

**Before an Independent Hearing Panel and Freshwater Hearing
Panel of Greater Wellington Regional Council**

Under the Resource Management Act 1991

In the matter of Proposed Plan Change 1 to the Greater Wellington Natural
Resources Plan

**SUMMARY OF LEGAL SUBMISSIONS ON BEHALF OF WELLINGTON
INTERNATIONAL AIRPORT LIMITED**

Hearing Stream 2

21 March 2025

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- 1.1** These legal submissions are filed on behalf of Wellington International Airport Limited (**WIAL**), a submitter and further submitter on Plan Change 1 (**PC1**) to the Greater Wellington Natural Resources Plan (**NRP**) - Hearing Stream 2.
- 1.2** WIAL's submission points for this hearing in the main relate to those NRP PC1 provisions which include the coastal environment/CMA and to which WIAL has opposed in part on the basis that they do not sufficiently recognise the operational and functional requirements of RSI including in particular the Wellington International Airport (**Airport**).
- 1.3** WIAL has filed evidence from:
- (a) Jo Lester, Planning Manager, WIAL;
 - (b) Kirsty O'Sullivan, Director and Resource Management Consultant, Mitchell Daysh Ltd.
- 1.4** Ms Lester's evidence sets out some background information about the Airport's important role in the Region both in social and economic terms which in turn means it is recognised as Regionally Significant Infrastructure (**RSI**) in the RPS and NRP. This evidence is intended to provide context for Ms O'Sullivan's evidence and for later hearing streams.
- 1.5** It should be clear from Ms Lester's evidence that the Airport's safe and efficient operations are dependant on long term planning and associated projects as well as urgent projects all of which are reliant on RMA provisions that are fit for purpose and appropriately cognisant of the Airport's role and status as RSI.
- 1.6** Obviously objectives and policies play an important role in terms of both the formulation of the associated rules to be heard in the later hearing streams and the assessment of future resource consents and notices of requirements. The importance of these types of provisions cannot be understated in these contexts and this interplay is particularly obvious in the *East West Link* decision of the Supreme Court which is discussed more detail below.

- 1.7** Ms O’Sullivan’s evidence sets out the main points of difference between her and the Section 42A report. She agrees with the S42 Report’s recommendations for the Policies WH. P1 and P2 and the reinstatement of Objective O2.
- 1.8** However she recommends further amendments to proposed Objectives WH.O1, WH.O2 and WH.O3 (**CMA Objectives**) that she considers more appropriately reflect the functional and operational requirements of RSI and the Airport as well as the importance of RSI in accordance with the relevant higher order documents.
- 1.9** I will not outline the relevant legal methodology for the consideration of a plan change in the context of a regional plan as I have read and agree with the legal submissions of the Council for Hearing Stream 1 which set this out.
- 1.10** These brief legal submissions focus on the proposed CMA Objectives which include the CMA as well as freshwater which in my submission do not properly recognise the role, statutory status and functional requirements of RSI and in addition essentially seek to treat coastal water in the same manner as freshwater which is inconsistent with the NZCPS.
- 1.11** These CMA Objectives in particular have the potential to detrimentally affect the future operation of the Airport particularly because of its location adjoining the coast and CMA at either end of the Airport’s runway.
- 1.12** The public notice for PC1 states that the provisions relating to the management of freshwater and coastal water implements the NPS FM and this is reflected in the S32 analysis. The s32 Analysis states that the CMA Objectives have been included because the NPS FM *“requires consideration of downstream coastal receiving environments that are impacted by freshwater catchments¹.”*
- 1.13** The s32 Report considers that the proposed CMA Objectives build on the operative NRP provisions and are consistent with the NZCPS directives, will further assist in giving

¹ Section 32A report Part C Section 3.1.4 paragraph 59.

effect to the NZCPS particularly in respect of enhancing deteriorated coastal water quality².

1.14 Clause 1.5 Application of the NPS FM provides as follows:

- (1) This National Policy Statement applies to all freshwater (including groundwater) and, to the extent they are affected by freshwater, to receiving environments (which may include estuaries and the wider coastal marine area).

1.15 Clause 3.5 Integrated Management clause (1) provides as follows:

- (1) Adopting an integrated approach, ki uta ki tai, as required by Te Mana o te Wai, requires that local authorities must:
 - (a) recognise the interconnectedness of the whole environment, from the mountains and lakes, down the rivers to hāpua (lagoons), wahapū (estuaries) and to the sea; and
 - (b) recognise interactions between freshwater, land, water bodies, ecosystems, and receiving environments; and
 - (c) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems, and receiving environments; and
 - (d) encourage the co-ordination and sequencing of regional or urban growth.

1.16 In *Bay of Islands Maritime Park Inc v Northland Regional Council*³ the Environment Court considered these provisions in the context of coastal wetlands and the NES F.

1.17 The Court stated at paragraph [27]:

This appears, on the face of it, to qualify impacts on the receiving environments to only those that result from freshwater. There is also no express discussion of effects of the land or sea on freshwater. This in itself indicates that controls or standards may be imposed on freshwater and also on matters that might affect that freshwater, to protect the values of receiving environments.

1.18 Then at paragraph [28]:

² At 61

³ [2021] NZRMA 256 at [25] onwards

We have concluded that the relevant wording does not indicate that all receiving environments are part of or covered by the NPS-FM. We again recognise the integrated management discussion in 3.5 which

- “(a) recognises ‘the interconnectedness of the whole environment from mountains and lakes, down the rivers to hapuā (lagoons), wāhapū (estuaries) and to the sea’; and
- (b) the interactions of those between freshwater, land, waterbodies, ecosystems and receiving environments; and
- (c) manages freshwater and land use and development in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects, ‘on the health and well-being of water bodies, freshwater ecosystems, and receiving environments’; and
- (d) [not relevant here].”

1.19 And at paragraph [30]:

We have concluded that there is nothing in the NPS-FM that militates for or requires there to be controls over the wider receiving environment. Overall, it might be said that the regulations are focused on ensuring that the generation of adverse effects on or by freshwater do not have impacts on other environments such as estuaries.

1.20 While the Environment Court’s decision was successfully appealed⁴ as it related to the particular wetland definitions and their applicability to the NES F, these more general obiter statements were not rejected by the High Court.

1.21 In my submission therefore care needs to be taken when seeking to manage the CMA using the NPS FM as the basis for that and further consideration of the CMA as a receiving environment does not justify using the NPS FM for wide ranging provisions within the CMA.

1.22 However the more important consideration is whether the proposed provisions will in fact give effect to the NZCPS (and the relevant parts of the RPS) especially in relation to RSI/specified infrastructure as the effects management hierarchy of the NPS FM only applies to inland wetlands and rivers.

1.23 I agree with Ms O’Sullivan’s evidence that the NZCPS has a broader lens when compared with other NPS such as the NPS FM⁵ so that the CMA Objectives here require careful scrutiny particularly in light of the statements in the S32 Report as highlighted above.

⁴ Minister of Conservation v Mangawhai Harbour Restoration Society Inc. [2021] NZHC 3113

⁵ Ms O’Sullivan’s evidence at 4.7

1.24 I also agree with Ms O’Sullivan that while the Section 42A recommended amendments go some way in resolving this issue, including the recognition that the wai ora state āhua should be qualified by “ *where deteriorated*”, they do not go far enough.

1.25 I note the NZCPS does not refer at all to a wai ora state and rather Policy 21 provides as follows:

Enhancement of water quality

Where the quality of water in the coastal environment has deteriorated so that it is having a significant adverse effect on ecosystems, natural habitats, or water based recreational activities, or is restricting existing uses, such as aquaculture, shellfish gathering, and cultural activities, give priority to improving that quality by:

- (a) identifying such areas of coastal water and water bodies and including them in plans;
- (b) including provisions in plans to address improving water quality in the areas identified above;
- (c) where practicable, restoring water quality to at least a state that can support such activities and ecosystems and natural habitats;
- (d) requiring that stock are excluded from the coastal marine area, adjoining intertidal areas and other water bodies and riparian margins in the coastal environment, within a prescribed time frame; and
- (e) engaging with tangata whenua to identify areas of coastal waters where they have particular interest, for example in cultural sites, wāhi tapu, other taonga, and values such as mauri, and remedying, or, where remediation is not practicable, mitigating adverse effects on these areas and values.

1.26 Clearly this policy and the broader NZCPS Objectives do not require a wai ora state to be reached but rather (relevantly) where water quality is having significant effects priority should be given to the improvement and restoration of water quality where practicable (which can account for the operational requirements of RSI) to at least a state that can support the listed activities, ecosystems and habitats.

1.27 While PC1 to the RPS Objective TAP does refer to a wai ora state (although it is not a defined term) its heading “*Long-term freshwater vision for Te Whanganui-a-Tara*” makes it more apparent the aspirational nature of the Objective⁶. I note that the proposed Objective WH.01 does not refer to it being part of a long term vision for the TWT Whaitua and in my submission it should.

⁶ although it is also confusing by referring to freshwater which excludes the CMA

- 1.28** I also share Ms O’Sullivan’s concerns that the provisions as amendment by the Section 42A Report still have the potential to be interpreted differently to that indicated by the Section 42A Report writer. For example the suggestion that the “use” of coastal water does not relate to public access when in my submission it can be reasonably argued that access is a subset of use and the Objective could be considered in addition to the public access provisions of the NRP.
- 1.29** In this regard I simply remind the Panel about the East West Link Decision⁷ which clearly demonstrates the forensic analysis undertaken by the Supreme Court of every relevant statutory plan provision in that case.
- 1.30** It is also abundantly clear from the East West Link decision that there will inevitably be a very narrow pathway if at all for infrastructure proposals (including most specified infrastructure or RSI) to be granted where there are strong avoid as well as directive provisions from the “*top to bottom in the RMA hierarchy of objectives and policies*”⁸. This being the case it is important to not inadvertently narrow even further “the eye of the needle” through loose language and assumptions that provisions will be interpreted in a certain way when it is clear other interpretations are possible.
- 1.31** Accordingly I consider Ms O’Sullivan’s suggested amendments in the Appendix to her evidence will more appropriately give effect to the NZCPS and will better recognise and provide for RSI, including the Airport with its distinct operational and functional requirements.

DATED this 21st day of March 2025



Amanda Dewar
Counsel for WIAL

⁷ *Royal Forest and Bird Protection Society v New Zealand Transport Agency* [2024] NZSC 26

⁸ East West Link Decision at [169]