

BEFORE THE FRESHWATER HEARING PANEL OF GREATER WELLINGTON
REGIONAL COUNCIL

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF Proposed Plan Change 1 to the Regional Policy
Statement for the Wellington Region (Hearing Stream 4)

STATEMENT OF EVIDENCE BY CLAIRE HUNTER

15 SEPTEMBER 2023

INTRODUCTION

QUALIFICATIONS AND EXPERIENCE

- 1 My full name is Claire Elizabeth Hunter. I am a resource management consultant and Director of Mitchell Daysh Limited, a nation-wide resource management and environmental planning consultancy firm. I have over 18 years' experience in this field. I hold a first-class Honours degree in Environmental Management from the University of Otago. I am a member of the Resource Management Law Association and an Associate Member of the New Zealand Planning Institute.
- 2 As I have appeared before the Panel on previous occasions, I refer to my Appendix A of the Hearing Stream 2 Brief of Evidence which contained an outline of my professional experience. My firm has significant experience in the airport planning space, and my experience includes providing advice to both Queenstown Airport and Wellington Airport on both district and regional plan reviews, private plan changes, notices of requirements and resource consents.
- 3 I have assisted Wellington International Airport Limited (**WIAL**) with planning matters for more than a decade. I am therefore familiar with and have visited the Airport and the areas surrounding the Airport on numerous occasions.

CODE OF CONDUCT STATEMENT

- 4 While this is not an Environment Court hearing, I nonetheless confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. I agree to comply with the Code and I am satisfied that the matters which I address in my evidence are within my field of expertise. I am not aware of any material facts that I have omitted which might alter or detract from the opinions I express in my evidence.

SCOPE OF EVIDENCE

- 5 This statement of evidence relates to Hearing Stream 4 (Urban Development) for proposed Plan Change 1 (**PC1**) to the Regional Policy Statement for the Wellington Region (**RPS**).
- 6 In this statement of evidence, I will:
 - a. Provide my recommendations where I disagree with the position expressed in the section 42A report on the provisions that WIAL submitted on which are the subject of Hearing Stream 4; and
 - b. Explain my procedural concern about allocating some of these provisions to the Freshwater Planning Process (**FPP**). This is also addressed in legal submissions on behalf of WIAL.

NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT AND QUALIFYING MATTERS

- 7 In its submission, WIAL noted that the changes being made to the RPS as they relate to urban development are largely giving effect to the National Policy Statement on Urban Development (**NPSUD**). WIAL also sought as an overarching amendment to such provisions that in giving effect to the NPSUD appropriate recognition needs to be also given to the "qualifying matters" that are set out within it.
- 8 Under Clause 3.32 paragraph (1)(c) of the NPSUD, the term "qualifying matter" means *"any matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure."* Nationally significant infrastructure is then defined in Clause 1.4 of the NPSUD. It includes *"(h) any airport (but not its ancillary commercial activities) used for regular air transport services by aeroplanes capable of carrying more than 30 passengers"*. Wellington International Airport comfortably fits within the definition of nationally significant infrastructure.
- 9 In paragraph [97] of the section 42A report, the writer agrees that qualifying matters are an important consideration when enabling development capacity, but that they have not been included in PC1 because the direction from the NPSUD and MDRS concerning qualifying matters relates to district plans. I do not agree that the NPSUD limits the recognition and application of the qualifying matters to District Plans only. Policy 4 of the NPSUD for example, refers explicitly the development of regional policy statements and states:

Regional policy statements and district plans applying to tier 1 urban environments modify the relevant building height or density requirements under Policy 3 only to the extent necessary (as specified in subpart 6) to accommodate a qualifying matter in that area.

(emphasis added)

- 10 As district plans are required to give effect to the RPS¹, it would seem to me to be appropriate that the Wellington RPS should set out (at least at a high level) what the qualifying matters are as they are applicable within its region. This would assist in directing what the lower order plans need to be cognisant of in developing urban development related provisions.
- 11 Although the section 42A report writer disagrees that it is necessary to include reference to the qualifying matters in PC1, as they would *"risk conflicting with the NPSUD or the MDRS"*², they have suggested some amendments to strengthen protection of regionally significant infrastructure from reverse sensitivity effects. While I support the general intent of this, as I discuss further below, I note that the focus of

¹ Section 75(3) of the RMA

² Paragraph 97 of the section 42A report, page 26

the qualifying matters regarding nationally significant infrastructure is on preserving its safe and efficient operation. This is somewhat broader than reverse sensitivity type effects³.

OBJECTIVE 22

- 12 The Section 42A report states that the proposed Objective 22 seeks to articulate what contributes to well-functioning urban environments in the Wellington region's context. The section 42A report notes at paragraph [170] that the objective contains aspects of NPSUD Policy 1, where 'well-functioning urban environments' are defined as a minimum and adds other qualities and characteristics to an articulation of well-functioning urban environments in response to regionally significant issues. The report goes on to say at paragraphs [191] and [192] that:

"the regional form, design and function provisions must respond to [these] regional issues, as well as give effect to the NPSUD" and

"In my opinion Objective 22 must clearly set out all outcomes sought for regional form to support implementation of the chapter and contributing provision".

- 13 WIAL sought to include a new clause within this objective to recognise that in developing urban environments, it also appropriately protects regionally significant infrastructure and its ability to operate safely and effectively. As discussed above, this is necessary to give effect to the qualifying matters set out in the NPSUD and particularly in the Wellington context it is an important outcome for achieving an efficient and functioning urban form.
- 14 The section 42A report writer does not appear to address this submission request by WIAL directly, but later in the report at paragraphs [310] and [311], the writer notes that a number of infrastructure providers have sought greater recognition of regionally significant infrastructure and/or the protection of such activities from reverse sensitivity.
- 15 In response, the writer notes that the RPS already has Policy 8 and Policy 39 which protect RSI from "*incompatible new subdivision, use and development from occurring under, over, or adjacent to the infrastructure*". However, they agree that given the desire for integration and the concerns raised by submitters regarding recognition of RSI in well-functioning urban environments, protecting RSI is a useful consideration for urban development to contribute to achieving well-functioning urban areas⁴.

³ Where adjoining landowners may complain about the operation of such infrastructure to the extent that ultimately its operations are constrained or curtailed due to community complaints and concerns. The focus in the qualifying matters is on safety and efficiency.

⁴ Paragraphs 310 – 312 of the section 42A report, pages 80 - 81

- 16 To this end, the section 42A report recommends adding the following clause to new Policy UD.5.

'protecting the operation and safety of regionally significant infrastructure from potential reverse sensitivity effects'

- 17 While I support the proposed amendment to Policy UD.5 and consider this to be appropriate in seeking to give effect to the NPSUD, I am concerned that there is no link to an objective within the RPS in order to hang this amendment from. Policies 8 and 39 of the operative RPS sit under Objective 10 which is as follows:

The social, economic, cultural and environmental, benefits of regionally significant infrastructure are recognised and protected.

- 18 This objective only seeks to recognise and protect the benefits of regionally significant infrastructure and does not provide for its operational efficiency or safety. This appears to be a gap in the objectives of the RPS.

- 19 A new clause should therefore be added to Objective 22, as follows:

A compact, well designed, climate resilient, accessible, and environmentally responsive regional form with well-functioning urban areas and rural areas, where:

...

(i) It does not compromise the ability to operate nationally and regionally significant infrastructure safely and efficiently.

- 20 In my view, if the RPS seeks to enable urban development and intensification (i.e. housing) without constraint in certain locations or near existing activities, this is not giving effect to the NPSUD which recognises that there should be limits on intensification, those limits being in the form of "qualifying matters". In the context of the Airport as nationally significant infrastructure, the qualifying matters seeking to preserve its operational efficiency and safety are directly relevant. In my view, it is necessary that these matters are set out in this objective, as there is currently nothing within the Operative RPS that specifically seeks to protect the operational efficiency and safety of infrastructure. It would be remiss of the Urban Development Chapter of the RPS to ignore that the Wellington International Airport sits within a very urban context and will, therefore be directly impacted by provisions seeking to allow urban development and intensification.

POLICY 55

- 21 WIAL submitted in partial opposition to Policy 55 of PC1, seeking an amendment to strength protection for regionally significant infrastructure by adding the following clause:

Avoids adverse reverse sensitivity effects on the operation and safety of regionally significant infrastructure.

- 22 The section 42A report writer does not agree that this amendment is necessary on the basis that the policy already refers to Policy 8, which seeks to protect RSI from incompatible activities. I agree that a link to Policy 8 is appropriate here, but note that similar to the proposed clause ix) (relating to mineral resources) it would be appropriate to draft this as follows:

viii) Protecting Regionally Significant Infrastructure from incompatible or inappropriate adjacent land uses, consistent with Policy 8.

POLICY UD.5

- 23 As mentioned above, Policy UD.5 is a new policy as a result of the section 42A report recommendations. At paragraph [288], the report writer states that the origins for this policy are in part a response to the submission of WIAL, who sought amendments to the chapeau of Objective 22 to make it clear that the infrastructure referred to is specifically the infrastructure associated with housing, and where WIAL also seeks the protection of the safety and operation of RSI to be included as an aspect of well-functioning urban environments in submissions on Policies 55 and UD.3.
- 24 I support the section 42A report addition of Policy UD.5 and in particular clause (f) which seeks to protect the operation and safety of regionally significant infrastructure from potential reverse sensitivity effects. However, as I have discussed above, this support does not mean that I agree there should not be any reference to this matter in Objective 22.

PROCEDURAL MATTERS - FRESHWATER PLANNING PROCESS

- 25 WIAL's submission at [4.33] outlined its view that some PC1 provisions being progressed via the FPP pathway "*...are either not related to freshwater resources at all or relate to matters which may have some interaction or interplay with freshwater resources but are focused on outcomes that are much broader*".
- 26 The General Submissions s42A report prepared for the first PC1 hearing stream discusses at [99] to [109] Council's process in allocating provisions to either the FPP stream or the Standard Schedule 1 stream. At [103] of that General Submissions s42A report, the criteria Council used to allocate provisions to the FPP process are identified as follows:
- Whether the provision is directly related to the maintenance or enhancement of freshwater quality or quantity.
 - Whether the provision is directly related to matters that will impact on the quality and quantity of freshwater, including groundwater, lakes, rivers and wetlands.

- Whether the provision gives effect to the freshwater quality or quantity parts of the NPS-FM.
- 27 Relevant to this hearing stream and WIAL's submissions, Objective 22, Policy 55, Policy UD.2 and Policy UD.3 are all currently allocated to the FPP stream.
- 28 With respect to Objective 22, the section 42A report writer explains that the wording of clause (d) – now clause (e), links directly to the objective of the NPSFM (2.1) for the health and wellbeing of water bodies and freshwater ecosystems to be prioritised⁵, and it is appropriate for this reason to remain subject to the FPP.
- 29 Similarly, Policy 55 is included in the FPP because the policy integrates Te Mana o te Wai and protects indigenous ecosystems, including freshwater ecosystems, as part of achieving well-functioning urban environments. The section 42A report writer confirms that this provision should remain subject to the FPP as it forms part of the integrated implementation of the NPSFM particularly the relationship to urban development, by seeking that greenfield development is environmentally responsive⁶.
- 30 The focus of Objective 22 is to achieve a compact, well designed, climate-resilient, accessible and environmental responsive regional form with well-functioning urban areas and rural areas. The remainder of the objective addresses many factors, including development capacity, housing typologies, Māori culture, Te Mana o Te Wai, climate resilience, transportation, biophysical characteristics of the land, infrastructure, and others. It is apparent to me that this objective is not focused on water quality or quantity outcomes but is one of many considerations in designing and achieving a well-functioning regional form and urban environments. And while I accept that water management is a critical part of a well-functioning environment, this is not the sole focus of this objective, and I therefore do not agree that it should be subject to the FPP. I also note that this objective is seeking to give effect to parts of the NPSUD, so it is not ringfenced to giving effect to the NPSFM.
- 31 Policy 55 relates to urban development beyond the region's defined urban areas and seeks that it contributes to achieving a compact, well designed, climate resilient, accessible, and environmentally responsive regional form. From my review there is one explicit reference to "giving effect to Te Mana o te Wai" at clause 4 (v) [of the section 42A report version]. I accept that this relates to freshwater and the NPSFM. However, there are many limbs to this policy which are not directly related to or necessarily give effect to the NPSFM. For example, the clause which refers to indigenous ecosystems is arguably giving effect to the National Policy Statement of Indigenous Biodiversity (**NPSIB**)⁷ and the clauses relating to the urban development are giving effect to the

⁵ Page 15 of the section 42A report.

⁶ Page 18 of the Section 42A report.

⁷ Clause (4)(ii) of the Section 42A report version, page 16 Appendix 1

NPSUD⁸. Therefore, the application of this policy is broader than just freshwater and should proceed under the standard Schedule 1 process.

- 32 I also note that from my experience with the Otago Regional Council Proposed Regional Policy Statement, following the High Court proceedings, the Otago Regional Council ultimately ended up with a very narrow list of provisions being subject to the FPP. Notably the provisions which had a more integrated approach to land use planning and freshwater were not subject to the FPP⁹.
- 33 Policy UD.2 seeks to enable Māori to express their culture and traditions in land use and development by, as a minimum, providing for mana whenua / tangata whenua to express their relationship with their culture, land, water sites, wāhi tapu, and other taonga. While I accept that there is a connection with freshwater within this policy, it is broader than freshwater.
- 34 Policy UD.3 is focused on urban development and outcomes. It provides direction to local authorities with jurisdiction over part, or all, of an urban environment and relates to considering changes to district plans only. The explanatory text confirms that Policy UD.3 *outlines the criteria that need to be met for a development to be considered to provide 'significant development capacity' as required by Clause 3.8(3) of the National Policy Statement on Urban Development 2020.*
- 35 These issues are clearly directed toward territorial authorities and seeks to give effect to the NPSUD. Territorial authorities also have limited jurisdiction regarding the matters identified in the NPSFM. I therefore see limited connection between this policy, the NPSFM and freshwater and do not agree that it should be subject to the FPP.
- 36 I also note that the section 42A report identifies Policy UD.5 as qualifying for the FPP¹⁰. For the same reasons I have set out above, I do not agree that this provision is

⁸ See Clause (a) for example of the Section 42A report version, page 15 Appendix 1

⁹ For example LF-WAI-P3 – Integrated Management was excluded from the FPP process in Otago. It reads as follows:

Manage the use of fresh water and land in accordance with tikaka and kawa, using an integrated approach that:

- (1) *recognises and sustains the connections and interactions between water bodies (large and small, surface and ground, fresh and coastal, permanently flowing, intermittent and ephemeral),*
- (2) *sustains and, wherever possible, restores the connections and interactions between land and water, from the mountains to the sea,*
- (3) *sustains and, wherever possible, restores the habitats of mahika kai and indigenous species, including taoka species associated with the water body,*
- (4) *manages the effects of the use and development of land to maintain or enhance the health and well-being of fresh water and coastal water,*
- (5) *encourages the coordination and sequencing of regional or urban growth to ensure it is sustainable,*
- (6) *has regard to foreseeable climate change risks, and*
- (7) *has regard to cumulative effects and the need to apply a precautionary approach where there is limited available information or uncertainty about potential adverse effects.*

¹⁰ Page 23 of the Section 42A report.

focused only on achieving freshwater outcomes and should not be progressed via the FPP.

Claire Hunter

15 September 2023