Energy Resources Aotearoa
POWERING A BETTER NEW ZEALAND TOGETHER

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Ministry for the Environment (MfE)

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Submission on proposals to update some national directions

Introduction

1. Energy Resources Aotearoa is New Zealand's peak energy sector advocacy organisation. We represent participants from across the energy system, providing a strategic sector perspective on energy issues and their adjacent portfolios. We enable constructive collaboration to bring coherence across the energy sector through and beyond New Zealand's journey to net-zero carbon emissions by 2050.

2. This document constitutes our submission on the first packages of proposals to update some of the national directions. We have focussed on elements of the proposals of relevance to the energy sector. These are mostly in the first package on 'Infrastructure and development', particularly the new *National Policy Statements (NPS) for Infrastructure* and *Natural hazards* and amendments to existing instruments related to renewable electricity generation and transmission.

3. The 'Primary sector' package also covers some matters of interest, particularly in relation to forestry.

4. We have not provided any feedback on the 'Freshwater' package and do not intend to submit on the final 'Going for Housing Growth' package.

5. Our submission does not address the questions as they are put in the discussion documents. If you would like a follow-up conversation on the discussion questions that could be arranged.

Key messages

6. Energy Resources Aotearoa's key messages for officials are:

   a the primary purpose of the RMA is to manage effects and a key tenet of the Government's resource management reform package is to uphold property rights. These fundamental objectives are not reflected in these proposals to the extent that we would expect;

   b singling out parts of the complex and interconnected energy system, particularly on the basis of fuel type, risks differential and inconsistent treatment that can have adverse, and even perverse, outcomes. The national direction framework as reflected in these proposals does just that by having separate NPS for renewable electricity generation and transmission and another covering the remaining energy infrastructure;

   c a systems-based and fuel agnostic approach to managing energy infrastructure should be taken with a single *NPS for Infrastructure*. Specific NPS and National Environmental Standards (NES) could hang off this to deal with areas that require particular attention and to address activity specific technical details; and

   d a range of further adjustments will need to be made to the NPS as they are proposed including better aligning those relevant to energy infrastructure and ensuring that key pieces of it are covered, particularly generation facilities for energy other than electricity. Our preference would be for these changes to be made alongside the new approach proposed above but, for the sake of addressing pressing issues expeditiously, it could be done within the proposed framework.

Summary

7. We agree with the need for a fundamental overhaul of the Resource Management Act 1991 (RMA), which is long overdue, and the direction of travel that this is taking so far. We also agree with progressing these changes to national directions now, *so long as they are consistent with the overall objectives of the reform package*.

8. It is important, if the new reform package is to retain a focus on the management of any adverse effects of activities on the environment, then the structure of any supporting policy documents should be framed by this consideration;

9. We support the development of the *NPS for Instructure* and its objectives. However, the rationale as to what it does (or does not) cover is unclear and ambiguous. As currently drafted, it covers energy infrastructure, *but not* renewable electricity generation or transmission, which have separate instruments. Why these particular boundaries have been drawn is unclear.

10. From a principled perspective, the *NPS for Instructure* should be given primacy for *all infrastructure*, including all forms of energy generation, transmission and distribution to signal the importance of all of these forms of infrastructure to New Zealand's future prosperity and economic growth. Each could be given dedicated sections within the new *NPS for Instructure*.

11. The approach embodied in the current formulation *is not* activity or effects agnostic. This approach risks preferencing renewable energy and particular parts of the energy system to the detriment of other parts of what is an interconnected system. For example, it is not clear why renewable electricity generation is privileged over thermal electricity generation, or electricity transmission is privileged over gas transmission (or electricity distribution, for that matter) given the commonality of their attributes.

12. Specific classes of infrastructure could be spun out of the *NPS for Infrastructure* to have their own policy statements to reflect their priority but, on a matter of principle, these should only be done in a way that recognises and acknowledges the interconnectedness and dependencies across the energy system, and the risks associated with taking a reductionist view[1] of what is a complex operating system. Making an arbitrary distinction between fossil fuel-related and renewable infrastructure is a case in point. An NES could be added to address activity specific technical details.

13. On this basis, instruments for all forms of electricity generation, and electricity and gas transmission and distribution could be warranted. These would be fuel agnostic, effects-based, and sufficiently flexible to accommodate the changing needs of the market and investors. These could be 'docked' back into the *NPS for Infrastructure* when the reasons for their special treatment diminish.

14. If the technology and fuel biased NPSs in addition to an infrastructure NPS are retained, much needed infrastructure related to thermal generation, such as the building of gas fired peaking plants, should have some prominence and visibility in the *NPS for Infrastructure* when it is formally drafted. The definitions used for infrastructure need to be expanded to ensure gaps are not left (e.g. account for facilities to produce renewable gas such as biomethane). The relevant NPS need to be better aligned and other technology or fuel related NPSs may also be appropriate to reflect this Government's strategic priorities.

15. This is not to undermine our principled approach but simply a pragmatic and expeditious means to address long outstanding issues with the existing NPS in the quickest means possible. If possible, our preference remains to make these changes alongside the new approach to the national direction outlined above but

[1] 'Reductionism' is the practice of analysing and describing a complex phenomenon (in this case the energy system) in terms of its simple or fundamental constituents, especially when this is said to provide a sufficient explanation.

we recognise the urgent need to make positive changes if the more fundamental changes cannot to be implemented quickly now.

16. We have concerns about the implications of the new *NPS for Natural Hazards* and changes to the *NPS for Highly Productive Land* in relation to property rights. In our view, the first could erode property rights, and the second clearly already does. This is not consistent with the overall tenet of the reform package to uphold property rights. The *NPS for Natural Hazards* should also *not* be extended to all infrastructure as commercial providers are best placed to assess these risks.

17. We support the changes to the *National Environmental Standard for Commercial Forestry*, so long as they facilitate a competitive market for slash. The new rules should not be overly prescriptive or prejudice domestic operators.

Submission

Our views on reforming the resource management regime

18. We welcome the much needed and long overdue 'new' planning legislation to replace the RMA. In acknowledgement that the legislative processes will take time and there is an urgent need for reform, we also support the Government's approach to make changes to the national directions now.

19. We agree with the aims of the new legislation to improve the quality and speed of decision-making and reduce unnecessary barriers and red tape. Greater standardisation and national consistency, including more nationally set standards, should improve efficiency. A focus on the protection and enjoyment of existing property rights, allowing rights holders to do more, is also critical. All this should streamline consenting and help to give investors the confidence they need to invest in our natural resources, including petroleum.

20. In the meantime, it is necessary and consistent with good regulatory practice to ensure that the national directions be kept up to date and remain fit for purpose. These directions set national-level resource management policies and rules and are a crucial for the development and implementation of regional and local plans. They include National Policy Statements (NPS), National Environmental Standards (NES) and national planning standards. There have been longstanding issues with many of them in relation to the petroleum and mining industries.

21. We also support the initiative of targeted changes to national direction instruments (12 in total) and introducing four new ones to facilitate development and infrastructure projects. The overarching goals of unlocking development capacity and enabling high-quality infrastructure delivery, while managing environment impacts, are laudable. As noted in the newly released *Draft National Infrastructure Plan*, while New Zealand is in the top 10 per cent of the OECD for investment in infrastructure over the last decade (spending 5.8 per cent of GDP), the quality of what we get for it is comparably low. We are in the bottom 10 per

cent when it comes to getting 'bang for buck' for our spending, so there is ample room for improvement.

22. The current resource management system and national directions have not been adequately facilitating major infrastructure and development projects, and the problems have been getting worse over time. The consenting processes for these projects have been pedestrian at times and many have been rejected or had oppressive conditions placed on them, all of which increases costs. The grounds for rejection often focus on managing adverse effects such as regional environmental impacts and do not sufficiently recognise the national social and economic benefits of the projects.

23. These problems have played out time and time again with major energy projects, including those for renewable energy such as wind and solar farms. Research by the Infrastructure Commission has shown that New Zealand is likely to miss the 2050 emissions targets from the energy and transport sectors by 11-15 per cent *due to consenting delays* (even under optimistic scenarios with unconstrained consenting resources). [2] Much of our existing energy infrastructure was built with support from government, including the gas transmission system in the North Island. In our view, it would be nearly impossible for anything on this scale to be developed by any party in today's policy environment, at least not without huge costs and significant delays.

24. The Government needs to have in mind the overall objectives of the wider reform package, particularly the primacy of property rights, in making these changes. We are concerned that some of the proposals of relevance to the energy sector, which this submission focuses on, may in fact erode those rights.

Purpose of resource management legislation in New Zealand is being lost

25. We are concerned that the objectives of resource management legislation in New Zealand are expanding into matters for which it was never intended. The stated purpose of the Resource Management Act 1991 is to "promote the sustainable management of the natural physical resources", primarily by managing the "adverse effects of activities on the environment."[3] It was supposed to be an enabling regime to allow economic players to invest, subject to the effects of the activities they were undertaking. It was never intended to be a tool to favour any particular means of delivery or a means for advancing Government objectives, such as increasing renewable energy generation.

26. Over time, however, the legislative regime has increasingly been amended to be used for political objectives, as evidenced by the special treatment given to some issues (such as climate change) or technologies (such as coal-fired boilers). Our expectation is that the emphasis on property rights will refocus the new regime

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2 See https://tewaihanga.govt.nz/our-work/research-insights/infrastructure-consenting-for-climate-targets.

3 See section 5 at https://www.legislation.govt.nz/act/public/1991/0069/latest/DLM231905.html.

back on to effects and, in light of this understanding, believe that the instruments being consulted on should be drafted with this objective in mind.

Package 1: Infrastructure and development

27. The first package, on 'Infrastructure and development' is directly related to the energy system and its nationally critical infrastructure. It includes new *NPS for Infrastructure* and *Natural Hazards* and amendments to existing instruments related to renewable electricity generation and transmission.

New NPS for Infrastructure and changes to NPSs on Renewable Electricity Generation and Electricity Transmission

28. The new *NPS for Infrastructure* does not treat all aspects of the energy system and its infrastructure equally. It starts out by noting it covers energy, but not renewable electricity generation and transmission, which are covered by separate NPSs. The resource management framework for developing and maintaining energy infrastructure is therefore not putting all types of infrastructure, let alone energy sources, on an equal footing.

29. The basis of these boundaries are unclear and opaque. Where, for example, might LNG infrastructure sit in the proposed framework, in light of the growing recognition of its importance to New Zealand's energy security? Indeed there appears to be no legislative imperative or rationale for some infrastructure to be addressed under the *NPS for Infrastructure* with other forms of infrastructure being set out under their own NPS. No greater legal status seems to be attached to the separate NPSs and splitting them out in this way could lead to inconsistent treatment of infrastructure projects even at the same site, particularly if the NPS are not aligned. For example, the Huntly Power Station, critical for the country's energy security, has a portfolio that includes coal, gas, biomass, battery storage and potentially new peaking capacity. Maintaining its existing capacity and adapting or building new capacity (requiring new consents and reconsenting) will fall under either the new *NPS for Infrastructure* or the amended *NPS on Renewable Electricity Generation (NPS REG),* depending on the fuel or technology related to the project.

30. As a matter of principle, we consider that unless some legal hierarchy between NPSs can be clearly enunciated, ideally all infrastructure should be addressed under the single *NPS for Infrastructure*. To do otherwise would not only imply a hierarchy but would also imply a shift away from the focus on the management of any adverse effects of activities on the environment, towards a focus on the predetermined desirability of certain fuels and/or technologies as determined by policy makers rather than investors. This seems to be contradictory with what we understand to be the goals of the next phase of RMA reform.

31. This reductionist approach is a serious misstep, especially in light of the interconnectedness and complexity of the electricity market (and the gas

market). New Zealand's electricity system is already one of the most renewable in the world, with around 88 per cent of our generation needs met by renewable energy sources. In 2023, natural gas provided 9 per cent of our generation, and coal 2 per cent. The renewable component of our world-class electricity system is only set to increase as we develop our abundant renewable energy resources.

32. While our reliance on fossil fuels will possibly diminish over time, as it stands, natural gas will continue to play a vital role in the security of our electricity system, providing crucial 'peaking' and 'firming' to back up other less reliable intermittent energy sources, such as wind and solar. Gas infrastructure, particularly the reticulation network in the North Island, is also critical for new and some renewable fuel sources such as LNG and biogas. With New Zealand looking to nearly double its electricity generation capacity over the next 30 years, natural gas will enable us to electrify our economy safely and securely.[4]

33. As outlined in our submission on the *Resource Management (Consenting and Other System Changes) Amendment Bill*, all electricity generation projects sit within a wider, complex system. Other jurisdictions are struggling with similar challenges integrating a higher proportion of renewables into their electrical systems. Grid operators are having to reassess their approach to integrating intermittent renewables into the network.[5]

34. In the United Kingdom (UK) alone, there are reports of over 200,000 applications for renewable energy projects currently backlogged, with some solar projects facing wait times of up to 15 years for grid connection. The UK's electricity regulator, the Office of Gas and Electricity Markets ('OFGEM'), estimates this is about 120GW of renewable power projects that have connection dates extending to 2030 or beyond.[6]

35. The examples above highlight the difficulty of integrating increasing amounts of intermittent generation into electrical grids. *A shortened, more predictable consenting path for both renewable generation project, and firming solutions are therefore an important part of solving this puzzle*. Without consideration given to predictable, dispatchable generation sources, it is entirely possible these same projects will experience delays in connecting to the grid, as the resource consents for intermittent renewables outrun the capacity of the system operator to manage and ensure the stability of the national grid. A whole of system approach needs to be considered. It is important to evaluate each project on its merits

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4 See: https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/energy-statistics-and-modelling/energy-modelling/electricity-demand-and-generation-scenarios.

5 See https://www.mckinsey.com/industries/electric-power-and-natural-gas/our-insights/how-grid-operators-canintegrate-the-coming-wave-of-renewable-energy for a discussion of these challenges.

6 See https://www.environmentenergyleader.com/stories/streamlining-renewable-energy-connections-toovercome-grid-challenges-in-the-uk,45063.

using the same criteria. This includes non-renewable firming solutions, such as gas-fired peakers and renewable options like long-duration energy storage[7].

36. Matters of specific priority might warrant being addressed through individual NPSs separate to the underlying *NPS for Infrastructure.* In addition, separate NES could be used to address the activity-specific technical details. Specific classes of infrastructure could be spun out of the *NPS for Infrastructure* to have their own policy statements to reflect their priority, but on a matter of principle, these should only be done in a way that recognises and acknowledges the interconnectedness and dependencies across the energy system, and the risks of not doing so (some of which we are already observing).

37. Making an arbitrary distinction between fossil fuel-related and renewable infrastructure is a case-in-point. The discussion on the changes to the *NPS REG* needs to be assessed in this context. These include decision-makers not recognising the significance and benefits of renewable electricity energy generation and increasing uncertainty and consenting costs and complexity that can discourage investment. All these problems apply equally to natural gas and other thermal generation projects, as well as maintenance of existing infrastructure. These problems need to be addressed for all projects and could be used as the rationale for establishing any specific NPS.

38. Consistent with the intent of the RMA, the framework for developing and maintaining our energy infrastructure needs to be agnostic of energy source. Improvement should apply not just for matters involving renewable electricity generation (and transmission), but also for other renewable and thermal energy projects. If it does not do this, it is clearly 'picking winners' and distorting the energy market in doing so. This disrupts the optimal functioning of the market leading to inefficient resource allocations that can hinder competition and ultimately, increase energy prices. The regulatory framework for resource management should stay firmly focused on its primary purpose of managing the effects of any activity.

39. The *NPS for Instructure* should be given primacy for all forms of energy generation and distribution. The other NPSs for renewable electricity generation and transmission could be folded back into it and given separate sections and activity specific NES developed. If separate instruments were used, NPS for all forms of electricity generation, and electricity and gas transmission and distribution, could be warranted. These would be fuel agnostic, effects-based, and sufficiently flexible to accommodate the changing needs of the market and investors. These could be 'docked' back into the *NPS for Infrastructure* when the reasons for their special treatment diminish, with other issues effectively being 'pulled-out' into a separate NPS should that be warranted.

[7] See Highview Power's website for more information about this technology at https://highviewpower.com/.

40. We acknowledge that restructuring the national directions (as suggested above) might take more work, further consultation and expanded timeframes. In the interests of making some changes expeditiously to address pressing problems for energy infrastructure maintenance and development, these more fundamental changes could be left for later in the reform process. Our preference remains to make these changes alongside the proposed new approach to the national direction outlined above. Should the decision be taken to retain technology and fuel biased NPSs in addition to an infrastructure NPS, at least for now, we have several proposals.

41. Some general adjustments will need to be made to the proposed NPS. We consider that the much-needed infrastructure related to thermal generation, such as the building of new gas fired peaking plants, should have some prominence and visibility in the *NPS for Infrastructure* when it is formally drafted (e.g. a separate section). The *NPS for Infrastructure* and the *NPS REG* need to be better aligned to ensure consistent policy approaches and weighting in decision-making (for example to ensure the flexibility to use both biomass and non-renewable fuels at Huntly). Ideally the 'effects management hierarchy' adopted in other NPS (e.g. Indigenous Biodiversity) would be endorsed into all the infrastructure related NPS as well. We understand that this will be addressed in the next phase of work, but it would be preferable for it to be incorporated into this package.

42. The definition of 'infrastructure' used in the RMA or the list of 'Additional infrastructure' proposed in this package also needs to be expanded to ensure that key missing pieces of energy infrastructure are explicitly covered. These definitional issues expose gaps in the coverage of the NPS and further highlight the problems associated with not having a single NPS covering all energy infrastructure. The specific examples are:

    a energy storage systems (ESS), including grid scale batteries and long-duration energy storage. These are covered in the *NPS REG* when associated with a renewable electricity energy generation project, but not as standalone infrastructure;

    b energy (other than electricity) generation facilities likely to be connected to the transmission or distribution networks, such as those for manufactured gas (e.g. for biomethane); and

    c infrastructure associated with the importation and distribution of LNG (as noted above);

43. Finally, we would propose a new petroleum NPS in addition to all the other energy related policy statements. The arguments for such an NPS are:

    a the critical importance that natural gas plays in not only delivering energy security, but also the environmental gains from:

i. helping reduce the amount of coal used in the electricity market;

ii. underpinning the growth of renewable sources of electricity generation; and

iii. placing downward pressure on energy prices and unlocking the electrification of our transport fleet; and

b the high priority that the Government places on the sector, as evidenced by its pro-petroleum policy programme.

NPS for Natural Hazards

44. The new *NPS for Natural Hazards* aims to support a consistent approach to natural hazard management when local authorities make planning and consenting decisions. It would introduce a framework emphasising proportionate risk management based on measurable data. It will apply directly to all new subdivision use and development, but primary production and infrastructure are excluded from its scope. The sector therefore has limited direct interests in the content of the new NPS, but we do have some concerns about the implications of it in terms of property rights.

45. Property rights are at the core of an economy and are the basis for an exchange between willing buyers and sellers. For centuries, property rights have protected ordinary people against governments taking homes, liberties and titles. Property owners, including businesses, must have relative security in their property rights, with the right to use their property in the manner they choose (while respecting the rights of others). By upholding property rights, living standards have increased overall and there has been a growing demand for tradable goods and services.

46. Investors also need to have the confidence that any assets they purchase or improve upon will be safe from confiscation and unreasonable restrictions, or alternatively that they will be compensated for any erosion of their property rights. If not, they will have little incentive to invest.

47. The untold truth of the 2018 ban on offshore gas exploration is that it did not leave existing permits unaffected – in reality, the ban led to investor flight and severely damaged investor confidence. Only nine of the 25 investors active in 2018 remain. Permits were handed back, and no investment was possible in new field exploration after that date. Due to the lack of respect for those private property rights New Zealand has faced seven and a half years of being an uncertain place to invest and is now swinging from energy crisis to energy crisis.

48. We support the goals of the new NPS, particularly if it achieves a more consistent national approach to risk, but have some concerns about how it might impact on

property rights. In particular, the proposed approach could put a greater focus on hazard risk assessments and may place the onus and associated costs on applicants to convince decision makers that appropriate mitigation options are available for their planned project and land use. We would be concerned if this unduly limits the ability of property owners to make use of their land and rights. This would also not be consistent with the overall tenet of the reform package to uphold property rights.

49. We agree that the management of natural hazards should be excluded from the scope of this NPS. In our view, the approach suggested is not fit for purpose for major infrastructure projects. Commercial infrastructure providers have comprehensive risk management procedures and sector specific expertise and experience. They are best placed to assess risks and make decisions about natural hazards.

50. The discussion document suggests that this NPS could be extended in the future. This creates uncertainty for infrastructure providers if the NPS may be applied in some form in the future. Any indication of wider application of the NPS should be removed.

Package 2: Primary Sector

National Environmental Standard for Commercial Forestry

51. NES specify technical and non-technical standards, methods, or other requirements for activities affecting the environment, such as land use, water use, discharges, and noise. The proposed amendments to the *NES for Commercial Forestry* seek to enhance regulatory clarity and efficiency while addressing current inefficiencies in forestry management. Several of these address slash, with a multiple win-win benefit.

52. Forestry slash will be critical to the development of woody bioenergy sector. Products from slash could include biochar, coal alternatives, biogases, and sustainable aviation fuels. We would support changes that help to facilitate an efficient market for slash to support the growth of that sector. We would not, however, want to see overly prescriptive requirements put in place that unduly restrict that market or prejudice our domestic producers. The proposals seem to recognise these risks by noting that slash management regulations should be considered alongside international standards and criteria to remain competitive.

NPS for Highly Productive Land

53. We see a similar risk in the erosion of property rights in relation to the *NPS for Highly Productive Land*. This aims to protect land for primary production while addressing urban development needs. The proposed amendments would remove restrictions on some categories of Land Use Capability (LUC) land to

facilitate housing development but would still allow for the establishment of Special Agricultural Areas (SAAs) to protect key food production regions.

54. The regulation of highly productive land is not based on external effects on the environment, but rather on a regulator's and other stakeholders' views that land is better used for one purpose over another. There is arguably no legitimate basis for the whole NPS.

55. We also note with approval that the removal of LUC 3 land from this NPS should help support the development of new generation, but particularly REG, which often requires new infrastructure on this category of land.

Conclusion

56. The Government needs to remind itself of the objectives and the purpose of the resource management regime, which is to manage effects, not to tell property owners and investors how to use their land, labour or capital. Such choices are best left to project proponents, not bureaucrats, be it either central or local government, subject to an assessment of 'quiet enjoyment' and environmental effects. Screwing the investment scrum inevitably acts as a drag on optimal investment flows and innovation and leads to adverse outcomes, impacting all New Zealanders.

57. Ideally the framework for national directions should be changed to give the *NPS for Infrastructure* primacy. If separate instruments were used, NPS for all forms of electricity generation, and electricity and gas transmission and distribution could be warranted. These should be fuel agnostic, effects-based, and sufficiently flexible to accommodate the changing needs of the market and investors. They could be pulled out and then drawn back into the primary NPS as priorities change. NES could be developed for activity specific technical details.

58. Should a decision be taken to retain technology and fuel biased NPSs in addition to an infrastructure NPS, we suggest a range of changes to these NPS as an interim measure. Infrastructure related to thermal generation should be given prominence and visibility in the *NPS for Infrastructure* when it is formally drafted (e.g. a separate section). The relevant NPS will need to be better aligned and the definitions need to be expanded to cover gaps. Our preference would still be to make the necessary changes alongside the proposed new approach to the national direction.