

BEFORE THE HEARINGS COMMISSIONERS

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of the Proposed Otago Regional Policy Statement
2021 ("PORPS") (Non-Freshwater Parts)

**MEMORANDUM FOR THE OTAGO REGIONAL COUNCIL ON IMPLICATIONS
OF THE NATIONAL POLICY STATEMENT FOR GREENHOUSE GAS
EMISSIONS FROM INDUSTRIAL PROCESS HEAT 2023**

Dated 16 August 2023

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MEMORANDUM OF COUNSEL FOR THE OTAGO REGIONAL COUNCIL

May it please the Panel:

Introduction

1. The National Policy Statement for Greenhouse Gas Emissions from Industrial Process Heat (“NPS”) was notified in the New Zealand Gazette on 29 June 2023 and came into force on 27 July 2023.
2. On 26 June 2023 the Resource Management (National Environmental Standards for Greenhouse Gas Emissions from Industrial Process Heat) Regulations 2023 (“NES”) were made. The regulations came into force on 27 July 2023. The regulations accompany, and, in part, give effect to the NPS.
3. Otago Regional Council (“ORC”) has considered the implications of these developments.
4. This memorandum reports on its position.

Jurisdiction

5. A Regional Policy Statement must give effect to a National Policy Statement.¹
6. A Regional Policy Statement must also be prepared in accordance with any National Policy Statement and any regulations.²
7. Once a policy statement is notified, the ability to amend it is limited to the submissions received.
8. Consequently, the new NPS and NES can only be taken into account to the extent that to do so is within the scope of submissions made on the notified RPS.

NPS

9. The NPS is attached: Appendix I.

¹ Section 62(3) RMA.

² Section 61(1)(da) and (e).

10. Its objective is to reduce emissions of greenhouse gases by managing the discharges to air of greenhouse gases from the production of industrial process heat.
11. Policy 1 states requirements to reduce or eliminate discharges into the air of greenhouse gases from heat devices.
12. Policy 2 requires regional councils to consider the cumulative effects of discharges of greenhouse gases when considering resource consent applications for discharges from heat devices. This policy is given effect to by the insertion, without using Schedule I of the RMA of a policy in relevant regional plans pursuant to clause 3.2 of the NPS.
13. Policy 3 requires holders of resource consents for discharges to air of greenhouse gases from heat devices to update relevant emissions plans to reflect technological developments and best practice. Policy 3 is given effect to by a mandatory policy to be inserted in relevant regional plans, without using Schedule I RMA, pursuant to clause 3.3 of the NPS.
14. Clause 3.4 of the NPS requires regional councils to provide specified information to the Minister for the Environment upon request.
15. It is only policy 1 which might affect the proposed Regional Policy Statement.
16. The provisions which might be affected are in the Integrated Management, Air, and Energy, Infrastructure and Transport chapters.

Integrated Management

17. The integrated management chapter contains provisions relating to climate change.
18. The lead witness on that chapter, Felicity Boyd, has concluded that no changes are required to give effect to the new NPS.

Air

19. While the provisions of the air chapter might be amended to give effect to the new NPS, the Regional Council consider there is no jurisdiction to making any changes: there are no relevant submissions.

Energy, Infrastructure and Transport

20. The lead witness on this chapter, Marcus Langman, has considered the new NPS and its implications for this chapter.
21. In his opinion, policy EIT-EN-P5 can be amended to reflect policy 1 of the new NPS. There are submissions which provide sufficient jurisdiction. These are identified in Mr Langman's statement.
22. Mr Langman's statement is attached: Appendix II.

Process

23. The Regional Council suggests that this memorandum be drawn to the attention of all submitters and that they be given an opportunity to make submissions in response by 15 September 2023, with the Regional Council having a right of reply by 22 September 2023. This proposal aligns with the timeframe for submissions on the National Policy Statement for Indigenous Biodiversity.



A J Logan
Counsel for Otago Regional Council
Dated 16 August 2023