

**Before the Hearings Panel
At Wellington City Council**

Under Schedule 1 of the Resource Management Act 1991

In the matter of the Proposed Wellington City District Plan

**Hearing Stream 12 Wrap Up Reporting Officer Right of Reply of Jamie Sirl on
behalf of Wellington City Council**

Date: 29 November 2024

INTRODUCTION:

1 My full name is James (Jamie) Grant Sirl. I am employed as a Senior Planning Advisor in the District Planning Team at Wellington City Council (the Council).

2 I have prepared this Reply in respect of the matters considered in the Stream 12 Wrap Up (Wrap Up) hearing as directed by the Panel in Minute 61.

3 I have listened to submitters in the Wrap Up hearing, read and considered their evidence and tabled statements, and referenced the written submissions and further submissions.

4 The Section 42A Report section 1.2 sets out my qualifications and experience as an expert in planning.

5 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023, as applicable to this Independent Panel hearing.

6 Any data, information, facts, and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinions. Where I have set out opinions in my evidence, I have given reasons for those opinions.

SCOPE OF REPLY

7 This reply follows the Wrap Up hearing held on the 7th and 8th of November 2024. *Minute 61: Wrap-Up Hearing Follow-Up* requested that the Council submit a written reply to specific matters contained in the Minute. Minute 56 requires this response to be supplied by 29 November 2024.

8 The Reply includes:

- Discussion and recommendations in response to the specific matters and questions raised in Minute 61; and
- An appendix (Appendix A) containing those chapters of the PDP with further recommendations identified by tracked changes; and

- Additional matters that I would like to bring to the Panel's attention.

RESPONSE TO MATTERS RAISED IN MINUTE 61

9 I respond to the further advice sought by the Panel as follows.

Proposed bird strike risk activity definition

10 Expert conferencing between Ms O'Sullivan (representing Wellington International Airport Limited (WIAL)) and myself has occurred with the outcomes of that conferencing captured in a [Joint Witness Statement \(JWS\)](#).

11 In summary, Ms O'Sullivan and I found it challenging to qualify the size and scale of landfill or marine food processing activity that the proposed bird strike risk activity rule should apply to, and question whether qualification is necessary particularly when considering the wider plan approach to landfills.

Definition of Regionally Significant Infrastructure (RSI)

12 Expert conferencing between Ms O'Sullivan (planning consultant advising Wellington International Airport Limited (WIAL)) and myself has occurred with the outcomes of that conferencing captured in a [Joint Witness Statement \(JWS\)](#).

13 In summary, we agree that the proposed amendments to the definition of RSI sought by Ms O'Sullivan in her Statement of Evidence are not within scope of the WIAL submission relief, or wider relief of other submitters.

14 As a consequence of this conclusion, I have reviewed my recommended amendments to the definition of RSI in response to the submissions of Envirowaste (EnviroNZ) seeking that landfills be included in the definition of Infrastructure. I now consider that my recommended amendment to include the Southern Landfill within the definition of RSI is not within scope of submissions. I consider that the matter of the District Plan's consistency with the RPS and NRP where it is beyond the scope of submissions is best addressed through future plan change processes, and logically some time following resolution of any appeals on the RPS Change 1 decisions and becoming operative.

Definition of 'upgrading'

15 Expert conferencing between Ms O'Sullivan (WIAL), Ms Foster (planning consultant advising Meridian Energy Limited) and myself has occurred with the outcomes of that conferencing captured in a [Joint Witness Statement \(JWS\)](#).

16 In summary, there was agreement that the rules and standards set the limitations on the size and scale of upgrading of infrastructure and, beyond those recommended in my supplementary evidence, no amendments to the definition of upgrading are necessary.

17 Similarly, we agreed that while it is inherent in the language used in the definition, that expressly requiring upgrades to involve physical works may have the potential to prejudice other infrastructure providers. However, I am not aware of an example of non-physical works to upgrade output or capacity that is intended to be managed by the upgrading of infrastructure rules.

18 I note that Ms Whitney advised that she did not wish to attend conferencing on the 'upgrading' definition.

Introduction to the INF-NG Sub-Chapter

19 Expert conferencing between Ms Whitney (planning consultant advising Transpower Limited) and myself identified a minor improvement to the introduction to address the matter highlighted by the Panel. The wording agreed by Ms Whitney and me is included in Appendix A – INF-NG Sub Chapter to this Reply.

Map showing the three potential areas to be referenced in a bird-strike rule, being the area 3km, 8km and 13km respectively from the threshold of the Wellington Airport runway;

These areas are available to view in a [Council web-based viewer](#).

Scope to extend the ambit of a bird-strike rule beyond 13 kilometres from the runway

20 WIAL sought the following relief in their submission:

Other land uses near airports

4.109 The Civil Aviation Authority of New Zealand (“CAA”) produces guidance on land use activities at or near aerodromes.¹⁰ The following activities are of particular concern to Airport Operators where located within close proximity to an airport due to their potential bird attracting properties:

4.109.1 Refuse dumps and landfills;

4.109.2 Sewage Treatment and Disposal (outdoor);

4.109.3 Certain agricultural activities (cattle feed lots, pig farming);

4.109.4 Fish Processing;

4.109.5 Artificial and natural lakes/waterbodies; and

4.109.6 Abattoirs and freezing works.

General relief sought

4.110 In order to protect the safety of aircraft and their passengers, WIAL submits that a bespoke framework should be established for the above activities where located within a fixed distance of the Airport to ensure a consenting pathway is available that requires appropriate consideration of potential increase in bird strike risk posed by the aforementioned activities. This could be achieved by a narrowly framed restricted discretionary activity that restricts discretion to the potential effects of aircraft safety, including the potential risk of bird strike.

21 WIAL refined their approach through a memorandum¹ in response to a pre-hearing request from the Panel, and subsequent planning evidence. One component of the refinement being the proposed management of landfills within 13km of the Airport.

22 I consider the scope for relief is established by WIAL’s original submission, and is not narrowed by the subsequent refinement of relief proposed by WIAL. WIAL’s submission seeks management of the specified activities ‘within a fixed distance of the Airport’. I consider that this allows for an appropriate distance to be established and that this distance could be citywide such that it encompasses the entirety of the Wellington district.

23 Relying on the evidence of Dr McClellan that a citywide management of landfills for bird strike risk is supportable, and noting Dr Anderson’s verbal agreement with this approach, I remain of the opinion that a citywide rule has greater evidential support than a 13 km management area as proposed by Ms O’Sullivan. The citywide application could be applied

¹ [Memo – Wellington International Airport Ltd – Wrap up Hearing, 11 July 2024.](#)

as a measured distance to ensure the city boundary is included, but a rule with citywide application is a more efficient way of achieving this outcome which broadly reflects the relief sought as expressed in the WIAL submission.

Wording to better express the advised intention that the REG and Infrastructure Chapters are stand-alone and no other objectives and policies throughout the balance of the Plan other than the strategic objectives are relevant to the activities they address

24 Unless where specifically referenced in an INF chapter, INF sub-chapter or REG provision, the chapters are 'standalone' to the extent that no other *provisions*, other than the *strategic objectives*, are intended to apply to infrastructure activities managed by these chapters.

25 I note that the General Approach states:

*The Infrastructure, Renewable Electricity Generation, Subdivision and Temporary Activities chapters generally operate as standalone chapters containing all **relevant objectives, policies, rules and standards** relating to those activities, unless otherwise specifically identified in those chapters.*

26 I recommend that clear statements are included in REG, INF and INF sub-chapters that clarify that the *zone and overlay objectives and policies do not apply*, as set out in Appendix A.

Appropriate wording in the INF Sub-Chapters other than the INF-NG Sub-Chapter to address how potential overlaps between those sub-chapters should be resolved

27 There will be existing or proposed infrastructure located within more than one overlay which will result in the provisions of more than one INF sub-chapter applying, in addition to the overarching Infrastructure Chapter. All relevant sub-chapters apply unless there is an explicit exception. As directed by the Act, the most restrictive activity status of the rules applicable to a specific proposal would apply.

28 I recommend reformatting of, and inclusion of additional content to, the introduction sections of the sub-chapters to improve clarity on the relationship between sub-chapters and other chapters of the plan.

29 While I acknowledged that there are situations where additional clarity is not necessary, such as the INF-NG sub-chapter not applying to the Airport, to ensure consistency across the sub-chapters and for the avoidance of doubt the list of exclusions is proposed to be included in all sub-chapters.

Do the INF Sub-Chapters need to make it clear that both objectives and policies in the Infrastructure Chapter are relevant to their exercise?

30 Yes, and rules. The recommended amendments to the INF chapter and INF sub-chapters set out in Appendix A to this reply provide this clarity.

Does the statement on the first page of the Introduction to the Infrastructure Chapter to the effect that rules in Zone Chapters or specified Overlays do not apply to infrastructure “unless specifically stated in an infrastructure rule or standard” need to be qualified to reference the exceptions discussed on the second page of the Introduction (REG, Airport and Airport Related Activities within the Airport Zone, and Port and Operational Port Activities within the Port Zone)?

31 Yes. However, I consider that a simple statement “managed by the Infrastructure Chapter and sub-chapters” is adequate given the detail provided in the later section of the chapter introduction.

Scope and merit in amending the reference in the definition of “maintenance and repair”, as it applies to infrastructure and REG, to provide that it includes replacement of an existing structure with a smaller structure

32 I consider that this amendment would provide additional clarity. However, it is highly likely a replacement with a smaller structure would be undertaken in reliance on use rights in accordance with section 10 of the Act. Regardless, I do not consider there to be scope to make the suggested amendment.

Which iwi groups is the Council consulting with in relation to the Te Ao Māori Plan Change and how the Council intends to work in partnership with Mana whenua to determine the relevant issues and scope of the plan change

33 In March 2024, the Council directed Officers to prepare a Plan Change to address a range of Te Ao Māori considerations within the District Plan.

34 The Plan Change is in its early stages, with the District Plan Team currently engaging with iwi and mana whenua across Wellington to identify and scope the key issues.

35 The scope of the Plan Change is currently broad and will include, but is not limited to, the following areas:

- Issues arising from the Hearings Process.
- Historical inaccuracies within the Tangata Whenua Chapter.
- Provisions for Papakāinga development.
- Additional concerns raised by iwi throughout Wellington.

36 Issues which cannot be addressed through the District Plan are also being discussed and options will be presented to councillors for addressing these outside of the Plan Change.

37 In developing this Plan Change, the Council is partnering with mana whenua:

- Taranaki Whānui ki Te Upoko o Te Ika.
- Ngāti Toa Rangatira.

38 In addition to this, Council is also engaging with:

- Wellington Tenth Trust.
- Muaūpoko Tribal Authority.

39 Council is committed to ensuring the Plan Change is informed by the historical accounts, knowledge, and aspirations of the above listed iwi. Current engagements involve meetings with iwi representatives to discuss and scope the Plan Change, identify specific issues, and explore ways that Council can resource iwi participation effectively.

40 Iwi involvement will be a continuous and integral part of the Te Ao Māori Plan Change. This will include, but is not limited to:

- Co-developing provisions for the Plan Change; and

- Inviting Tākai Here partners to attend Council meetings when reporting back to Councillors.

41 The Council's collaborative approach in developing and implementing the Te Ao Māori Plan Change with iwi will reflect the Council's commitment to the [Tūpiki Ora Māori Strategy](#).

42 The Te Ao Māori Plan Change Team, including iwi representatives, will report back to Council in the first quarter of next year with the scope of the Plan Change and a comprehensive issues and options analysis. It is expected that in this meeting Councillors will direct Officers to prepare a Plan Change for notification. The timeframe for notification is currently uncertain as it will depend on many factors, including the availability of iwi. However, this work is being progressed as a matter of high importance within the District Plan Team's Work Program.

On the assumption that recommended references to the Moa Point Seawall Area remains in the Coastal Environment Chapter, consider wording advising that those references do not imply that the chapter manages infrastructure within that area

43 I do not consider that this is required. Infrastructure is not managed by the Coastal Environment chapter, and this is made clear in the General Approach section, and the Coastal Environment Chapter, which states:

Provisions relating to infrastructure within the coastal environment are located in the INF-CE sub-chapter and in the Special Purpose Port Zone and Airport Zone.

44 I also note a recommended amendment to the Infrastructure Chapter introduction to remove any inference that the Moa Point Seawall is located in Airport zone, as set out in Appendix A to this reply.

Does the Panel have jurisdiction to recommend amendments to the General Approach Chapter given that that chapter was the subject of the IPI process, and Council decisions thereon, and is now operative?

45 In forming a response to the Panel's request, I sought advice from Council's legal counsel, Mr Whittington. The General Approach section sets out how the plan is intended to be applied, and is equally relevant to the parts of the plan that formed the IPI, and the

remaining parts that followed the Part 1 Schedule 1 process. If, as in this instance, an amendment is necessary to provide clarity as a result of matters raised in the Part 1 Schedule 1 process, in his opinion this is within the jurisdiction of the Panel.

46 However, having considered this matter further, I consider it would be more appropriate to split the infrastructure-related explanation out from the explanation related to subdivision and temporary activities. This avoids any material change to the content related to subdivision and temporary activities, and allows for amendments to the infrastructure-related explanation. My updated recommended amendments to the General Approach Chapter are set out in Appendix A to this reply.

Check the policies referenced in other rules in the REG Chapter and in the Infrastructure Chapter or Sub-Chapters, and advise if there are any other situations where the notified rules referenced the wrong policies or where he considers that additional policies should be referenced (as opposed to situations where subsequent renumbering of policies has required consequential changes to rules) and there is no scope to correct the error.

47 I confirm that there is no submission providing scope to correct the following errors, with the proposed amendments no longer included in Appendix A to this Reply:

- a. INF-NFL-R44.2 references the wrong policy as matters of discretion.
- b. INF-CE-R29.3 references the wrong policy as matters of discretion.
- c. INF-CE-R31.3 references the wrong policy as matters of discretion.
- d. INF-CE-R32.1.1 references the wrong policy as matters of discretion.
- e. INF-CE-R37.1.1 references the wrong policy as matters of discretion.

48 I note that the recommended amendments to the policies as matters of discretion for REG-R2.3.3 are fine as they simply result in removing the specific ECO policies.

ADDITIONAL MATTERS

49 During further consideration of INF sub-chapters and the relationship between the various maintenance, repair and upgrade provisions, I have identified recommended improvements to INF-CE-R29:

- a. The recommended new permitted conditions INF-CE-R29.1a and 1b duplicate standards (INF-S1, INF-S2 and INF-S3) that will apply regardless through INF-R1. As there is no cascade in the INF-CE rule where compliance with these permitted conditions is not achieved, I see no apparent need to repeat them in INF-CE-R29.

- b. The recommended new permitted condition INF-CE-R29.1c references “alterations, or additions, or upgrades to existing hard engineering hazard mitigation structures (seawalls)”. As this rule does not apply to upgrades (which are managed under INF-CE-31), I recommend that the permitted condition (intended to provide an allowance for replacement seawall blocks where working within exact existing dimensions is not easily achieved) and standard INF-CE-S16 are amended to apply to only to maintenance and repair.

Appendix A – Tracked Changes

Note: Red underline and ~~strike-out~~: show recommended additions and deletions to the notified chapters as recommended by the hearing stream Section 42A reporting officer.

Green underline and ~~strike-out~~: show recommended additions and deletions as recommended by the Wrap Up hearing reporting officer as contained in the Section 42A report and appendices.

Purple underline and ~~strike-out~~: show recommended additions and deletions as recommended by the Section 42A reporting officer for the Wrap Up hearing, updated by the Statement of Supplementary Planning Evidence of Jamie Sirl dated 30 October 2024, and this Right of Reply of Jamie Sirl dated 29 November 2024.