ▪ The Association notes that step 3(c) specifies giving interested parties and the public a reasonable opportunity to provide written submissions on the draft strategy. ▪ NZWEA considers a requirement for minimum 40 working day period for submissions should be provided, consistent with NBE plans.

About the NZ Wind Energy Association (NZWEA)

- The NZWEA is an industry association that promotes the development of wind as a reliable, sustainable, clean and commercially viable energy source.
- We aim to fairly represent wind energy to the public, Government and the energy sector.
- Our members are involved in the wind energy sector and include electricity generators, wind farm developers, lines companies, turbine manufacturers, consulting organisations and other providers of services to the wind sector,
- By being a member of NZWEA you are assisting the development of wind energy in New Zealand and helping to reduce our greenhouse gas emissions to meet climate change targets.

The Association's strategy focuses on three key areas:

- Leveraging NZ's emission reduction imperative to enable the energy transition to renewables, particularly wind energy.
- Optimising wind energy's position and ensuring the regulatory environment supports wind farm development.
- Expanding the opportunity for wind energy development to enable community and industrial projects including wind's integration with other technologies.

Contact details in relation to this submission:

Grenville Gaskell
Chief Executive
New Zealand Wind Energy Association
PO Box 553, Wellington 6140
grenville@nzwea.org.nz

Appendix 1 - Aligning Climate Change, Electricity Sector and Environmental Targets

1. Climate change is undoubtedly the environmental issue of our time, with global warming expected to have a material negative impact even if global emission reduction targets are achieved.
2. The Government, in passing the Climate Change Response Act, has supported global ambition by setting a target of achieving a net zero emissions of greenhouse gases other than biogenic methane by January 2050. The Climate Change Commission (CCC) Final Advice has recommended targets for the first 3 budget periods as a pathway to achieving the net zero target.
3. The Commission recommended a 63% reduction in long lived gases by 2035 with key transition strategies including accelerating the uptake of electric and other zero emissions cars, buses and trucks and vehicles, phasing out fossil base-load generation and replacing coal (and eventually gas) with biomass and electricity in industrial heat processes.
4. Electrification of the energy sector with renewables is therefore a key plank of the CCC's recommendations.
5. From a 2020 baseline, the CCC has wind generation increasing by 7.6 TWh (308%) by 2035 under their demonstration pathway. Should Tiwai stay, wind generation would need to increase by 10.9 TWh (479%). Wind generation is forecast to increase from 5% of total generation to 18% (demonstration pathway) or 26% if Tiwai stays by 2035.
6. Transpower is forecasting a wind capacity of 6,500 MW and generation of 19.6 TWh by 2050 to comprise 28% of total generation [13]. The Waipipi Wind Farm, commissioned in 2021, and Turitea and Harapaki Wind Farms which are under construction, will see wind capacity double to 1,200 MW.
7. An additional 5,300 MW of wind will be required to meet Transpower's forecast, this is an increase of over 430% and represents an additional 53 wind farms at 100MW each that will need to be consented and built. There is also significant interest from international developers in offshore wind which could see wind farms of around 1,000 MW built. These could either support domestic electricity demand growth and / or should electro-fuels, including green gas develop wider development and export of green energy.
8. The Government has set an aspirational target of 100% renewable electricity generation by 2030. Renewable generation averaged 81% in 2020 and whether 100% (or near that value) can be achieved in the timeframe will depend on sustaining existing capacity and enabling new build activity.
9. The Government published its Emissions Reduction Plan in May 2022. The Plan covers 3 budget periods up to 2035.
10. The emission targets are similar to those proposed by the Climate Change Commission (CCC) in their emissions budget advice and the actions proposed, relating to the energy sector, are also largely consistent with the CCC advice.
11. Delivery of the Plan is expected to result in all greenhouse gases falling 7% by 2025; 22% by 2030 and 38% by 2035 (compared to 2019).

[13] Transpower Whakamania i Te Mauri Hiko, Empowering our Energy Future, March 2020.

12. Under the reforms, environmental limits will be prescribed in the NPF or plans, with the intention that the limits are absolute bottom lines in their application.
13. Given the resource management system will determine whether and where infrastructure can be built, for renewable electricity generation, which has a dependency on the availability of natural resources, the definition of environmental limits will be key.
14. NZWEA considers there is a high likelihood of wind energy coming into conflict with biophysical limits and, if limits are to be enforced without recourse to mitigation including compensation or offsetting, it will be essential to test whether proposed environmental limits prevent the achievement of the Government's climate change and electricity targets.
15. Without ensuring alignment and having a supportive resource management system there is a material risk that the significant renewable electricity generation build required to enable decarbonisation of the energy sector will not be possible.
16. The in-practice effect of the proposed exemptions regime in the NBA Bill will therefore determine whether the targeted emissions reductions contained in the Emissions Reduction Plan are able to be achieved.
17. In addition, enabling the reconsenting of current renewable generation, and hydro generation in particular, will be essential to sustaining capacity and being available to support the short-term variability of wind and solar generation.
18. It is widely recognised that hydro generation is a most cost-effective option to manage the variability of wind and solar generation and meet demand peaks. As new wind and solar generation is built the importance of sustaining hydro generation capacity and ensuring operating flexibility will be key to an efficient decarbonisation of the electricity sector.
19. Part 3 of the NBA Bill therefore needs to provide clear policy direction that enables responsible new and existing renewable electricity generation assisted also by direction that ensures climate change targets and specific environmental limits are balanced.

Appendix 2 - Aligning Climate Change, Electricity Sector and Environmental Targets

POTENTIAL IMPACT OF THE NATURAL AND BUILT ENVIRONMENTS ACT ON CONSENTING OF RENEWABLE ENERGY PROJECTS AND CONSEQUENCES FOR NEW ZEALAND'S CLIMATE CHANGE OBLIGATIONS

INTRODUCTION AND SUMMARY

1. We have been requested to prepare an opinion for New Zealand's principal electricity generators (the "**Electricity Sector Environment Group**" or "**Group**") to consider the potential impact of the Natural and Built Environments Act ("**NBEA**") on the consenting (and reconsenting) of renewable energy projects required to meet New Zealand's international climate change mitigation obligations.[14]

2. The NBEA is intended to provide for environmental limits to protect the ecological integrity of the natural environment and human health (ss 5, 12A-12E of the NBEA). 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,[15] 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[16] 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.[17] The effects of renewable energy projects are also readily understood.[18] For New Zealand, renewable energy is particularly critical because of the difficulties in addressing agricultural emissions[19] and the country's intended reliance on electrification to replace fossil fuels in key areas (e.g. transport, industry and heating).[20]

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

---

14 We acknowledge the contribution made by Aidan Cameron, Barrister, to the development of this opinion.

15 Refer appended paper (Appendix 3) prepared by Dr Ian Boothroyd (Boffa Miskell) as addressed further below.

16 Nationally Determined Contribution.

17 As discussed by the IPCC and summarised below.

18 See e.g. NZS6808:2010 in relation to noise generated from wind turbines.

19 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).

20 If private vehicle use is maintained and EV adoption is a key part of the transport solution then renewable electricity generation is all the more important.

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, 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.

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*).[21]

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.[22]

10. In this advice we:

    a. address the existing case law on bottom lines;

    b. identify why the environmental limits and outcomes in the NBEA present barriers to renewable energy projects;

    c. outline the sources of New Zealand's climate change law and policy, and its present emissions targets;

    d. review the (settled and accepted by New Zealand) IPCC science on climate change, which shows material overlap with the concerns covered by the NBEA environmental limits;

    e. address the importance of renewable energy in meeting emissions targets and the vulnerability of New Zealand's pathway to delays or constraints in the rollout of renewable energy projects; and

---

21 The best case scenario assumes project substitution is available (for any renewable generation project declined consent as a result of NBEA limits), refer appended paper prepared by Concept Consulting (see, in particular, sections 1 and 5) (Appendix 4) as also addressed further below.

22 It is settled science, accepted by successive New Zealand governments, that anthropogenic climate change will result in damaging changes to the physical environment (to rivers and soil from drought, erosion, flooding; to the oceans from ocean acidification; to coastlines from rising sea levels; etc), with compounding negative impacts on biodiversity and ecosystems. Climate change is predicted to turbo-charge biodiversity loss. Threats to food and water security are predicted. These risk geopolitical instability that may cause further environmental degradation.

f. propose amendments to the NBEA to accommodate the vital role renewable energy projects will have in mitigating climate change and therefore avoiding environmental harm.

11. The proposed amendments to the NBEA are set out in **Appendix 1** to this opinion. They include:

a. an exception to the environmental limits for renewable energy projects where the Minister is satisfied that such exceptions are necessary to enable New Zealand to meet its international climate change obligations, the Target set under the Climate Change Response Act, or an Emissions Reduction Plan under that Act; and

b. amendments to the environmental outcome relating to climate change by adopting strongly directive verbs to ensure equivalent weight is afforded to this critically important outcome as it is to other outcomes.

12. The amendments in Appendix 1 will ensure the NBEA does not score an "own goal" by immutable environmental limits preventing renewable energy projects required for climate change mitigation from being assessed on their merits where they may, or may not, be approved with reference to the environmental outcomes and other tests in the NBEA.

13. It is acknowledged that an exception to the bottom-line approach for renewable energy may mean that on some occasions after a full merits assessment, transgression of environmental limits may be allowed. However, this exception would not undermine the purpose of those limits, but instead enhance it: the scale of species loss, habitat loss and threat to human health that flows from delaying emissions reduction will readily eclipse relatively minor localised impacts from particular projects. This is not to downplay such harms but rather to put them in context: inaction on climate change risks much greater harm to the very environmental concerns that the NBEA is designed to protect.

14. The proposed exception for renewable energy and the more directive outcome, as recommended in this opinion, are both required by, rather than in conflict with, the NBEA's underlying policy drivers.

Appendix 3 - Recognition of Resource Management Act issues as the basis for reform

1. Issues with the RMA have been well documented. In relation to the energy sector, a 2016 Ministry for the Environment Report on the effectiveness of the National Policy Statement for renewable Electricity Generation (NPS-REG) [23] concluded *'the NPS-REG does not appear to have resulted in noticeably more certainty for resource consent applicants for REG projects'* and '*the NPS-REG has not resulted in nationally consistent approaches to the drafting of regional and district plans'*.
2. Key challenges noted included *'a lack of detailed direction and guidance'* and *'the complexities in balancing and resolving interactions between the NPS-REG and other national policy statements and other competing RMA part 2 matters at a local level'.*
3. A number of influential reports on the electricity sector [24] and on addressing the impacts of climate change [25] have similarly highlighted the importance of resource management reform if the potential of renewable electricity generation to contribute to the decarbonisation of the energy sector and the 2050 net zero emissions target is to be achieved.
4. In response, the Government has, in addition to the wider review of the resource management system, in parallel commenced a review of national direction on renewable electricity.
5. The national direction project has reviewed existing RMA provisions relating to renewable electricity, national direction instruments and case law, and has identified a number of challenges in the current resource management system to achieving New Zealand's climate change and renewable electricity targets. The key issues which have been identified include:
    - Existing national direction on renewable electricity generation provides limited direction and weak policy wording. As such it has generally been ineffective.
    - There are gaps in the application of the National Policy Statement for Electricity Transmission and National Environmental Standard on Electricity Transmission Activities which mean that certain transmission and distribution are not as effectively enabled.
    - There is a lack of clear national direction on resolving key tensions between competing national and local interests and environmental/biophysical limits (e.g. extent of natural wetlands, significant natural areas of high natural character, and outstanding natural landscapes and features).
    - There are uncertainties relating to the consenting pathways for renewable electricity projects which trigger 'avoid policies', regardless of whether the project can demonstrate net environmental and economic benefits.
    - Acceptance of offsetting and compensation approaches, to avoid significant adverse effects, is limited.

[23] Ministry for the Environment, Report on the Outcome Evaluation of the National Policy Statement for Renewable Electricity generation, December 2016 Electricity Authority, Transmission Pricing Review, July 2019.
[24] Electricity Price Review Final Report October 2019 and MBIE Accelerating Renewable Energy discussion document, December 2019.
[25] Productivity Commission, Low-emissions Economy Report, August 2018. Interim Climate Change Committee Accelerated Electrification April 2019, He Pou a Rangi Climate Change Commission, 2021 Draft Advice for Consultation January 2021

- The time, complexity and cost of consenting renewable projects under the current system is acting as a barrier to some renewable electricity projects and will not provide for the pace of development required to meet New Zealand's renewable electricity generation targets.
- The re-consenting process is overly complex, inconsistent and creates significant uncertainty and costs.
- Catch-all discretionary/non-complying activity rules do not reflect the variability of environmental effects for different types and scales of generation.

6. The Association also maintains that the current RMA consenting process is a major barrier to the development of community and other distributed renewable generation projects as it does not differentiate on the scale and complexity of projects.
7. Studies undertaken by the Parliamentary Commissioner for the Environment[26] confirm that large scale wind farms can only ever occupy a limited portion of a country's wind locations. Other locations with microclimates that have funnelling or hilltop attributes are very favourable for community wind projects.
8. Internationally, small-scale community-owned wind farms are a growing sector to utilise available wind resource and increase local energy independence while reducing carbon emissions. Denmark, Germany, Austria and the Netherlands have high levels of community ownership which have played a major role in the development of wind energy.
9. The current consenting process favours large-scale developments where the high cost of consenting has a relatively lower overall impact on commercial viability and generally is in the range of between $25k and $50k per MW. For small developments consenting costs can be significantly higher. As an example, it has been estimated the consenting cost of wind turbines on Stewart Island would be in the order of $0.5m to $1.0m per MW[27].
10. The Association considers smaller scale wind projects a key opportunity to support regional growth and improve energy resilience. Resource management reform to simplify and reduce the cost and uncertainty of obtaining a consent is a necessary prerequisite to enabling such developments.

[26] PCE Report Wind Power, People and Place (2006b) Parliamentary Commissioner for the Environment, PCE Report (2006a) Get smart, think small. Wellington Parliamentary Commissioner for the Environment.
[27] Roaring40s Wind Power presentation to the 2021 Wind energy Conference – Wind Development Potential including Small Scale opportunities May 2021.