

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of Manawatu-Wanganui Regional Council's
Proposed One Plan

**MEMORANDUM OF COUNSEL ON BEHALF OF GENESIS ENERGY
ADDRESSING HEARING COMMITTEE QUESTIONS IN RELATION TO
GOVERNMENT POLICY DOCUMENTS**

(8 JULY 2008)

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MAY IT PLEASE THE HEARING COMMITTEE:

1. In response to questioning of Genesis Energy at the Overall Plan Hearing, Counsel addresses the status of the following documents for the purpose of the Committee's deliberations on the Proposed One Plan:
 - (a) The National Policy Statement on Electricity Transmission ("**Transmission NPS**").
 - (b) The New Zealand Energy Efficiency and Conservation Strategy ("**NEECS**").
 - (c) The New Zealand Emissions Trading Scheme Framework ("**NZ ETS Framework**").
 - (d) The New Zealand Energy Strategy ("**NZES**").

Transmission NPS

2. Under Section 67(3)(a) of the RMA, the regional plan must give effect to the Transmission NPS:¹

"67 Contents of Regional Plans

- (3) A regional plan must give effect to-
 - (a) any national policy statement; and..."

NEECS

3. Section 66(2)(c)(i) of the RMA states:²

"66 Matters to be considered by regional council

- (2) In addition to the requirements of section 67(3) and (4), when preparing or changing any regional plan, the regional council shall have regard to-
 - (c) Any-
 - (i) Management plans and strategies prepared under other Acts; and..."

4. The NEECS was prepared in accordance with section 10 of the Energy Efficiency and Conservation Act 2000.

NZ ETS Framework / NZES

5. There is no provision in the RMA which expressly includes 'non-statutory documents' as a mandatory or relevant consideration in decisions on a proposed regional policy statement or regional plan.

¹ A similar provision applies in respect of a regional policy statement - section 62(3).

² A similar provision applies in respect of a regional policy statement - section 61(2)(a)(i).

6. However, a statutory power will be construed as impliedly authorising everything which can fairly be regarded as incidental or consequential to the power itself.³
7. Moreover, there is no statutory bar on the matters that Council may or may not have regard to in preparing the Proposed One Plan. It is a matter of relevance and weight.
8. The Environment Court has had regard to or referred to documents which have not been prepared under a statute.
9. For example, in *St Lukes Group Limited v North Shore City Council*,⁴ the Environment Court considered the Auckland Regional Growth Strategy and its relevance to the North Shore City Council's Proposed District Plan, despite the fact that it was not a strategy expressly prepared under legislation. Relevant extracts include:
- "[62] We were impressed with the thorough appraisal advanced by Mr Parton in reference to the ARPS and the ARLTS, as well as the Auckland Regional Growth Strategy ("ARGS") developed through the body known as the Regional Growth Forum formed in 1996 and made up of ten representatives from the seven territorial local authorities in the wider region and the ARC. The ARLTS and the ARGS are not themselves statutory instruments under the RMA, but the former is a statutory document under the Land Transport Act 1988. It is therefore a relevant plan in terms of s.74(b)(i) of the RMA.
- [63] Reference was made to provisions bearing on strategic direction from the ARPS and traffic growth and transport strategy provisions from the ARLTS that are expressly supportive of the ARGS."
10. Similarly, the NEECS (as a 'statutory document') is expressly supportive of the NZ ETS Framework and NZES.⁵ Therefore, the NZ ETS Framework and NZES should be considered in relation to the NEECS.
11. Moreover, the NZ ETS Framework and the NZES are directly relevant to those provisions in the Proposed One Plan which address climate change and renewable energy (eg, Section 3.1 Scope and Background and Policy 3-4).

Summary

12. In summary:
- (a) The Proposed One Plan "must give effect to" the Transmission NPS;
 - (b) Council "shall have regard to" the NEECS in preparing the Proposed One Plan;

³ *A-G v Great Eastern Railway* (1880) 5 AC 473; *A-G v Smethwick Corporation* [1932] 1 Ch 563.

⁴ [2001] NZRMA 412.

⁵ For example, see page 68 of the NEECS which refers to the target of generating 90% of electricity from renewable energy by 2025 (see page 22 of the NZES) and the role of New Zealand's energy system in a low carbon economy (see pages 82-88 of the NZ ETS Framework).

- (c) Council may have regard to the NZ ETS Framework and the NZES.
13. These documents are all relevant to the purpose of the RMA and to the issues being considered in relation to the Proposed One Plan.

A handwritten signature in blue ink that reads "Paul F Majurey". The signature is written in a cursive style with a large, sweeping flourish at the end.

Paul F Majurey / T L Hovell
Counsel for Genesis Energy

(8 July 2008)

TO: Manawatu-Wanganui Regional Council