

**Before an Independent Hearing  
Panel Appointed by  
Wellington City Council**

**In the Matter**

of the Resource Management Act  
1991 (**Act**)

**And**

**In the Matter**

of a Notice of Requirement to  
designate land for Airport Purposes  
known as the Main Site NOR

**By**

of a Notice of Requirement to  
designate land for Airport Purposes  
known as the East Side Area NOR.

**Right of Reply on behalf of Wellington  
International Airport Ltd**

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**Amanda Dewar | Barrister**

PO Box 7

Christchurch 8140

Email: [amanda@amandadewar.com](mailto:amanda@amandadewar.com)

Phone: 0212429175

## INTRODUCTION

1. This Right of Reply is presented on behalf of Wellington International Airport Ltd (**WIAL** or **Requiring Authority**).
2. The hearing associated with WIAL's Notices of Requirement (**NORs**) for the East Side and Main Site areas was adjourned until 25 June 2021 to enable:
  - (a) further expert conferencing to occur as directed by the Hearing Panel in its Minute dated 25 May (**3<sup>rd</sup> Minute**);
  - (b) Dr Palmer to provide written comments on Ms Smith's supplementary evidence;
  - (c) WIAL to provide its right of reply in writing to respond to matters raised at the hearing by the Panel, Council reporting officers and submitters;
3. The further expert conferencing produced a post hearing joint witness statement (**Post Hearing JWS or JWS**) and updated conditions for each NOR. The Post Hearing JWS responded to the matters that were directed to be discussed by the Panel's 3<sup>rd</sup> Minute and the conditions are those agreed as between the Planners (**Planners' Version**). The Post Hearing JWS outlines the areas of agreement and disagreement as between the expert witnesses for the matters raised by the Panel.
4. In this Right of Reply I:
  - (a) **attach** further amended conditions for both NORs (**Right of Reply Version**);
  - (b) explain the further suggested amendments;
  - (c) respond to matters raised by the Panel, Council Reporting Officers and submitters;
  - (d) **attach** a plan showing the final ESA Compliance Line (which shows the 60 dB L<sub>dn</sub> noise contour that accounts for all Aircraft Operations and APU usage) as promised;
  - (e) provide a final casebook (electronic);

- (f) provide a short conclusion.

## FURTHER AMENDMENTS TO CONDITIONS

5. Before discussing the further suggested amendments in the Right of Reply Version in more detail below, I note:
- (a) the tracking highlighted in red is mine. All other tracking stems from the Planners' Version and has been authored by John Kyle, Mark Ashby or Ms Simpson (in various colours) as part of the post hearing joint witness conference process.
  - (b) some of my suggested amendments are not discussed individually as they are self-explanatory or have been made for either consistency between the two NORs (to the extent appropriate) or to improve the construction of the condition for better certainty or understanding.

### Main Site NOR

6. **Purpose of Designation:** A note has been added to qualify the extent to which commercial outdoor signage is provided for by the NOR in response to one of the directed matters of the Panel (para 4. (vii) - extended by the Planners to include the Main Site).
7. In the Planners' Version a proviso was added to Condition 1 D, however in my submission this does not sit well within that condition which acts as a trigger for an outline plan if certain criteria or limits are exceeded.
8. Third party owned outdoor commercial signage is not covered by the Designation as a matter of law so in my submission it is more appropriate to include a note as part of the Purpose of the Designation given it is a matter of scope.
9. I have amended the Planners' Version so that the note reads as a limitation in terms of the Purpose of the Designation. Given such signage is outside the Purposes of the Designation there is no need for a note about the need to obtain resource consent.
10. **Purpose of Designation - Attachment 2:** The attachment shows the Precinct areas within the NOR area. The Hillock has been identified in

Attachment 2 to provide certainty given it is referred to in a number of conditions.

11. **Condition 1 D:** Condition 1 provides various triggers for the requirement of an outline plan. The term “criteria” has been added to condition 1D to better align with the wording used in Condition 2.
12. **Condition 8:** This condition provides for development of an urban design principles document for the Terminal Precinct. It has been amended by the Planners to reflect the agreement reached in terms of design principles versus design guide issue (Para 4 (ii) Minute 3). I have made further amendments to:
  - (a) more accurately reflect the nature of public space within the Terminal Precinct;
  - (b) make it clear that the Vision is part of the Principles document;
  - (c) make it clear that in some instances design excellence may not be a relevant consideration in the context of some minor projects or works within the Terminal Precinct;
  - (d) make it clear that the Terminal Precinct is just a part of the Airport as regionally significant infrastructure.
13. **Condition 9:** This condition provides for a landscape and urban design statement for all Precincts and has also been amended by the Planners to reflect the agreement reached in terms of design principles versus design guide matters (Para 4 (ii) Minute 3). I have made one further minor amendment to more accurately reflect that the “where relevant” qualification applies to both matters identified in the condition (i.e. streetscape may not be a relevant consideration in the context of a project or work that is nowhere near a public road).
14. **Condition 11:** This provides for an ECMP in the Rongotai Ridge Precinct and Hillock. As it is the only management plan type condition requiring “certification” for the Main Site NOR and given the likely lesser scale and complexity of associated earthworks in the two areas of the airport covered by the condition it is not proposed to have a separate certification process condition (as is proposed for the ESA NOR).

15. It is anticipated most amendments for the ECMP can be dealt with as part of the outline plan process but the condition has been further amended to account for the situation where an amendment is required once a project or work has commenced.
16. **Condition 12:** This condition requires additional information to be provided as part of the outline plan process for the Rongotai Ridge Precinct and has been amended by the Planners to include the Hillock. I have added the qualifier “where relevant” to recognise that clauses b) and c) of the condition may not be relevant for works associated with the Hillock.
17. **Condition 22:** This condition provides noise limits for the operation of GPUs and APUs together with a number of exceptions to those limits for APUs.
18. WIAL has volunteered very restrictive APU usage in the ESA so as to reduce adverse effects on ESA Receivers but is unable to commit to extending this restriction across the entire Airport.
19. The Planners have suggested some amendments as part of the post hearing conference. Since the hearing WIAL has undertaken further investigation and has recently heard back from an Air New Zealand representative providing another perspective on the timing and need for APU usage.
20. Mr Clarke has provided me with some examples of when extended APU use is required as follows:
  - (a) current Covid regulations (in accordance with a directive from Air New Zealand’s Chief Medical Officer) require an aircraft’s air conditioning to run for 60 minutes after each international aircraft arrival to clear the cabin and flush any potential viruses through the aircraft’s hepa filters;
  - (b) current international cleaning protocols require 45 - 60 minutes of activity following deboarding which takes 15-20 minutes. It would not be possible to meet the limits prescribed in the ESA NOR whilst performing these essential tasks;
  - (c) prior to trans-Tasman departures in the morning, Air New Zealand Engineering can require 60 minutes of electrical system operation

after power up and before departure to prepare the aircraft systems and clear any error messages ready for departure;

- (d) in the event that aircraft are diverted to Wellington due to weather conditions at other airports, they can remain on the ground for extended periods. Due to the type of aircraft and/or the time of arrival, it is sometimes not possible for such operations to access plug-in ground power. APUs must then be used to maintain cabin temperature and electrical systems until the aircraft is cleared to depart to their intended destination.

21. Mr Clarke has also advised that:

- (a) usually these procedures can be performed by utilising plug-in ground power (GPU) thus avoiding the need for APU use, however if ground power is unavailable APU power must be utilised;
- (b) the use of APUs is ultimately a decision taken by the pilot in command of the aircraft to meet safety and operational requirements at their discretion, however WIAL as the license holding airport operator under the Civil Aviation Act is able to instruct users of the airport of local standard operating procedures and restrictions;
- (c) WIAL as the Airport operator is able to influence regular day to day operations regarding APU use, however exceptions to the standard operating procedures and run time restrictions will occur from time to time. As such, there is a need to provide for these exceptions in the condition especially until additional gates can be provided as part of the expansion of the Airport to reduce apron congestion during peak times;
- (d) it is also important to note that the use of APUs is strongly disincentivised due to the commitment aircraft operators have made to reduce unnecessary carbon emissions. Operators are encouraged to use plug-in ground power whenever it is available. Further to this, each airline maintains detailed carbon auditing processes which will monitor activity and encourage the use of plug-in power sources whenever they are available;

- (e) from an airport infrastructure perspective, WIAL can confirm that all future apron designs will incorporate the inclusion of ground power to further enable reduced APU operations.
22. Given the above I have amended the Planners' version of the condition to account for these matters taking a more flexible approach but have also amended the one of Noise Management Plan conditions to ensure that a reduction in APU usage over time is appropriately considered.

### ESA NOR

23. **Purpose of Designation:** As discussed above, a note has been added to qualify the extent to which commercial outdoor signage is provided for by the NOR in response to one of the directed matters of the Panel (para 4. (vii)).
24. **Condition 3:** This is a new condition in the Planners' Version in response to a question from the Panel during the hearing about the certification process and the need to provide for a "loop" process. The condition has been adapted from other cases involving certification.
25. I have tidied up the condition and provided more certainty about when certification can be refused especially given the subjective nature of some of the matters requiring certification.
26. **Condition 4:** This condition concerns the Landscape and Visual Management Plan. I have amended the Planners' Version by deleting the term "retained" with "identified" in the context of describing the buffer area so it is clear it is the whole of the buffer area, not just that part that might be subject to retaining structures.
27. **Condition 9:** This condition relates to geotechnical matters and the requirement for a geotechnical assessment report (**GAR**). The Planners' Version had deleted the phrase "which was previously occupied by the golf course" which results in the GAR being required when current airport land which is subject to the ESA NOR is developed which is likely to be ahead of and initially separate to, the development of the golf club land.
28. This is not considered to be necessary as the airport land component has already been developed for airport purposes so the GAR is not justified at this stage. Accordingly, I have reinserted the deleted phrase.

29. **Condition 15:** This condition relates to the need for an archaeological assessment and again the Planners' Version had deleted the phrase "which was previously occupied by the golf course". For the same reasons as discussed above, the phrase has been reinserted.
30. **Condition 17:** This condition requires the ECMP to be reviewed by a geotechnical professional. I have further amended this condition to make it consistent the Planners' changes to Condition 14 which amended the requirement for the ECMP to be provided 20 working days prior to an outline plan being submitted, rather than at the time of submitting an outline plan.

## RESPONSE TO QUESTIONS BY PANEL

### Air Noise Committee

31. The Panel asked what is the statutory basis for the Air Noise Management Committee (**ANMC**)?
32. The Environment Court's Consent Order on the previous District Plan Review is included in the electronic casebook. The Consent Order<sup>1</sup> provides for the ANMC as a "Method" so technically it sits outside the District Plan<sup>2</sup>. The LUMINs study was developed as part of the considerations required by the Court but again sits outside the District Plan as does the associated Quieter Homes Programme.
33. In light of evidence from submitters at the hearing it is submitted that these methods have been successful despite their non-statutory status.
34. The Main Site NOR includes conditions for the continuation of the ANMC, the Noise Management Plan and LUMINs so the NOR is arguably stronger in a statutory sense than the current District Plan.

### Stormwater Conditions

35. The Panel asked about stormwater disposal in the context of a suggestion by Council Reporting Officers that stormwater neutrality should be achieved for the ESA NOR in particular.

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<sup>1</sup>WIAL v Board of Airlines Representatives of New Zealand Inc. at page 6

<sup>2</sup> I note some of the wording has changed in the current District Plan but is not of any moment for the purpose of this right of reply.

36. This is discussed in the Post Hearing JWS and confirms agreement of those experts that the concept of stormwater neutrality cannot be achieved given the limited land area available.
37. The Post Hearing JWS suggests it would be useful to condition the ESA NOR to manage stormwater accumulation and release to the extent practicable, but no amendment has been made to the Planners' Version of the conditions.
38. In my submission no such amendment is necessary. This matter is best left to the Regional Council as part of the "global" application for stormwater discharge currently being prepared by WIAL in advance of resource consents being required for stormwater discharges when the Regional Council's PNRP becomes operative in the near future.

### **Lighting Management Plan**

39. During the hearing the Panel suggested that a Lighting Management Plan may be appropriate and requested in its 3<sup>rd</sup> Minute that the experts cover how to manage lighting and glare from inside buildings for both the ESA and Main Site NORs (paragraphs 4(d) and 5 (d)).
40. The experts' response to this is set out in the Post Hearing JWS with an amendment to both NOR lighting conditions that requires a post installation check that the applicable New Zealand Standard (**NZS**) has been met. This is in line with the evidence of WIAL's lighting expert who did not consider a lighting management plan to be necessary but rather confirmation that installed lighting meets the NZS would be sufficient.
41. I also note that the Conditions 8 and 9 of the Main Site NOR have been amended to include:
  - (a) reference to lighting as part of the Urban Design Principles;
  - (b) a requirement for a Landscape and Urban Design Statement provided with any outline plan to include how lighting has been designed to reduce the extent and visibility of lighting when viewed from residential areas and public spaces.

### Climate Change Condition

42. As the Panel acknowledged at the hearing this condition needs to be volunteered by the Requiring Authority given the limited relevance of climate change concerns to the NORs.
43. I can confirm that the Planners' Version of the condition is acceptable to WIAL.

### Need for Main Site NOR

44. The Panel (and some submitters) queried the need for the Main Site NOR when the conditions largely replicate the District Plan provisions.
45. My response in opening was to refer to *Rangi Ruru* decision<sup>3</sup> where the Court held that a requiring authority is entitled to seek a designation in preference to District Plan provisions.
46. The Panel also asked if the *Rangi Ruru* decision was still the leading case in this area. I am not aware of any other Court decision that deals with this particular matter in such a direct way.
47. It is now apparent as a result of a number of amendments to conditions through conferencing and further consideration during (and after) the hearing process that the conditions for the Main Site NOR no longer just largely replicate the District Plan provisions. They are now far more comprehensive and comprise a more sophisticated approach to managing the effects of activities within the Main Site NOR land than the current District Plan provisions.
48. Further as Mr Kyle stated at the hearing in answer to a question by the Panel, the difficulty with the current District Plan provisions relates to ultimate enforceability and actually who is responsible for compliance with them. The NOR makes this very clear which in my submission is a strong indicator of need for the NOR in these particular circumstances as it will assist WIAL in meeting its Objective:

*To establish a suitable planning regime that properly recognises the regional significance of Wellington International Airport, while also ensuring*

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<sup>3</sup> *Rangi Ruru Girls School Board of Governors and others v Christchurch City Council* C130/2003 at paragraphs [40] to [44].

*the impact of aircraft noise on the surrounding community is appropriately managed.*

### **Planning Outcomes**

49. The Panel asked Mr Kyle whether the District Plan could remain without change in particular the relevant objectives if the ESA NOR was put in place. This was also articulated in the Panel's 3<sup>rd</sup> Minute at para 6 (b) using the phrase "meaningfully intact".
50. In my submission the Planners are correct at paragraph 26 of the JWS that Section 171 does not require that district plan policy provisions remain meaningfully intact for a notice of requirement to be confirmed.
51. Further in my submission the Planners are also correct in suggesting that in any event the Plan provisions do not direct that the golf course buffer must remain intact to properly address the effects of the requirement, provided there are methods to achieve appropriate avoidance or mitigation of adverse effects.
52. Both Planners agree that the revised conditions provide sufficient mitigation with Mr Ashby having some residual concerns about operational noise on outside residential space. I note that the Acoustic JWS records that the acoustic witnesses consider the external environment is already compromised by airport activities and were satisfied that the operational controls proposed were adequate.
53. Both Planners also agreed that the landscape buffer still serves important functions by retaining a degree of separation as well as sufficient space for recreational walking and possibly cycling. In answer to a question from the Panel Mr Kyle agreed there were other methods than just distance and space to manage effects and he referred to the bespoke approach taken to manage effects of the ESA NOR. These are inherent in the conditions and include height and setback controls, limits on the use of APUs, limits on the range of airport activities, and significant limits on activities at night-time to reduce effects on the adjoining residential area.
54. It is also important to remember that the recreational activity of the golf club will continue to operate and act as a buffer area in the context of the policy provisions.

55. Overall, 19.39 hectares or 60% of the buffer area formed by the Golf Course will remain. Additional to this, WIAL has set aside 3.5 hectares of the 12.9 hectare area it has acquired for the purpose of retaining a substantial buffer zone. So, in total, approximately 71% of the buffer area will remain if the ESA NOR is confirmed.

### **Design Principles Versus Design Guide Issue**

56. This matter was raised in the evidence of Ms Simpson and has been resolved through the post hearing conference and associated amendments to conditions as discussed above and outlined in paragraphs 12 and 13 of the Planners' JWS.
57. In my submission the conditions as drafted now:
- (a) achieve more than what the current District Plan does in terms of design given there is no current control in terms of design unless a resource consent is required; and
  - (b) offer a sensible balance between providing sufficient flexibility for the requiring authority while also ensuring design, landscape, and urban design will be an important part of development at the Airport, particularly within the Terminal Precinct.

### **Management Plans - Certification versus Comments Issue**

58. Similarly, this matter appears to have been resolved, with a certification approach to be taken where technical assessment is required as well as a certification "loop" condition to ensure there is an appropriate process in place as discussed above. Where no technical standard is involved a comments approach has been taken.
59. In my submission this is an appropriate distinction and recognises that "one size does not fit all" in the context of management plans that deal with different effects and circumstances and cover a wide variety of resources and issues.

## **Construction Management Plan – Main Site NOR**

60. The Panel suggested that a construction management plan may be appropriate for the Main Site NOR given that one is required for the ESA NOR.
61. WIAL does not consider that a construction management plan is required for the Main site. Given this site is an operational airport particular care needs to be taken for obvious reasons. That is currently undertaken without a formal management plan process in place and the consequential need for the Council's certification is not necessary.
62. WIAL has agreed to a separate management plan process for the Hillock that will require certification.

## **RESPONSE TO COUNCIL REPORTING OFFICERS**

### **Ms Simpson**

63. Ms Simpson's concerns have been largely resolved as set out in the Post Hearing JWS and associated conditions.
64. Ms Simpson continues to consider that Rongotai Ridge Precinct would be better managed via District Plan provisions as opposed to a designation given its public visibility and landscape elements. She also considers that upper limits to landform change and bulk and location of building should be included if the NOR is confirmed.
65. In my submission the visibility and landscape of this Precinct does not justify it being excluded from the NOR and to me it simply does not make sense to exclude one Precinct and have that separate from the other Precincts included in the Main Site NOR and associated conditions.
66. In terms of additional controls in this area, in my submission Mr Kyle's response recorded in the JWS is correct as the outline plan process would be triggered by relatively minor earthworks and the Precinct's location in the context of the Obstacle Limitation Surface Designation means that the potential for development in this Precinct is extremely limited in any event.
67. Finally, Ms Simpson referred to a Design Guide developed by Christchurch International Airport Limited (**CIAL**). I have spoken to one of the property

managers at CIAL who confirmed that this document is an internal document only and relates only to the commercial/ industrial parts of the Airport's campus.

### **Mr Ashby**

68. Like Ms Simpson, Mr Ashby's concerns appear to have been largely resolved as set out in the JWS and associated conditions.
69. In relation to the Rongotai Ridge Precinct he also considers that upper limits to landform change and bulk and location of building should be included if the NOR is confirmed. I refer to my submissions above in response to that matter.
70. At the hearing Mr Ashby's queried whether WIAL has given adequate consideration of alternatives in the context of the broader airport site.
71. In my submission WIAL has provided detailed and compelling evidence about this matter. Mr Munro's evidence in particular shows a clear pattern of consideration by WIAL over many years through master planning processes and as to the myriad matters that have been considered in designing the way the ESA will meet operational needs over time. This evidence has demonstrated why this area is the most appropriate and why provisioning for additional airside space at the airport is not able to be undertaken elsewhere within the broader airport site.
72. I also note Mr Munros evidence that WIAL has had to be particularly rigorous in its planning because, when compared to New Zealand's other major airports, Wellington is very space constrained. This should give the Panel comfort that WIAL has properly considered alternatives including in the context of the broader airport site.

## **RESPONSE TO SUBMITTERS**

### **Regional Council**

73. The Panel recognised that much of the relief sought by the Regional Council is beyond the Panel's jurisdiction and relates to commercial matters.
74. WIAL recognises the benefits of accommodating various categories of public transport in order to align with the various requirements and preferences of

the full spectrum of airport users. It has already and continues to actively plan for public transport to the extent that is reasonably and lawfully expected of it. Mr Clarke's evidence at the hearing in answer to a question by the Panel was that WIAL has even offered to run an airport bus service and has also agreed to a condition that requires reporting on carparking demand and supply at the Airport.

75. Subsequent to the hearing the Regional Council has publicly committed to commencing regular scheduled airport bus operations by 1 July 2022. WIAL is highly supportive of this service and intends to provide necessary on site assistance to the extent required of it.

### **Regional Public Health (RPH)**

76. Mr Gillam stated that RPH has had ongoing concerns about operational airport noise for some time. However, WIAL has never been made aware of such concerns and it is not aware that such concerns have been raised with the Council, who I would expect to be informed.
77. As for Dr Palmer, it is important to recognise that he is not an acoustic expert and his evidence conflicts on technical acoustic matters with that of his expert acoustic witness, Dr Chiles.
78. As I also stated in opening submissions you should be cautious of Dr Palmer's evidence particularly as his language (noting his description of Ms Smith's evidence at the hearing) is not that expected of an objective expert.
79. For example, Dr Palmer in his supplementary evidence, continued to assert that airport noise will lead to higher levels of cardiovascular disease when his evidence in chief did not establish this as a matter of fact (see paragraphs 12 – 18).
80. In my submission, Dr Palmer's reliance on the latest WHO Guidelines 2018 where an external noise limit of 45 dBA would be the trigger for intervention is not supportable (and is not supported by his own witness). Nor is it reasonable given the broad effect such an approach would have on all of New Zealand's commercial airports not to mention industrial and commercial areas as well. In these circumstances in my submission the requirements of the current New Zealand Standard 6805 should prevail.

81. Dr Chiles, while defending the WHO Guidelines did not suggest that managing aircraft noise at the airport to accord with a 45 dBA contour would be appropriate. Dr Chiles stated that criticism by others (with reference to the article by Truls Gjestland tabled by Ms Smith) should not take away the weight that ought to be afforded to the Guidelines.
82. In my submission taking account of criticism of the Guidelines is important especially when:
- (a) the Guidelines have not been reviewed by a NZ Standards Committee as to their applicability/ suitability in the NZ environment; and
  - (b) the Guidelines ultimate relevant recommendation seeks intervention at 45 dBA did not appear to be supported by any of the acousticians involved in the hearing.
83. Some of Dr Chile's concerns seemed to be more procedural in nature and he sought relief that is beyond the scope of the NORs.
84. For example, there is no scope to add a 60 dBA contour (in order to trigger a mechanical ventilation obligation) for the Main Site NOR as the Main Site NOR does not seek to amend the District Plan's noise boundary identified on Planning Map 35.
85. I note that, as stated by Ms Smith at the hearing, based on the current Airport noise contours even if the 60 dBA contour was put in place now, that level of airport noise has not yet been reached by current airport operations. As such at current noise levels no additional ventilation of dwellings would need to be implemented, and in fact this would not be necessary for some time.
86. However, I note the upcoming District Plan Review will be much wider in scope including the opportunity to reconsider noise contour matters and any noise related designation conditions can also be changed at that time if required.
87. Dr Chiles also asserted that the Main Site designation needs to have the same noise control condition for Aircraft Operations as the ESA NOR.
88. This suggested amendment is also beyond scope of the NOR as it would in turn change the boundary of the ANB which as discussed above is not part

of this NOR process. This is because the ESA NOR Aircraft Operations condition also includes APU usage as well as Aircraft Operations.

89. Further, from an acoustic perspective mirroring the conditions in the way suggested by Dr Chiles does not make any difference (i.e. it does not allow WIAL to double dip or make more noise).
90. Both other acoustic witnesses considered that the aircraft operational conditions are capable of implementation.
91. Finally, I note that while Dr Chiles had concerns about the Main Site NOR as discussed above, he stated that he was satisfied with the ESA provisions and that no further steps were required.

### **International Climate-Safe Travel Institute**

92. I refer to my opening submissions as to the relevance of climate change to the consideration of these NORs (see paragraphs 56 – 79). From that it will be clear that I disagree with Mr Bennion's assertion regarding the relevance of climate change related matters at paragraph 3 of his statement <sup>4</sup> at the hearing and paragraph 8 of Mr Sapsford's evidence.
93. Accordingly, both Mr Sapsford's and Mr Bennion's evidence is of limited relevance in the context of this hearing.
94. However, I respond to a few matters below although I confess that I found this statement difficult to follow in places.
95. Contrary to Mr Bennion's assertion, Mr Sapsford evidence is not uncontested but in my submission, it says very little of relevance given the legal position in any event. I note Mr Sapsford was critical of WIAL not providing information sought by the Institute at the end of April 2021. The request came when WIAL was finalising its evidence for the hearing and information, to the extent considered to be appropriate, was included in the WIAL evidence.
96. Mr Bennion criticised the use of phrase "in a sustainable manner" in one of NOR objectives at paragraph 5 of his statement at the hearing. He suggested this must refer to the general sustainability of the airport defined

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<sup>4</sup> Mr Bennion stated he was not providing legal submission and hence giving evidence as a layperson.

in a “Brundtland” sense and went on to state that this is a problem as the airport is one of the largest sources of emissions in the region.

97. In my submission Mr Bennion is confusing the airport’s emissions with the emissions of its airline customers. In addition, the reference to “sustainable” in the objective should be given its ordinary dictionary definition in the context of the Requiring Authority’s operations over time and not extended to that of “sustainable development” in the wider Brundtland sense, as inferred by Mr Bennion.
98. Mr Bennion appeared to suggest that adding a reference to “sustainable infrastructure” in the list of activities provided for by the NOR is somehow a material factor in the context of suggesting the area of land within the ESA NOR is not justified. However, it should be apparent that sustainable infrastructure is a minor component of the ESA listed activities, as most of the area will be required for the circulation and parking of aircraft, as well as buffer and roading areas. As discussed above the need for this area and in this location is explained in detail in the WIAL evidence including in particular, Mr Munro’s.
99. Overall in relation to his comments about the Objectives, in my submission Mr Bennion:
- (a) was seeking a greater level of detail in the objectives than is necessary or appropriate;
  - (b) attempted to impose his own gloss on the WIAL objectives for the NORs. The statutory consideration here is in terms of achieving the requiring authority’s objectives. It is settled law that this does not enable the merits of an objective to be judged by the Court<sup>5</sup> and so it follows that Mr Bennion may not do the same.
100. Finally Mr Bennion referred to the *Peka Peka to Otaki* Board of Inquiry decision<sup>6</sup> as somehow endorsing his view about the relevance of climate change considerations. Paragraph 36 of Mr Bennion’s statement sets out what he considered to be the Board’s conclusion and then went on to say that the “contrast with this WIAL proposal is striking”.

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<sup>5</sup>Gavin Wallace v Auckland Council [2012] NZEnvC 120 paragraph [184]

<sup>6</sup> Peka Peka to North Ōtaki Expressway Proposal Volume 1

101. However the Board there accepted the requiring authority's transport modelling which did not include potential effects from climate change considerations (in this instance climate change effects would lead to less vehicles on the road which in turn would not justify the significant environmental effects of the motorway). Ultimately the Board only considered the anticipated effects of climate change such as flooding.
102. Importantly Mr Bennion did not refer to the leading case of the Supreme Court in *Buller* discussed in my opening submissions nor any other Board of Inquiry decisions such as for the *Transmission Gully* or the *Mackays to Peka Peka* projects where the Boards in those decisions expressly found that greenhouse gas emissions were not a relevant consideration.

### **Ms Salisbury**

103. Ms Salisbury raised a concern about whether taxiing of aircraft is taken into account as part of the noise monitoring programme. This was answered by Ms Smith at the hearing so it is clear that aircraft taxiing is part and parcel of the noise that is accounted for from airport operations.
104. Ms Salisbury also raised concerns about the perceived adverse effects of the Execujet hangar. The Planners' conditions have been amended to provide for appropriate height and setback limits which together with the outline plan process (also extended by the Planners' Version of conditions) and the preparation and implementation of the Landscape and Urban Design Statement. This should assist in managing the edge effects of larger buildings in the future and these do so in a manner that is more effective than the current District Plan performance standards.
105. Finally, Ms Salisbury referred to the issue of air quality around the airport which the Panel recognised as being beyond the scope of these NORs. Ms Lester has advised me that air quality (nitrogen dioxide levels) is monitored at the Airport by Greater Wellington Regional Council as part of its State of the Environment Reporting and to ensure compliance with the NES-AQ. The annual results show that levels are well within any guideline values.

### **Dr Thomas**

Dr Thomas appeared as a resident in the local community but noted that she had no clear view of the Airport. Dr Thomas raised issues such as increased eco anxiety

in the community surrounding the airport as a result of airport operations but did not provide any evidence support her assertions of such effects. Environmental effects must have some evidential basis before they can be considered and in my submission this type of evidence does not meet that threshold.

### **Strathmore Residents Association**

106. Mr Frost from the Strathmore Park Residents Association was particularly critical of the WIAL's communication and consultation processes and stated that the Association first heard about the Master Plan via the media. Ms Lester has advised that:

- (a) as noted in Mr Clarke's evidence, negotiations with the Miramar Golf Club were ongoing for several years. On the 24<sup>th</sup> of April 2018, the Dominion Post ran a story about WIAL seeking to purchase part of the course for future expansion. This story was the first time the potential for golf club land to be converted to airport activities had been publicised and was in advance of the finalisation of the draft Master Plan;
- (b) when the draft Master Plan was prepared a copy was sent directly to the Strathmore Park Residents Association and a presentation was provided to Ms Robin Boldarin at the ANMC meeting who attends the Strathmore Park Residents Association meetings regularly. Noting also, that a Press Release was issued, and a neighbourhood mail drop undertaken with an invitation to provide comments on the draft Master Plan which resulted in approximately 40 responses from the local and wider community;
- (c) the Airport also discussed and met with members of the SPRA.

### **Mr Muthu**

107. Mr Muthu suggested that nearby properties will be "unsaleable" as a result of the ESA NOR.

108. This assertion is not borne out by the number of residential sales that have taken place adjacent to or very close to the ESA land since the Airport's plans to develop the area were announced and widely reported in the news

media. Mr Clarke has provided the table below which lists the observed transactions:

Address	Date Sold	RV	Sale Price	Comments
15 Bunker Way	19/02/2021	\$ 1,180,000	\$ 1,250,000	Direct fix monolithic cladding
16 Bunker Way	26/11/2020	\$ 1,430,000	\$ 2,000,002	
21 Bunker Way	14/12/2020	\$ 1,540,000	\$ 925,000	Sold as a leaky home
4 Bunker Way	26/11/2020	\$ 920,000	\$ 1,550,000	
5 Bunker Way	23/10/2020	\$ 1,160,000	\$ 1,395,000	
460 Broadway	14/12/2020	\$ 820,000	\$ 720,000	
426A Broadway	29/01/2021	\$ 760,000	\$ 950,000	
6 Kekerenga St	15/12/2020	\$ 640,000	\$ 1,040,000	
36 Ahuriri Street	23/02/2021	\$ 720,000	\$ 1,000,000	
3 Bunker Way	31/12/2019	\$ 900,000	\$ 950,000	

109. Mr Muthu questioned whether WIAL has properly looked at alternative designs rather than just alternative locations. In the context of s171 this boils down to whether the appropriate assessment of alternative methods under Section 171(1)(b) has been carried out by the requiring authority.
110. As discussed above Mr Munro's evidence in particular outlines the consideration by WIAL through the master planning process and the myriad matters that have been considered in designing the way the ESA will meet operational needs over time. Importantly, in the context of Mr Muthu's question the evidence shows:
- (a) how the area's design is dictated by these operational and layout requirements including at the dimensions required to accommodate aircraft in compliance with the Civil Aviation safety rules; and

- (b) why this area is the most appropriate and provisioning for additional airside space at the airport in this way is not amenable to significantly different designs.

111. Therefore in my submission the WIAL evidence explains in some detail how the potential layout of the area has been arrived at and there has been no failure in this regard.

### **Guardians of the Bay (GOTB)**

112. Ms Weeber for GOTB suggested that there has been an unstructured pattern of development at the Airport using the example of the parking building being built in the wrong place which has led to the need for ESA NOR.

113. In my submission the existence of the parking building is an example of the extent to which WIAL has gone to avoid extending airport operations beyond its boundaries when possible. Mr Clarke has advised that the cost of vertical car park construction is over ten times the cost of at grade car park construction. Notwithstanding this substantial cost premium, WIAL has developed this facility to avoid using its scarce land resource for cheaper to develop, at grade carparking.

114. In addition, and as described in Mr Munro's evidence and that of Mr Howarth, the Airport requires the extension of aircraft parking areas adjacent to the passenger terminal. There is no viable alternate area to extend these facilities absent the ESA land.

### **Mr Pette**

115. Mr Pette was critical of the how long it has taken to implement the Quieter Homes programme. As described in Mr Clarke's evidence, the pace of the rollout of the programme is determined by a number contributing factors, most significantly resident take-up. The Phased rollout of the Quieter Homes acoustic mitigation project commenced in April 2016 (after a very detailed study) starting with the properties that experience the most exposure to airport noise. Since then, 74 packages have been installed remembering that Areas 1 and 2 are the most involved, and Area 3 is continuing.

116. WIAL understands the programme is considered in the industry to be best practice for the treatment of homes affected by aircraft noise in New

Zealand. Certainly, there was no evidence given at the hearing that the results of the programme have not been successful and submitters, who have been recipients of acoustic treatment, were complimentary about the process and the results.

### Save the Basin

117. In my submission the submitter goes beyond its constitution which only relates to the Basin Reserve area. This is shown in the extract from the constitution below:

#### **3.0 Purposes of Society**

3.1 The purposes of the Society are to:

*(a) Promote, preserve and protect the historic character of the Basin Reserve area*

*(b) Promote high quality urban design and environmental management of the Basin Reserve area*

*(c) Promote an appropriate role for the Basin Reserve area in the development of a high quality, sustainable transport network, recognising the importance of the Basin to the public transport spine, and the importance of walkability and public transport for the users of the area*

*(d) Do anything necessary or helpful to the above purposes.*

118. Accordingly, the submission of this organisation is not valid.

### Mr Weir

119. While acknowledging that Mr Weir is a layperson, it is apparent that he misunderstands how the designation conditions work and how the regulatory approach works (see paragraphs 8 – 10 of his statement at the hearing). Clearly the District Plan rules do not and cannot apply to the ESA NOR and hence the need for appropriate conditions to regulate noise and other effects from the ESA land.

120. In my submission Mr Weir overstated the purpose of the buffer as a regulatory method for noise attenuation in terms of the District Plan policy provisions. The buffer afforded by the golf course is for the avoidance or mitigation of adverse amenity effects (Objective 10.2.5 and Policy 10.2.5.1) however the method associated with the management of noise does not refer to the buffer area at all. I also refer to the Planners' JWS who also disagree with Mr Weir's lay analysis of these policy provisions.

121. Mr Weir raised the issue of bird scaring at the Airport which is not understood to have been the subject of complaints at the Airport to date. WIAL as the airport operator is obliged to manage birds at the airport (for obvious

reasons) and has a range of mechanisms to do so. This would be an appropriate matter for the ANMC to consider if in the unlikely event it becomes a concern for the ESA Area.

122. Finally, Mr Weir also questioned whether all the ESA land is needed and justified. This is essentially the same issue raised by Mr Ashby and Mr Muthu and from a Section 171 perspective translates to whether the alternatives assessment in terms of Section 171(1)(b) has been appropriately considered by the requiring authority, the parameters of which were discussed in my opening submissions.
123. In my submission and as discussed above, the WIAL evidence, particularly that of Mr Munro goes to some lengths to demonstrate the consideration that has been given to the potential layout of the area and the master planning process that underpins it.
124. Noting that the statutory test is set quite low being “adequate” consideration, in my submission WIAL has done more than that, referring to Mr Munro’s evidence that WIAL has had to undertake more detailed planning than other New Zealand airports because of the scarcity of airport land at Wellington. In my submission the evidence shows the area is tight for the proposed activities which includes the retention of a buffer area and the relocated road.

## **CONCLUSION**

125. In my submission taking in account the evidence given at the hearing and as discussed above both NORs continue to meet the requirements of Section 171(1) and achieve the purpose of the Act. It follows that they are worthy of your recommendations to confirm, together with the imposition of the further updated conditions explained and attached to this Right of Reply.

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**Amanda Dewar**  
Counsel for Wellington International Airport Ltd  
2021