

**BEFORE THE INDEPENDENT HEARINGS PANELS APPOINTED TO HEAR AND MAKE
RECOMMENDATIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS ON PROPOSED CHANGE 1
TO THE REGIONAL POLICY STATEMENT FOR THE WELLINGTON REGION**

UNDER Schedule 1 of the Resource Management
Act 1991 (the Act)

IN THE MATTER OF Hearing Submissions and Further
Submissions on Proposed Change 1 to the
Regional Policy Statement for the
Wellington Region

**REPORTING OFFICER RIGHT OF REPLY OF SHANNON JOHN
WATSON**

ON BEHALF OF WELLINGTON REGIONAL COUNCIL

**HEARING STREAM SEVEN – DEFINITIONS (NATIONAL GRID,
REGIONALLY SIGNIFICANT INFRASTRUCTURE, STRATEGIC
TRANSPORT NETWORK)**

30 MAY 2024

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RIGHT OF REPLY AUTHOR

- 1 My full name is Shannon John Watson. I am Technical Lead Planning at GHD Limited.
- 2 I have prepared this Reply in respect of the matters raised during the hearing of matters in Hearing Stream Seven: Small Topics Wrap Up and Variation 1, as they relate to Definitions issues.
- 3 I have listened to submitters in Hearing Stream Seven, read their evidence and tabled statements, and written submissions and further submissions to the relevant Hearing Stream Seven topic(s).
- 4 My Section 42A Report, at paragraphs 13-15, sets out my qualifications and experience as an expert.
- 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.

SCOPE OF REPLY

- 6 This Reply follows Hearing Stream Seven held from 15 April to 16 April 2024.
- 7 Minute 27 also requested that the Section 42A report author submit a written Right of Reply in response to matters raised in the Minute.
- 8 The Reply covers:
 - Responses to questions raised directly by the Panels in Minute 27 as relevant to the categorisation of definitions between the FPP and P1S1 processes (question 10 (a)(i)-(iv)) and the definition of Regionally Significant Infrastructure (questions 10 (g)(i-iv) and (h)); and
 - Responses to matters raised by submitters during the hearing.
- 9 Appendix 1 includes tracked and clean versions of changes to provisions recommended in this report.
- 10 Throughout this report wording changes are indicated with different colours as follows:
 - Blue strikeout and underline reflects rebuttal evidence wording changes as of 8 April 2024.

- Green strikethrough and underline reflects amendments I am recommending in this right of reply evidence.

RESPONSE TO MATTERS RAISED IN MINUTE 27

11 Minute 27 raised the following questions from the Panels relating to the categorisation of relevant definitions and the Regionally Significant Infrastructure definition:

CATEGORISATION OF PROVISIONS

12 At paragraph 10(a) of Minute 27, the Panels requested the following:

10a. Please advise whether, having heard submitters, you recommend any changes to the categorisation of provisions between FPP and P1S1.

- i. In Table 3 of the s 42A Report on Definitions, the Officer recommends that the three definitions that are within the scope of the Report (National Grid, Regionally Significant Infrastructure and Strategic Transport Network), are re-categorised as P1S1 provisions on the basis that while activities associated with these definitions may have some interaction with water quality, the connection to freshwater quality and quantity is indirect because the substance of the definition substance is largely about the activity itself rather than its effects.*
- ii. It seems that Officers across the different hearing streams may have applied a different methodology to the categorisation of provisions and definitions in Proposed Change 1. For example, the explanation and rationale given by the HS4 Report Author, to the categorisation of HS4 definitions to the FPP (see Table 5, s 42A Report, HS4) and the explanation and rationale given by the HS7 Report Author to the categorisation of HS7 definitions (see Table 3: FPP assessment), seems to be different.*
- iii. We found the approach described in Mr Wyeth's HS2 Right of Reply evidence clear and helpful (see paragraphs 39 – 42).*
- iv. We would be grateful if the Officers across the different hearing streams could please review their advice on the categorisation of all provisions to the FPP with a view to providing consistent analysis and rationale for their recommendations.*

- 13 The tests applied to the different provisions in Change 1 is set out in Ms Pascall's reply evidence on behalf of the Council¹. In summary, case law (*Otago Regional Council v Royal Forest & Bird Protection Society of NZ Inc* [2022] High Court decision) has prescribed that a direct relationship to water quality/quantity must exist for a provision to qualify for consideration under the FPP process. However, the categorisation of definitions as FPP in the s32 report was based on whether a definition was used in a provision categorised as FPP or not. If it was, the definition was assigned to the FPP process to support implementation of that provision.
- 14 In the context of this topic, I applied the *Otago Regional Council v Royal Forest & Bird Protection Society of NZ Inc* [2022] High Court decision test (the direct relationship test) to my recommended categorisation of provisions. The outcome of this assessment is set out in Table 3 of my section 42A report². I acknowledge this could mean that the relevant definitions, where they are used in FPP provisions, are still under consideration when the FPP provisions are made operative, due to the different timeframes of the FPP and the P1S1 processes. The risk is that these provisions are not interpreted and implemented as intended by Change 1 until the P1S1 provisions are operative. In my opinion, this risk is low as the recommended changes to definitions in this topic are to clarify intent of meaning or scope of activities in the operative RPS definition(s) rather than introducing new activities or a new definition. If the operative RPS definition(s) continue to apply in the meantime (until P1S1 provisions are operative), there would be no substantive risk to implementation and minimal risk of the objectives and desired outcomes of the RPS being compromised.
- 15 Conversely, if the Panels were to adopt the alternative test (paragraph 25 of Ms Pascall's right of reply evidence) and recommend retaining the definitions in HS7 as FPP, consistent with the s32 methodology, definitions in this topic may not in and of themselves meet the High Court decision test for a direct relationship.
- 16 In conclusion, given the low risk to implementation of the Change 1 described above, I am satisfied that my categorisation of the definitions to the P1S1 is the most appropriate outcome for this topic.

WELLINGTON INTERNATIONAL AIRPORT

- 17 At paragraph 10(g) of Minute 27, the Panels request the following:

¹ Greater Wellington Response to questions in Minute 23 and Minute 27, 30 May 2024.

² HS7 Definitions s42A report Table 3 (page 12) [HS7 - S42A Report - RSI - CLEAN.docx \(gw.govt.nz\)](#)

The definition of RSI includes ‘Wellington International Airport’. We have some questions about the clarity of the amendment proposed by the Officer, and supported by WIAL.

- i. Can the Officer please confer with Ms Dewar and/or Ms Hunter and advise whether WIAL agrees to any amendments to the definition to clarify that the buildings, installations, equipment referred to must be owned/operated by WIAL (so that, for instance, a car rental business located on WIAL’s land that is operated by a third party, is not RSI).*
- ii. We appreciate the definition begins “Wellington International Airport including its infrastructure etc” (emphasis added). However, we query whether amendments are helpful to remove any doubt that other buildings/installations etc located on airport land, are not RSI.*
- iii. We also query the words “its administration”. We assume that administrative activities associated with the airport must be carried out by the airport in order to come within the RSI definition, but we query whether this wording also requires clarification.*
- iv. Can the Officer also consider whether the word “such” can be removed from the definition, so that it would read “... buildings, installations, and equipment on or adjacent to any such area used in connection with the airport...”, in the definition of Wellington airport.*

18 I have considered the questions raised by the Panels related to the reference to Wellington International Airport in the definition of RSI and conferred with Ms Claire Hunter (on behalf of WIAL) on potential amendments to the definition.

19 I recommend the definition be amended as follows:

Wellington International Airport including all supporting navigational infrastructure including ~~its~~ infrastructure and any buildings, installations, and equipment required to operate, maintain, upgrade and develop the airport located on, or adjacent to ~~any such area, land and water~~ used in connection with the airport ~~or its administration.~~

This includes infrastructure, buildings, installations and equipment not located on airport land.

20 Ms Hunter has confirmed that she is comfortable with these amendments.

- 21 With reference to the example used by Chair Nightingale in the hearing (and question 10(g)(i) above), related to concern about activities such as rental car businesses being captured by the recommended definition in my rebuttal evidence, my recommended amendments make it clear that the activity must be required to operate, maintain, upgrade or develop the airport rather than just be ‘associated’ with the airport and its activities. This is consistent with the terminology used in the definition for the Strategic Transport Network, while still maintaining the relationship of these activities to the Airport Authorities Act which is required to meet the ‘infrastructure’ test cited in my rebuttal evidence³. My recommended changes also respond to points ii, iii and iv of Minute 27.
- 22 In my opinion, including a requirement for infrastructure, buildings and equipment to be owned by WIAL is inappropriate as there are other third parties that own and operate infrastructure, buildings and equipment critical to the operational integrity of the airport. For example, Airways owns and operates navigational infrastructure, buildings and equipment both on and outside airport land.
- 23 Tracked changes to this definition alongside a ‘clean’ version can be found in Appendix 1.

Wairarapa Federated Farmers

- 24 At paragraph 10(h) of Minute 27, the Panels have asked:

Does Mr Watson have any additional comments in response to Ms McGruddy’s presentation at the hearing and Hearing Statement dated 10 April 2024, requesting that rural water storage infrastructure be included within the definition of RSI? Would it be appropriate, in the Officer’s view, to recognise ‘community scale’ (as opposed to ‘single-farm or ‘neighbourhood farm scale’) rural water storage and supply networks in the definition of RSI, and if so, can the Officer please provide any wording he would recommend to reflect this.

- 25 I have considered including rural water storage in the definition of RSI and the option of recognising ‘community scale’ rural water storage. In principle, I consider that community scale water storage *could* be included in the definition because I am satisfied that water storage meets the ‘infrastructure’ test⁴ described in my evidence to date. However, I remain concerned about the lack of a threshold or criteria for community scale water

³ Paragraph 32 of HS7 Definitions rebuttal evidence; [HS7-Regionally-Significant-Infrastructure-GWRC-Statement-of-Rebuttal-Evidence-Shannon-Watson-080424.pdf](https://www.mta.govt.nz/hs7-Regionally-Significant-Infrastructure-GWRC-Statement-of-Rebuttal-Evidence-Shannon-Watson-080424.pdf)

⁴ As a water supply distribution system as defined in section 2 of the Resource Management Act <https://legislation.govt.nz/act/public/1991/0069/latest/DLM230272.html>

storage infrastructure (e.g. the number of properties that constitute differing scales ‘community scale vs neighbourhood scale’) and the lack of an evidence base to determine the appropriateness of any threshold or criteria, and to determine at what scale regional benefit could occur.

- 26 I have also considered options that could provide for rural water storage and supply where the storage and supply forms part of a wider (unspecified) distribution network which *could*, as a collection of smaller activities, add up to provide regional benefit. However, in my opinion this approach is reliant on a threshold or scale in order to be appropriate. Without a definition or thresholds/criteria for any wider distribution network I consider there is the same risk in terms of scale, being that a wider distribution network could range from water supply supporting only one or two farms (which in my opinion is not regionally significant) to water supply which feeds into a wider network serving dozens of properties (which could be regionally significant).
- 27 I also consider attempting to define any criteria or thresholds this late in the process could create natural justice issues, as this is a significant change that submitters will not have an opportunity to comment on.
- 28 While in principle I am supportive of recognising community scale rural water storage in the definition, in the absence of evidence outlining what constitutes ‘community scale’ and how many properties might need to be serviced to provide regional benefit (which is the other test for meeting the RSI definition), I am unable to recommend any amendments to the definition.
- 29 I do however acknowledge Ms McGruddy’s concerns regarding potential inconsistency as to the role of ‘scale’ in some of the activities in the definition⁵. In my rebuttal evidence I highlighted that changes to activities in the definition of RSI were made following mediation for the Proposed Natural Resources Plan process. Only specific activities were submitted on as part of Change 1 and therefore in my opinion there was insufficient scope to revisit the appropriateness of all activities as part of this topic. It may be that a full review of the definition is required as part of the future RPS review to iron out any inconsistencies.

⁵ Paragraphs 186-190 of the Day Two (16th April 2024) HS7 transcript [Transcription-Hearing-Stream-Seven-Small-Topics-Wrap-Up-and-Variation-1-April-2024.pdf](https://www.gw.govt.nz/transcription-hearing-stream-seven-small-topics-wrap-up-and-variation-1-april-2024.pdf) (gw.govt.nz)

ADDITIONAL MATTERS

30 During the hearing Chair Nightingale queried whether ‘Strategic Transport Network’, as a defined term, should be italicised and bolded and I agreed it should⁶. I recommend a consequential amendment to Method 16 responding to this as shown in Appendix 1.

SECTION 32AA EVALUATION

31 In accordance with Section 32AA, I consider the amendments I am recommending to Method 16 and the definition of Regionally Significant Infrastructure (as it relates to Wellington International Airport) are appropriate as they improve the interpretation and implementation of the RPS, and in doing so will enhance the effectiveness and efficiency of the provisions they relate to.

DATE:

30 MAY 2024

SHANNON JOHN WATSON

TECHNICAL LEAD PLANNING

GHD LIMITED

⁶ Paragraphs 869-889 of the Day One (15th April 2024) HS7 transcript