

**BEFORE THE COMMISSIONERS APPOINTED ON BEHALF  
OF THE OTAGO REGIONAL COUNCIL**

**Under** The Resource Management Act 1991  
(the **Act/RMA**)

**In the Matter** of a submission on the Proposed  
Otago Regional Policy Statement  
2021 (PRPS)

**On behalf of** **DUNEDIN INTERNATIONAL  
AIRPORT LIMITED (DIAL)**

**Submitter**

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**SUBMISSIONS OF COUNSEL ON BEHALF OF DUNEDIN  
INTERNATIONAL AIRPORT LIMITED**

**TOPIC: ENERGY, INFRASTRUCTURE AND TRANSPORT**

**DATED 14 MARCH 2023**

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**SUBMISSIONS OF COUNSEL ON BEHALF OF DUNEDIN  
INTERNATIONAL AIRPORT LIMITED**

**May it please the Panel:**

**DIAL's Interest**

1. Dunedin International Airport Limited made a submission in support of the definitions for nationally significant infrastructure and regionally significant infrastructure. The reason for doing so was that at the time of public notification in 2021, the Dunedin City Council was pursuing an application for resource consents associated with the Smooth Hill Landfill project. That site is 4.5km from Dunedin Airport and DIAL was concerned about the potential for a new class 1 landfill to have adverse effects on the airport's operations. DIAL was seeking policy recognition that adverse effects on the airport's operations must be avoided. DIAL was satisfied that the notified version of the 2021 pRPS achieved that policy setting and so the submission was effectively defensive.
2. It was part of the Dunedin City Council's case in favour of Smooth Hill that it ought to be recognised (despite not at that time existing), that the landfill would be regionally significant infrastructure and thus would be protected by policies that recognise and protect such infrastructure. For DIAL, this approach raised an important issue. Does existing infrastructure and future infrastructure warrant the same policy recognition? DIAL recognises the importance of enabling new infrastructure, but not at the expense of the operational efficiency of existing infrastructure.
3. DIAL has now settled its Smooth Hill landfill issues with DCC.

**CIAL's case.**

4. Dunedin International Airport Limited has no position on the merits of Christchurch International Airport's Tarras proposal. DIAL's concern is to avoid conflict between existing infrastructure and new infrastructure.
5. DIAL does not currently know what the potential for conflict with Tarras might be. Too little is yet known about that proposal. Perhaps in the

longer term, there is a potential for conflict in relation to limited carbon emissions budgets. The Climate Change Response (Zero Carbon) Amendment Act 2019 establishes a process for the Government to set emissions reductions targets. There is statutory provision for a sinking lid of carbon emissions. CIAL's evidence (Mr Boswell) floats the possibility of more carbon efficient air travel at Tarras. That is speculative. Compared with what? By any stretch, building a new international airport at Tarras will require carbon emissions. Mr Boswell might be right, but he might not be too. That is for another day.

6. Distinguishing between new and existing infrastructure is likely to grow in importance because of the imbedded carbon in existing infrastructure relative to new carbon required for new infrastructure.
7. Mr Boswell also raised alarm about Dunedin's climate resilience. He implies that it is more efficient to build new airports than to enable existing airports to adapt. Again, that is a contestable notion for another day. For now, the potential for incompatibility cannot be ignored.
8. Mr Matt Bonis' evidence was limited to the definition of Regionally Significant Infrastructure. There is some attraction to the idea that policy settings are designed to manage future activities rather than respond to the status quo, planning being inherently a concern for the future rather than the present. But that is DIAL's point. DIAL seeks recognition that existing infrastructure requires protection from future land uses, including building new infrastructure, where incompatibility may arise. That is the point of a policy statement in relation to infrastructure- to achieve integration.
9. Section 30(1) of the Act sets out the Council's function:
 

*(gb) the strategic integration of infrastructure with land use through objectives, policies, and methods:*
10. That provision was added to the Act in 2005. The Resource Management Amendment Act 2005 was intended to provide

“guidance” to councils to achieve the right balance between local and national interests.<sup>1</sup>

11. The function is not to enable all infrastructure development. The strategic integration requirement seems to suggest that the potential for conflict with the use of land ought to be addressed in the RPS. That is what DIAL wants. That seems to be what the pRPS policy framework is trying to do. It also explains why the definition of Regionally Significant Infrastructure is limited to specified existing infrastructure. It doesn't include new airports, the significance of which is not yet known or tested.

**What is the significance of CIAL's proposed change?**

12. To understand the effect of Mr Bonis' evidence, careful attention must be paid to the interplay between Objectives EIT-INF-04 and 05; and policies EIT-INF-P10-P15 (31 October 2022 version).
13. Objective 04 recognises the importance of existing infrastructure. Objective 05 addresses future infrastructure and requires land use change to occur in a co-ordinated manner, avoiding or minimising adverse effects on the environment. Existing infrastructure is part of the environment. Future infrastructure is not.
14. The first thing to note about the objectives and policies is that there is no priority between NSI and RSI- they receive the same policy treatment. NSI does not trump RSI. So, CIAL achieves what it wants for Tarras by simply being RSI. It doesn't need to be NSI.
15. P11 is explicit that it deals only with existing NSI and RSI. It would not apply to Tarras. Nor does it protect Dunedin Airport from any incompatible proposal from any new infrastructure, such as landfills.
16. P12 applies to all new and existing infrastructure, whether NSI, RSI or not. P12 provides the consenting gateway for Tarras that it seeks. P12 would be neutral as between Tarras and Dunedin Airport, although

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<sup>1</sup> Minister for the Environment David Benson-Pope, Third Reading of the Resource Management Amendment Bill (No 5) (August 2005).

what is intended by “efficient”<sup>2</sup> in that context is not clear. Does it mean efficient in terms of return on capital, or efficient in terms relative utilisation of services between airports? Or efficient in terms of carbon emissions? The issue being managed here is mysterious.

17. P13 applies to new infrastructure, RSI and NSI. The matters in P13 do not deal with conflict between infrastructure.
18. P14(1) does not really add anything to the 4<sup>th</sup> Schedule to the Act., and P14(2) is arguably ultra vires where effects of existing infrastructure form part of the lawful environment. P14 does not address incompatibility.
19. P15 is the real meat in terms of managing incompatibility conflict. This is where Mr Bonis’ evidence bites. P15 “protects” NSI and RSI from incompatible activities. New infrastructure development is an activity. DIAL reads that policy as protecting existing RSIs and NSIs from new activities, which may include infrastructure. DIAL supports that policy.
20. But consider this thought experiment. What if all future airports were notionally “Regionally Significant Infrastructure”, how then would policy P15 work? If Tarras has the benefit of being RSI even before it is built, then P15 offers no protection to Queenstown or Dunedin Airports even if there was evidence of serious incompatibility that served to constrain either of the existing NSI airports.
21. That submission is made because under P15, the “avoid” policy is for the benefit of NSI and RSI without distinction. Thus, one could not read P15 as requiring a constraint on a proposed RSI in order to protect the function of an existing NSI, even though that seems self-evidently sensible and would give effect to objectives 04 and 05. Mr Bonis’ evidence does not explain the significance of his evidence on how the policies would then function. That is a significant omission.

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<sup>2</sup> Policy EIT-INF-P12(3) as at 31 October 2022.

22. What CIAL's submission does is undo the careful distinction the RPS makes between existing and new infrastructure. That is what DIAL is worried about.

**Where does the definition of Nationally Significant Infrastructure come from?**

23. It is useful to observe the function that it plays in that NPS UD 2020, from where the definition is adopted. Nationally Significant Infrastructure is a subset of "qualifying matters" at cl 3.32(1)(c). A qualifying matter is an exemption to the density requirements of policy 3 in tier 1 urban environments (Otago has none of those):

**Policy 4:** *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.*

24. Read in context, a "qualifying matter" must be an existing one. It wouldn't make sense to read policy 4 as applying to any location in which a potential future qualifying matter may or may not locate. This is consistent with cl 3.33(2) of the NPS UD which refers to incompatibility with qualifying matters in the present tense:

*"(2) The evaluation report prepared under section 32 of the Act in relation to the proposed amendment must:*

*(a) demonstrate why the territorial authority considers that:*

*(i) the area **is** subject to a qualifying matter; and*

*(ii) the qualifying matter **is incompatible** with the level of development directed by Policy 3 for that area; and..."*

25. Since the definition of NSI is to be the same, its meaning and function should be the same. It relates to existing airports only.
26. It would not make sense if the definition of regionally significant infrastructure were to include an airport that doesn't yet exist, but the moment it is used for regular air transport services with aeroplanes capable of carrying more than 30 people, it would automatically become NSI. There would be a period of time when an airport that

didn't exist was already an RSI, but as soon as it opened was an NSI. It is hard to understand the purpose served by that.

27. All of the airports listed in the definition of RSI are airports that already exist- some of which are also NSI's, but not all (Taieri, Wanaka, Alexandra, Balclutha, Cromwell, Oamaru). Nevertheless, those RSIs that are not NSIs all serve important regional functions (e.g. in the case of Alexandra, enabling medical staff transfer to Clyde Hospital; Taieri being the regional helicopter rescue base; Wanaka has scheduled passenger services, museum, and tourism activities associated with aviation that justify their status. The same cannot be said for airports that do not yet exist.
28. The purpose of the policy P15 is to protect that which exists from incompatible things that might come along. In that sense the policy framework is future focused because it is seeking to avoid future effects. The Panel should resist CIAL's submissions that muddy the distinction between actual and future infrastructure.

Dated 14 March 2023



**Phil Page**

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