

Before a Hearings Panel
Appointed by the Otago Regional Council

under: the Resource Management Act 1991

in the matter of: submissions and further submissions in relation to the
Proposed Otago Regional Policy Statement 2021
(excluding parts determined to be a freshwater planning
instrument)

and: **Christchurch International Airport Limited**
Submitter 0307

Statement of Evidence of Matthew William Bonis

Dated: 23 November 2022

Reference: JM Appleyard (jo.appleyard@chapmantripp.com)
AM Lee (annabelle.lee@chapmantripp.com)

chapmantripp.com
T +64 3 353 4130
F +64 3 365 4587

PO Box 2510
Christchurch 8140
New Zealand

Auckland
Wellington
Christchurch



STATEMENT OF EVIDENCE OF MATTHEW WILLIAM BONIS

INTRODUCTION

- 1 My full name is Matthew William Bonis.
- 2 I hold a Bachelor of Regional Planning degree and have been employed in the practise of Planning and Resource Management for 23 years. I am a full member of the New Zealand Planning Institute.
- 3 I am a Partner at Planz Consultants in Christchurch. I have held this position since 2009.
- 4 I am familiar with the submission made by Christchurch International Airport Ltd (*CIAL*) (submission number 0307) on 3 September 2021 on the Proposed Otago Regional Policy Statement 2021 (*pORPS*) and the planning issues raised.
- 5 I have been asked by *CIAL* to provide planning evidence in relation to its submission on the *pORPS*.
- 6 I am familiar with the site and operations of Christchurch International Airport and the work *CIAL* has been undertaking in relation to the demand for and feasibility of a new airport in the Otago Region, specifically in Central Otago. I have also been involved in planning matters associated with Dunedin Airport (*DUD*), as well as Queenstown Airport (*ZQN*) and Wanaka Airport (*WKA*).
- 7 I have also been involved in assisting Councils with the preparation of District Plans and Regional Policy Statements (including Auckland Council, Christchurch City Council and Canterbury Regional Council).
- 8 I have read:
 - 8.1 The Otago Regional Council's relevant s42A Reports and supplementary evidence, including:
 - (a) Chapter 3 – Definitions and Abbreviations (Ms Lisa Hawkins);
 - (b) Chapter 11 – Energy, Infrastructure and Transport (Mr Peter Stafford);
 - (c) Chapter 11 – Supplementary Evidence (Mr Marcus Langman); and
 - 8.2 The evidence of **Mr Rhys Boswell** on behalf of *CIAL*.

Code of Conduct

- 9 I acknowledge that I have read and am familiar with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court updated Practice Note 2014, and agree to comply with it. I confirm that the issues addressed in

this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

- 10 Two of my colleagues at Planz Consultants, Ms Carmen Taylor and Ms Susannah Tait are also providing planning evidence at this hearing, for Ravensdown Ltd and Fonterra Co-operative Group Ltd respectively. This planning evidence, which addresses a specific matter associated with **Definitions and abbreviations** (s42A Report – Chapter 11) does not, based on my review of their evidence, overlap with their evidence or result in inconsistent policy outcomes.

SCOPE OF EVIDENCE

- 11 My evidence will deal with the following:
- 11.1 Summary and recommendations;
 - 11.2 CIAL’s submission, my assessment and response to the s42A Report position;
 - 11.3 The legislative and planning architecture associated with Airports; and
 - 11.4 Conclusions.

SUMMARY AND RECOMMENDATIONS

- 12 This evidence addresses the definition of ‘*Regionally Significant Infrastructure*’ contained in the pOPRS.
- 13 As notified, that definition is constrained to specific airports being Dunedin, Queenstown, Wānaka, Alexandra, Balclutha, Cromwell, Ōamaru, and Taieri. That approach lacks clarity and is not future focused.
- 14 This lack of precision in the notified definition could preclude the ability for new airport proposals within the Otago Region to appropriately engage with the respective planning architecture.
- 15 Such an approach would provide an inappropriate barrier to a broader, merit-based consideration of a proposal’s regional economic and social wellbeing benefits against the need to avoid, remedy or mitigate adverse effects.
- 16 The provisions engaged are not limited to the Otago Regional Policy Statement. Relevant National Policy Statements (*NPS*) and National Environmental Standards (*NES*) refer to and apply to ‘*specified*

infrastructure', being 'regionally significant infrastructure identified as such in a regional policy statement or regional plan'.¹

- 17 The notified approach would therefore not be the most appropriate way to achieve the objectives of the pORPS² and, subsequently, achieve the purpose of the Resource Management Act 1990 (the Act).
- 18 I note that the Chapter 11 reporting officer recommends³ an amendment to the definition of '*Regionally Significant Infrastructure*' to insert, on the basis of submissions:⁴

(13) Any infrastructure identified as nationally significant infrastructure.

- 19 I agree with this recommendation, although I consider that an amendment to the 'Airport' component of the definition, in clause (6) remains necessary.
- 20 I consider that the following amendment to the definition, for the reasons outlined in this evidence, is appropriate for inclusion within the pORPS (as shown in **red, bold and underlined**):

Regionally Significant Infrastructure means:

...

- (6) **airports and aerodromes used for regular air transport services by aeroplanes capable of carrying more than 30 passengers, and includes** the following airports: Dunedin, Queenstown, Wanaka, Alexandra, Balclutha, Cromwell, Oamaru, Taieri.

THE CIAL SUBMISSION, ASSESSMENT AND RESPONSE TO S42A POSITION

- 21 CIAL's submission (0307) is generally in support of the provisions contained within the pORPS.
- 22 I confirm that my evidence does not traverse the freshwater planning instrument parts of the pORPS 2021 which were re-notified on 30 September 2022.
- 23 The key matter for CIAL is the submission point seeking to amend the definition of '*Regionally Significant Infrastructure*' such that it

¹ NPS for Freshwater Management 2020, clause 3.21(b).

² For example EIT-INF-04.

³ S42A Chapter 11 [512 – 549, Recommendation 550].

⁴ S42A Chapter 11 [540] Subs 003 00311.003 Trustpower, 00301.007 Port Otago.

does not exclude 'airports and aerodromes' that are not specifically included in the detailed list provided in (6) of that definition.

- 24 The substance of this evidence is a particularly concise matter, simply assessing and recommending an insertion of an inclusive reference to 'airports and aerodromes' within the definition of '*Regionally Significant Infrastructure*', such that the definition is not confined to those airports currently listed.
- 25 Within the statutory framework for establishing a regional policy statement,⁵ I consider that the proposed amendment:
- 25.1 Better meets the requirements associated with s32, including the efficiency and effectiveness of the pORPS provisions in achieving the objectives;⁶
- 25.2 Will improve and provide clarity⁷ in the notified provisions for the subsequent interpretation and application of the pORPS; and
- 25.3 Will better integrate with the wider national planning architecture.
- 26 Without the proposed amendment, it is considered that:
- 26.1 There is an absence of clarity as to whether a new airport venture would appropriately engage with the respective New Zealand planning architecture, including the Otago Regional Policy Statement, NPS such as the NPS for Highly Productive Land 2022,⁸ and NES such as the NES for Freshwater 2020.⁹
- 26.2 The pORPS would not fully recognise the social and economic wellbeing benefits attributable to new ventures associated

⁵ Section 61 Matters to be considered. Section 62 Contents.

⁶ For example EIT-INF-04 and EIT-INF-05.

⁷ Section 18A(b)(ii).

⁸ NPS – Highly Productive Land 2020. Clause 1.3: Definition of 'Specific Infrastructure' [Clause (b) - Infrastructure that is recognised as regionally or nationally significant in a National Policy Statement... **regional policy statement**].

⁹ NES – Freshwater 2020. Definition of 'Specified Infrastructure' [Clause 3] has the meaning given by the National Policy Statement for Freshwater Management. NPS – Freshwater Management 2020. Definition of 'Specified infrastructure' means any of the following: (a) infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002) (b) regionally significant infrastructure identified as such in a **regional policy statement** or regional plan.

with air connectivity,¹⁰ and enable a balancing of such against environmental effects.

26.3 There remains an inequity in the definition, whereas facilities for public transport, or Balclutha aerodrome, which appears to support only recreational general aviation users, is provided positive policy support, and any new airport proposal enabling commercial domestic and/or international services may not be.

27 I note that the Chapter 11 s42A Report recommends that the amendment sought by CIAL be rejected,¹¹ on the basis that:

[T]he amendment broadens the scope of coverage for airports to all aviation infrastructure through the reference to unspecified "aerodromes";

and

[T]he recommended cross reference to the definition of nationally significant infrastructure will resolve the submitter's concern.

28 I disagree with this position, for the reasons set out in this evidence.

29 I also note that the reporting officer, in relation to the definition for 'Nationally Significant Infrastructure' states that:¹²

I further consider use of consistent definitions within the New Zealand regulatory framework are critical to the interoperability of the pORPS with related regulatory and policy frameworks with Otago and nationally.

30 I agree and consider that CIAL's proposed amendment assists in the operability of the pORPS within that wider New Zealand regulatory framework.

31 Furthermore, at [533] the reporting officer states:

For the purposes of the following analysis I consider regionally significant infrastructure supports, at the regional level, economic and societal functions and, most importantly, interconnectivity (with respect to transport, electricity generation and transmission, communications, three waters, hazard management).

¹⁰ Statement of evidence of Rhys Boswell [21 – 23].

¹¹ S42A Report – Chapter 11 – Peter Stafford [533, 545].

¹² S42A Report – Chapter 11 – Peter Stafford [442].

- 32 I consider that 'airport and aerodromes' as defined through the case law and in legislation, and as associated with regular air transport services by aeroplanes capable of carrying more than 30 passengers - accords with each of the respective criteria, (economic, social and interconnectivity) as set out by the reporting officer above.

THE STATUTORY CONTEXT FOR AIRPORTS

The (interchangeable) meaning of airport and aerodrome

- 33 As outlined above, the CIAL submission seeks the definition of 'Regionally Significant Infrastructure' in the pORPS to refer non-exclusively to 'airports and aerodromes'.
- 34 As also outlined above, inclusion of the term 'aerodrome' is opposed by the reporting officer on the basis that the amendment '*broadens the scope of coverage for airports to all aviation infrastructure through the reference to unspecified 'aerodromes'.*
- 35 The meaning of the terms 'airport' and 'aerodrome' is one that has been addressed at length in case law and these terms are outlined in key aviation-related legislation.
- 36 The term 'airport' or 'aerodrome' is typically used in statutes and planning documents somewhat interchangeably, and with an ambulatory meaning.
- 37 Whether either or both terms (airport or aerodrome) are used, does not (of itself) constitute a narrow and specific meaning to include only uses directly involved in the primary aviation activity of landing and taking off of aircraft. The meaning also extends to the provision of passenger and freight services, air traffic services and infrastructure, and the related servicing of aircraft. For example, other effects on land may arise from aviation, including noise, approach paths, avoidance of bird strike and airport security; the land for which is held by the airport/aerodrome may extend to avoid or mitigate these effects.
- 38 The use and meaning of these terms is largely a legal matter which will be addressed in legal submissions for CIAL at the hearing. However, from a planning perspective, I consider there is sufficient certainty from the case law and legislation such that these are not 'unspecified' terms and it is appropriate to include them both in the definition.
- 39 In my planning view, CIAL's proposed amendment is not unnecessarily broad, but rather is consistent with how aviation infrastructure is and has been defined in case law and key legislation and other higher order planning documents, as below.

40 In terms of the manner in which aerodrome and airport are used in relevant statutes:

40.1 The **Civil Aviation Act 1964** – defined “aerodrome” as:

“Aerodrome” means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, movement, and servicing of aircraft; and includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the aerodrome or its administration:

40.2 The **Airport Authorities Act 1966** – contains no definition of “aerodrome” but defines “airport” as:

“Airport” means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, movement, or servicing of aircraft; and includes any other area declared by the Minister to be part of the airport; and also includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the airport or its administration.

40.3 The **Public Works Act 1981** contains no definition of “airport” but repeats the definition of “aerodrome” from the Civil Aviation Act 1964 and adds:

And also includes any defined air space required for the safe operation of aircraft using the aerodrome; and also includes a military airfield.

40.4 The **Civil Aviation Act 1990** contains no definition of “airport” and repeats the 1964 definition of “aerodrome”, though dividing it at the semi-colon into subparagraphs as below, the Act also contains a definition of “approach control service” which extends to air traffic control service which extends to associated infrastructure:

“aerodrome”

(a) means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, and surface movement of aircraft; and

(b) includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the aerodrome or its administration

“approach control service” means an air traffic control service for arriving or departing controlled flights

- 40.5 The definition of “airport” in the **Resource Management Act 1991** similarly to the other statutes provides:

“Airport means any defined area of land or water intended or designed to be used, whether wholly or partly, for the landing, departure, movement, or servicing of aircraft:”

- 40.6 The **Civil Aviation Bill**, which has been drafted to repeal and replace the Civil Aviation Act 1990 and the Airport Authorities Act 1966, and is currently at second reading stage, contains the following definitions:

aerodrome –

(a) means any defined area of land or water intended or designed to be used, either wholly or partly, for the landing, departure, or surface movement of aircraft; and

(b) includes any other areas, buildings, installations, and equipment that are on or adjacent to an area mentioned in paragraph (a) and that are used in connection with that area or its administration; and

(c) where an airport operator is registered in respect of the aerodrome, includes any area included under section 222(3)(b) or 223.

airport – means an aerodrome covered by a registration issued under section 222.

- 40.7 For completeness, I note that the **Civil Defence Emergency Act 2002** provides a list of Specific Entities in Schedule 1 – Part A which extends to the major trunk Airports of Auckland, Wellington and Christchurch, and entities as defined in section 2 of the Airport Authorities Act 1966 including specified airports including Dunedin, Queenstown and Invercargill. New aviation infrastructure would not therefore be deemed ‘lifeline utilities’.

- 41 In terms of higher order planning documents, the **NPS for Urban Development 2020** defines “*Nationally Significant Infrastructure*” as:

Means all of the following:

(h) any airport (but not its ancillary commercial activities) used for regular air transport services by aeroplanes capable of carrying more than 30 passengers.

- 42 The threshold at 30 passengers references Civil Aviation Rules - Part 121 'Air Operations – Large Aeroplanes' which prescribes the operating requirements for air operations conducted by a holder of an Airline Air Operator Certificate issued in accordance with Part 119 using an aeroplane that has:

(1) a seating configuration of more than 30 seats, excluding any required crew member seat; or

(2) a payload capacity of more than 3410 kg.

- 43 Reference to aeroplanes with a carrying capacity of more than 30 passengers therefore provides scale to the extent of significant airport operations, and hence the relative social and economic wellbeing benefits.

Recognition of statutory context in pORPS definition

- 44 In my view the reporting officer's concern as to the undefined nature of the term aerodrome is addressed by the context outlined above. To also ensure that such facilities are of such a scale as to facilitate reciprocal social and economic wellbeing benefits, the following additional amendment is recommended to the definition of 'Regionally Significant Infrastructure'. I note that this is a revision of the amendments proposed in CIAL's submission:

44.1 Inclusion of a threshold to a carrying capacity of 30 passengers, as related back to the Airline Air Operator Certificate issued in accordance with Part 119 of the Civil Aviation Rules, and hence a sufficient scale of social and economic wellbeing benefits.

The importance of inclusion in the definition of 'Regionally Significant Infrastructure'

- 45 It is important to note that recognising potential new aviation infrastructure in the definition of 'Regionally Significant Infrastructure' does not foreclose the requirements for new aviation infrastructure to account for its environmental impacts and engage with the requirements of s5(2)(c) of the Resource Management Act.
- 46 Some relevant provisions of the pORPS (such as EIT-INF-P13) as amended by the reporting officer's recommendations would account for substantial new aviation infrastructure under the definition of 'Nationally Significant Infrastructure' or 'Infrastructure' and provide for a hierarchy of management, commencing with avoidance as the first priority, but not foreclosing management as associated with functional needs.
- 47 However, others do not, meaning that such aviation infrastructure could not engage with such provisions, or would be confronted with a clear 'avoidance' approach.

- 48 For example, the application of LF-FW-P9 'Protecting natural wetlands' relies on the definition of 'Specified Infrastructure', noting that this provision comprises part of the freshwater planning instrument parts of the pORPS 2021 as were re-notified on 30 September 2022.¹³
- 49 New aviation infrastructure would not be accounted for under clause (a)¹⁴ (as it is not listed in Specific Entities in Schedule 1 – Part A of the Civil Defence Emergency Management Act 2002).
- 50 Neither would there be certainty as to whether such would also be accounted for under LF-FW-P9 (b)¹⁵ as to whether new aviation infrastructure constitutes as '*Regionally Significant Infrastructure*'.
- 51 Even should the reporting officer's recommended amendment to the definition of '*Regionally Significant Infrastructure*' be accepted – inserting into the definition reference to '*Nationally Significant Infrastructure*' under a new clause (13), a possible interpretation is that the more specific provision in the definition at clause (6) curtails 'Airports' to only those listed. It would be undesirable to have such uncertainty in the pORPS from its inception.
- 52 Accordingly, the inclusion of a non-exhaustive reference to 'airports and aerodromes' within the definition of '*Regionally Significant Infrastructure*' provides clarity that the economic and social wellbeing benefits of such infrastructure is recognised, and provides clarity as to approval pathways that may otherwise seek to 'avoid' or set non-complying rule thresholds against development.
- 53 In my view, CIAL's proposed amendment is the most appropriate way of achieving the objectives of the pORPS based on:
- 53.1 Ensuring consistency of application in Otago's planning regime; and
- 53.2 Ensuring appropriate engagement with the wider New Zealand planning architecture.
- Regional plan framework**
- 54 The Otago Regional Council is developing its new Land and Water Regional Plan. Accordingly, the definition for '*Regionally Significant*

¹³ As the same meaning as clause 3.21 of the NPS for Freshwater Management 2020.

¹⁴ *Infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002).*

¹⁵ *Regionally significant infrastructure identified as such in a regional policy statement or regional plan.*

Infrastructure in the pORPS will have prominence in that document in terms of giving effect to any regional policy statement.¹⁶

- 55 I understand there is no consistent definition for *Regionally Significant Infrastructure* in the current Regional Plans.
- 56 The operative Regional Plan: Waste for Otago (Waste Plan) defines Airports as follows: Policy 7.4.11A¹⁷ reference to *airports defined as Nationally Significant Infrastructure* includes:

'any airport (but not its ancillary commercial activities) used for regular air transport services by aeroplanes capable of carrying more than 30 passengers'.

- 57 The operative Regional Plan: Air for Otago (2009), Regional Plan: Water for Otago (2022), or Regional Plan: Coast for Otago (2012) do not provide definitions for *'Nationally Significant Infrastructure'* nor *'Regionally Significant Infrastructure'*. The latter does provide a broad definition of *'Infrastructure'*.¹⁸

Higher order national planning documents

- 58 The emerging NPS's and NES's provide important, but very directive provisions relating to the use and management of natural resources. Where not explicitly recognised as *'Regionally Significant Infrastructure'* new aviation infrastructure will not necessarily be able to engage with those provisions that recognise and provide for their inherent economic and social benefits.

- 59 For example:

59.1 The **NPS for Freshwater Management 2020** (and the **NES for Freshwater 2020**) distinguish activities based on whether they are termed *'Specified Infrastructure'* (as identified above). Certainty that *'Airports'*, (and not just those listed) are defined as Regionally Significant Infrastructure in the pORPS would mean that the any new aviation infrastructure would not be confronted with prohibitive provisions such as:

- (a) NPS-FW: Clause 3.22(a) which seeks to avoid the loss of the extent of natural inland wetlands, except where loss arises as associated with Specified Infrastructure and the management regime in clause (b) is satisfied.

¹⁶ S67(3)(c).

¹⁷ As a result of the decision of the Environment Court dated 30 May 2022 [Re Otago Regional Council [2022] NZEnvC 91].

¹⁸ Means: *Those built structures necessary for operating and supplying essential utilities and services to the community.*

- (b) NES-F: Whereas the consenting regime as associated with Specified Infrastructure proximate to natural wetlands (Regulation 45, 56) establishes a pathway that would otherwise be non-complying / prohibited under Regulation 52, 53 and 54.

59.2 The **NPS for Highly Productive Land 2022** also defines 'Specified Infrastructure' (as identified above). Certainty that 'Airports' are not defined as Regionally Significant Infrastructure in the ORPS would challenge any new aviation infrastructure pursuant to: Policy 4 'prioritise primary production'; Policy 5 'avoid urban rezoning'; Policy 7 'avoid subdivision of highly productive land'; and Policy 8 'protect highly productive land from inappropriate development' of the NPS.

59.3 In addition, specific clauses also require (must) the avoidance of:

- (a) the subdivision of highly productive land (clause 3.8); and
- (b) the inappropriate use or development of highly productive land (clause 3.9);

unless associated with Specified Infrastructure.

CONCLUSION

60 It is considered, for this discrete matter, that the most appropriate approach (in terms of clarity, efficiency and effectiveness) would be for the following amendment to be made the definition of '*Regionally Significant Infrastructure*' in the pORPS and hence then able to be applied within the architecture of the respective planning framework as follows:

Regionally Significant Infrastructure means:

...

- (6) **airports and aerodromes used for regular air transport services by aeroplanes capable of carrying more than 30 passengers, and includes** the following airports: Dunedin, Queenstown, Wanaka, Alexandra, Balclutha, Cromwell, Oamaru, Taieri.

Dated: 23 November 2022

Matt Bonis