

**BEFORE THE HEARING COMMISSIONERS**

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**UNDER** The Resource Management Act 1991

**AND**

**IN THE MATTER** of the Proposed Otago Regional Policy Statement  
2021

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**ORC SUBMISSIONS FOR HEARING  
AIR – Air Chapter**

Dated 10 February 2023

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**ORC SUBMISSIONS FOR HEARING  
AIR – Air Chapter**

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**May it Please the Commissioners:**

**Introduction**

- 1 It is an ORC function to control discharges of contaminants into air.<sup>1</sup>
- 2 The Air Chapter provides regional level policy direction on air quality.
- 3 The chapter provisions have two purposes:
  - 3.1 To achieve good ambient air quality (including by implementing the National Environmental Standards for Air Quality<sup>2</sup> (“NESAQ”)).
  - 3.2 To manage nuisance (ie objectionable, noxious etc) effects of discharges to air.
- 4 These two purposes reflect in the two objectives in the chapter.
- 5 Broadly, one objective is about good ambient air quality, and the other is about specific discharges causing nuisance effects.
- 6 The two aspects are interrelated, and there is overlap.
- 7 What I wish to highlight though is that while interrelated there are two separate purposes, and the chapter provisions need to be viewed through that lens.
- 8 The two objectives do seek to achieve different objects, and the chapter provisions need to be read with that in mind.

**The NESAQ**

- 9 The NESAQ are regulations under the Resource Management Act 1991 (“the Act”) and accordingly the ORC must prepare its Regional Policy Statement in accordance with the NESAQ<sup>3</sup>, among other things.
- 10 The NESAQ is prescriptive. In the PORPS there are necessary references to the NESAQ but not wholesale replication of provisions.

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<sup>1</sup> Section 30(f) of the Resource Management Act 1991

<sup>2</sup> Resource Management (National Environmental Standards for Air Quality) Regulations 2004

<sup>3</sup> Section 61(1)(e) of the Act.

- 11 A very brief summary of the NESAQ is attached for context as Schedule One.

### **A framework to achieve good ambient air quality in Otago**

- 12 The Air Chapter provides this framework through the following provisions, all of which flow from Objective 1.
- 13 Policy 1 is to maintain existing ambient air quality where it is acceptable.
- 14 Policy 2 is to improve degraded air quality through plan provisions that set limits and timeframes for improving ambient air quality and by prioritising actions to reduce concentrations of small particulate matter in polluted airsheds.
- 15 Method 1 provides that ORC review airshed boundaries by 31 December 2022 with respect to development areas, weather patterns and geography, and where air quality is degraded.
- 16 Method 2 requires that by 31 December 2024 ORC prepare or amend regional plans to:
- 16.1 set limits for the purposes Policies 1 and 2 (1A);
  - 16.2 implement actions to reduce small particulate matter in polluted airsheds (3);
  - 16.3 mitigate adverse effects of discharges adjacent to polluted airsheds (4); and
  - 16.4 give effect to the Air Quality Strategy for Otago (5).
- 17 Method 3 requires territorial authorities to add provisions to district plans by 31 December 2029 to direct urban form in ways that assist to achieve good air quality by reducing reliance on non-electric private vehicles and managing the spatial distribution of activities.
- 18 Method 4 requires ORC to monitor and report on air quality.
- 19 Method 5 requires the ongoing use of other mechanisms and incentives to achieve air quality objectives.
- 20 Together, this provides a coherent framework to achieve the overarching objective, without being prescriptive.

21 Importantly these provisions are all about ambient air quality and must be considered in that context.

### **A framework to manage the effects of specific discharges**

22 The balance of the Air Chapter is directed towards the nuisance effects of specific discharges.

23 A framework is provided for this all flowing from Objective 2.

24 Objective 2 requires protection of certain values. The following policies define that protection.

25 Of note, Policy 3 is to allow discharges to air that do not cause adverse effects on human health, amenity values, mana whenua values and the life supporting capacity of ecosystems. This is important because generally<sup>4</sup> discharges of contaminants to air are not permitted unless allowed by a rule in a plan or under other instruments.

26 Policy 4 is to avoid discharges to air that cause noxious or dangerous effects, and to avoid as the first priority, discharges that cause offensive or objectionable effects. On policy 4:

26.1 I understand the wording of avoidance ‘as the first priority’ has been criticised. These words operate as a qualifier and signal a lower threshold than pure avoidance (but requiring of more than ‘avoid, remedy or mitigate’ in that avoid is emphasised). Use of this wording without specific provisions spelling out how this is done leaves this level of detail for plan makers.

26.2 The use of the words “offensive or objectionable” has been criticised as overly subjective. But FIDOL (frequency, intensity, duration, offensiveness, location) assessments have been undertaken routinely to objectively assess nuisance discharges for many years in New Zealand. A plan provision that provided for subjective assessment by the receiver of any such nuisance would not be upheld.

26.3 Policy 4 does not replicate the NESAQ as suggested at paragraph 6.5 of Mr Frentz. NESAQ is directed towards ambient air quality.

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<sup>4</sup> Section 15 of the Act.

Policy 4 is directed towards the nuisance effects of specific discharges.

- 27 Policy 5 provides that the adverse effects of some discharges beyond site boundaries (for example primary production activities) are to be managed. There is an obvious interplay between policies 4 and 5, in that policy 4 will inform how management occurs under policy 5. That is the only way to read the two provisions together and give both meaning.
- 28 Policy 6 requires avoidance of discharges having adverse effects on mana whenua values.
- 29 Method 2 requires that by 31 December 2024 ORC prepare or amend regional plans to:
- 29.1 avoid discharges to air that cause noxious or dangerous effects, and to avoid as the first priority, discharges that cause offensive or objectionable effects (1);
  - 29.2 mitigate adverse effects of discharges beyond the boundary of origin (2);
  - 29.3 include measures to avoid adverse effects of air discharges on mana whenua values (6).
- 30 As with the first objective, the framework is not prescriptive, and each provision needs to be read in context of its purpose of managing the nuisance effects of specific discharges.

## **Conclusion**

- 31 The key points that these submissions seek to illustrate are:
- 31.1 The Air Chapter breaks down into two parts:
    - 31.1.1 achieving good ambient air quality; and
    - 31.1.2 managing nuisance effects from specific discharges.
  - 31.2 The policies and methods in the chapter need to be read in context of their respective objectives.
- 32 The ORC calls the Section 42A Report writer, Ms Hannah Goslin.

Dated this 10th day of February 2023



**Simon Anderson**  
Otago Regional Council

## **Schedule One – NESAQ – A very brief summary**

- 1 The NESAQ contains prohibitions and restrictions on discharges from certain activities including fires at landfills, burning of tyres, burning of bitumen, burning of coated wire, burning of oil and use of high temperature hazardous waste incinerators. It requires resource consents for incinerators at schools and healthcare institutions.
- 2 It sets ambient air quality standards for some specific contaminants. These standards must be achieved in airsheds. The contaminants are carbon monoxide, nitrogen dioxide, ozone, PM10 and sulphur dioxide.
- 3 Airsheds are either the entire region or part of a region specified by a gazette notice. There are 22 gazetted airsheds comprising Otago's main urban areas. The 23rd airshed is the balance of the region. The airsheds are mapped in Schedule 2 of the Regional Plan: Air for Otago.
- 4 Under the Air Plan the airsheds are collected into three Air Zones. Air Zone 1 is Alexandra, Arrowtown, Clyde and Cromwell which are now historically the airsheds most at risk of pollution. Air Zone 2 includes Balclutha, Dunedin, Milton, Mosgiel, Queenstown and Wanaka. Air Zone 3 is the balance of the region.
- 5 The ambient air quality standards described by the NESAQ and the airshed regime is intended to protect public health, principally from domestic and industrial discharges.
- 6 The other provisions of the NESAQ relating to resource consent discharges for PM10, and the use of wood burners and domestic open fires are directed to the same end. Resource consents are likewise required for discharges of carbon monoxide, oxides of nitrogen and volatile organic compounds. There can be an overlap with the control of nuisance discharges. For example, PM10 which is essentially unburnt matter is both adverse to health and can have nuisance effects.