

BEFORE THE WELLINGTON CITY COUNCIL

IN THE MATTER OF of the Resource Management Act 1991

AND

IN THE MATTER OF the Wellington City Proposed District Plan

STATEMENT OF EVIDENCE BY JOHN KYLE

HEARING STREAM 3 – COMMENCING 9 MAY 2023

INTRODUCTION

QUALIFICATIONS AND EXPERIENCE

- 1 My name is John Kyle. I am a founding director of the firm Mitchell Daysh Limited.
- 2 My qualifications and experience are set out in paragraphs 7 to 10 of my statement of evidence relating to Hearing Stream 1 of the Wellington City Proposed District Plan (“**Proposed Plan**”) dated 7 February 2023. In the interests of brevity, I do not repeat that information here.
- 3 I confirm my obligations in terms of the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. I agree to comply with the Code and I am satisfied that the matters which I address in my evidence are within my field of expertise. I am not aware of any material facts that I have omitted which might alter or detract from the opinions I express in my evidence.

SCOPE OF EVIDENCE

- 4 In this brief of evidence, I will:
 - a. Provide a brief overview of the Sites and Areas of Significance of Māori located within Wellington International Airport Ltd’s (“**WIAL’s**”) land or lease holdings;
 - b. Provide an overview of the “mechanics” of the Proposed Plan and how the relevant provisions relating to Sites and Areas of Significance to Māori apply at Wellington International Airport (“**the Airport**”);
 - c. Provide a summary of WIAL’s submission, the section 42A report officers recommendations with respect to WIAL’s submission; and
 - d. Recommend an alternative approach for managing the effects of infrastructure activities within Sites and Areas of Significance to Māori within the Airport Zone.

- 5 In preparing this statement of evidence, I confirm that I have read the following documents:
- a. WIAL’s submission and further submission;
 - b. Part 2 – Sites of Significance to Māori of the Proposed Plan, insofar as is relevant to WIAL’s submission and further submission;
 - c. Part 2 Infrastructure – Other Overlays of the Proposed Plan, insofar as is relevant to WIAL’s submission and further submission; and,
 - d. The Wellington City Proposed District Plan Hearing Stream 3 – Historic Heritage, Notable Trees and Areas of Significance to Māori report, prepared under section 42A of the Resource Management Act 1991 (“**the section 42A report**”) and its associated appendices (insofar as it relates to Sites and Areas of Significance to Māori).

SITES AND AREAS OF SIGNIFICANCE TO MĀORI AT WELLINGTON AIRPORT

- 6 There are currently two Sites or Areas of Significance to Māori identified on the planning maps within WIAL’s existing landholdings. These are:
- a. Maupuia Pā (Category A), located at the northern end of WIAL’s landholdings, on Rongotai Ridge; and
 - b. Moa Point (Category B), located near the southern end of the runway.
- 7 I note the Maupuia Pā site is located within the Airport Zone, but outside of WIAL’s Main Site Area Designation (WIAL4). The Moa Point site is located both within the Airport Zone and the Main Site Area Designation. The provisions relating to the Sites and Areas of Significance to Māori will therefore apply to activities being undertaken within the Maupuia Pā site, and activities within the Moa Point site, that are either not consistent with the purpose or do not comply with the conditions set out in the Main Site Area Designation.
- 8 A copy of the relevant planning map pertaining to each site is attached as **Appendix A** to this statement of evidence.

- 9 I understand, based on the section 42A report, that the provisions of the Proposed Plan that apply to these Sites of Significance only apply within the mapped extent of the identified Site or Area of Significance.¹
- 10 While both sites are included in Schedule 7 of the Proposed Plan, there is no information contained within that schedule that identifies what the “features integral” to the sites are, which means that the extent of the feature in question is difficult to ascertain.

PLANNING FRAMEWORK RELATING TO MAUPUIĀ PA AND MOA POINT

- 11 Because of the way the infrastructure provisions of the Proposed Plan are drafted, it is not clear to me whether the Sites and Areas of Significance to Māori chapter applies to the Airport Zone. I set out my reasoning for this below. I appreciate that while the infrastructure chapters are not subject to this Hearing, I raise them here because of the way that they work with the Site and Areas of Significance to Māori.
- 12 For the purposes of the Proposed Plan, the Airport comprises “Infrastructure”.²
- 13 The infrastructure provisions set out in Part 2 – District Wide Matters – Energy, Infrastructure and Transport are intended to apply to infrastructure on a City Wide basis. In this regard, I note the introduction to the Infrastructure chapter states (my emphasis added):

The provisions within this chapter apply on a City-wide basis. As such the rules in the zone chapters and earthworks chapter do not apply to infrastructure unless specifically stated within an infrastructure rule or standard. Likewise, the rules in the overlay chapters do not apply to infrastructure. Instead, infrastructure sub-chapters address the requirements particular to the overlays as follows:

- *INF-CE (Coastal Environment and Natural Character);*
- *INF-ECO (Significant Natural Areas);*

¹ Paragraph 1515 of the section 42 Report.

² The Proposed Plan applies the definition of Infrastructure, as set out in Part 1 of the Resource Management Act 1991 (“**RMA**”). Under the RMA, infrastructure means (as relevant to my statement of evidence):

(i) *An airport as defined in section 2 of the Airport Authorities Act 1966.*

- *INF-NFL (Outstanding Natural Landscapes, Outstanding Natural Features, Special Amenity Landscapes, Ridgelines and Hilltops);*
- *INF-NH (Natural Hazards); and*
- *INF-OL (Other Overlays).*

14 The Infrastructure Chapter therefore separately deals with the matters otherwise included in the relevant overlay chapters of the Proposed Plan. Put another way, “Infrastructure” is not subject to the overlay chapters, such as the Sites and Areas of Significance to Māori overlay.

15 Insofar as Airport infrastructure is concerned, it is important to note that the introductory text of the Infrastructure Chapter also states (again my emphasis added):

Further, the Resource Management Act, and therefore the District Plan, share the same broad definition of ‘infrastructure’, which includes airport and port facilities. Notwithstanding that, this Infrastructure Chapter does not apply to activities that fall under the definition of airport purposes or airport related activities (which are dealt with in the Airport Zone chapter), or the definition of port or operational port activities (which are dealt with in the Port Zone chapter). Any infrastructure in the airport or port areas that is inconsistent with those definitions is managed by the provisions in this Infrastructure Chapter.

16 As a result, it is not completely clear to me which overlay provisions apply to activities in the Airport Zone. Is it that the Sites and Areas of Significance to Māori provisions apply because there is no exemption within the Airport Zone chapter, or do the exemptions that apply to Infrastructure also apply to Airport activities within the Sites and Areas of Significance to Māori overlay?

17 If the Sites and Areas of Significance to Māori chapter of the Proposed Plan applies to activities at the Airport, I can potentially foresee a situation where there are considerable consenting difficulties for an otherwise meritorious infrastructure proposal within that zone. This is due to the policy directives within the chapter requiring that the spiritual and cultural values of “features integral” be protected and maintained³ and the

³ For example, SASM-P4 and SASM-P5.

demolition or destruction of identified sites and areas needing to be avoided.⁴

- 18 By comparison, other infrastructure activity can be assessed on a different basis because the infrastructure chapter provisions allow for a broader evaluative consideration, including the ability to account for significant regional and national benefits that infrastructure provides, as well as the operational and functional requirements that apply in a given case.
- 19 In essence, it seems to me that the Proposed Plan has set in place a regime whereby the development of airport infrastructure is treated differently to other infrastructure, due to the absence of a similar exemption to that which applies in the Infrastructure chapter.⁵ I question whether this was intended, and if it was, is it reasonable.

WIAL SUBMISSION AND SECTION 42A REPORT RECOMMENDATIONS

- 20 I understand that WIAL's submission with respect to the Sites and Areas of Significance to Māori took a conservative approach and assumed that the chapter that is the subject of this hearing is a relevant chapter that applies to its activities in the Airport Zone (due to the qualifier set out above in the Infrastructure Chapter and the commensurate lack of a similar qualifier in the Airport Zone).
- 21 Notably, WIAL's covering submission states:⁶

WIAL does not necessarily object to these [the Maupuia Pa and Moa Point sites] being identified as sites of significance but notes that these sites have been significantly modified by land use development over time. While WIAL recognises that mana whenua's relationship with these areas endures, despite the modifications, it is not clear how the planning framework is to be applied to these areas.

⁴ For example, SASM- P6.

⁵ I understand the exemption was included in response to WIAL feedback on the draft District Plan where it noted that a potential duplication of land use controls between the Airport Zone and the General Infrastructure methods.

⁶ Paragraphs 4.82 and 4.83 of the covering submission.

- 22 The covering submission then goes on to note three examples where it anticipates implementation issues will arise. This includes:
- a. Practical difficulties applying policies and methods that seek to manage the effects on “features integral”, where such features have not been identified in Schedule 7 for Maupuia Pā and Moa Point. This means it is difficult to know what measures need to be applied to successfully manage any effects on these features, if and when infrastructure is to be developed on or near these sites.
 - b. Practical difficulties applying policies and methods that seek to avoid demolition or destruction of Sites or Areas of Significance to Māori, as no guidance has been provided around what this means for sites that are already heavily modified, and the key features potentially already demolished or destroyed; and,
 - c. No consenting pathway being available for airport activities (like for other infrastructure), despite WIAL being a regionally and nationally significant infrastructure provider with potential operational and functional requirements to locate in these areas.
- 23 I note that I have focused my summary on WIAL’s covering submission as this reflects the key issues arising from the chapter subject to this hearing. The table appended to the covering submission sets out that the relief sought with respect to various provisions within this chapter is for the provisions to be amended or that they are deleted. I understand the latter was included to preserve scope and to provide the Panel with sufficient flexibility to resolve the issues identified in the covering submission if it is minded to do so.
- 24 The section 42A report officer addresses WIAL’s submission in paragraphs 1524 to 1526. Notably, the reporting officer says:
- a. That the provisions in the “Infrastructure – Other Overlays’ chapter will apply and that WIAL will have further chance to comment on those provisions during Hearing Stream 9 (when submissions on the Infrastructure – Other Overlays are heard); and,

- b. The reporting officer does not recommend removing the Maupuia Pā or Moa Point sites from the Proposed Plan in their entirety, nor are any changes recommended to respond to WIAL’s submission.
- 25 As noted in paragraphs 16 to 19 above, it is not clear to me whether the Infrastructure – Other Overlays chapter of the Proposed Plan can be engaged by WIAL if it were to further develop infrastructure activities in a way that triggers the provision associated with the two identified Sites or Areas of Significance to Māori. For this reason, am I somewhat troubled by what the reporting officer has said in this regard.
- 26 Notwithstanding the above, I am cognisant that wholesale changes to the Sites and Areas of Significance to Māori chapter to address WIAL’s submission, or the deletion of the two sites located on WIAL holdings, could potentially have ramifications that may not be appropriate in terms of section 6(e) of the RMA. However, I do think that the disparity between how the Proposed Plan manages airport activities and infrastructure more generally needs to be remedied. Importantly, it is my view that the Proposed Plan also needs to ensure that the Airport, as regionally and nationally significant infrastructure, has the ability to appropriately develop what is necessary to operate in an efficient way, whilst properly managing any effects it may have on the features identified. I suggest a way forward below.

RECOMMENDED PLANNING APPROACH

- 27 In my assessment, there is a suitable method to remedy the issues identified above without requiring wholesale amendments to the Sites and Areas of Significance to Māori chapter of the Proposed Plan. These methods include:
- a. Refining the qualifier within the Infrastructure – Other Overlays chapter; or,
 - b. Including appropriate consideration of the identified sites within the Airport Zone.

28 While I acknowledge that the Infrastructure – Other Overlays chapter is not being heard until Hearing Stream 9 and the Airport Zone until Hearing Stream 6, for the benefit of the section 42A report officers and submitters with an interest in those hearings, I note my preliminary view is that the following amendments could be made to the introductory text of the Infrastructure chapter to address WIAL’s concerns:

Further, the Resource Management Act, and therefore the District Plan, share the same broad definition of ‘infrastructure’, which includes airport and port facilities. Notwithstanding that, this the rules within the Infrastructure Chapter (excluding the infrastructure specific overlay sub-chapters) does not apply to activities that fall under the definition of airport activities purposes or airport related activities located in the Airport Zone (which are dealt with in the Airport Zone chapter), or the definition of port or operational port activities (which are dealt with in the Port Zone chapter). Any infrastructure in the airport or port areas that is inconsistent with those definitions is managed by the provisions in this Infrastructure Chapter.

29 I note that the above drafting could have broader ramifications for the Port Zone, which would need to be considered by CentrePort in particular. If the panel sees some benefit of this redrafting, I am happy to consult with CentrePort and council officers in advance of Hearing Stream 9 to determine if the above drafting is appropriate or whether further nuancing is required.

30 In the alternative, the Airport Zone could be refined to mimic the management approach that is applied to infrastructure as per the Infrastructure Chapter within overlay areas (or more specifically, the Sites and Areas of Significance to Māori). Again, I would be happy to undertake some redrafting of the Airport Zone chapter if the panel thought that was useful. This could be brought back to Hearing Stream 6.

31 With respect to WIAL’s submission regarding Schedule 7, I note that it is still not clear to me what the “features integral” are that relate to Maupuia Pā and Moa Point. This issue remains, regardless of which chapter of the plan seeks to manage the effects of development in and around these features. My difficulty with this description is that it is potentially very difficult for plan users to properly understand how to manage the effects of

development and use on these features. This is because it is difficult to understand what area might comprise such a feature and what might not especially where modification has already taken place.

32 I acknowledge that Taranaki Whānui may not wish to publicly disclose information about the full extent of the Scheduled Features. I understand that WIAL is working collaboratively with Taranaki Whānui on a number of projects in and around Wellington Airport, Miramar Peninsula and the surrounding coast. This will culminate in both parties working towards an agreed Memorandum of Understanding (“**MOU**”). The details of this MOU have yet to be finalised.

33 I anticipate that this is a matter that can be discussed further between Taranaki Whānui and that WIAL will be able to establish a further understanding of what the integral features of the site are. Following these discussions, Taranaki Whānui and WIAL may be in a position to provide appropriate descriptions of these features for inclusion in the Proposed Plan.

34 With the inclusion of such descriptions, there is difficulty in properly ascertaining the extent of the identified features.

CONCLUSION

35 Overall, I support the intent of the provisions contained in the Sites and Areas of Significance to Māori chapter of the Proposed Plan, and acknowledge that the proposed chapter is seeking to achieve outcomes that are generally consistent with sections 6(e), 7(a) and 8 of the RMA. As set out in my evidence, however, the drafting approach used to achieve these outcomes insofar as airport infrastructure is concerned:

- a. Creates uncertainty around which provisions of the Proposed Plan apply to activities occurring within the Airport Zone;
- b. Creates an inconsistency for airport activities compared to other forms of infrastructure throughout the district;

- c. Does not properly recognise the benefits of airport infrastructure, nor the operational or functional requirements that might necessitate modification or development in a particular location; and,
- d. Does not provide sufficient certainty around the extent of “features integral” to Maupuia Pā or Moa Point particularly in circumstances where the areas in question are already heavily modified and the key features are potentially already demolished or destroyed.

36 In my view, these matters can all be addressed by creating consistency in the framework applied to the Airport Zone and other forms of Infrastructure by the means I set out in paragraphs 27 to 30 above and by including further description of the features integral that relate to Maupuia Pā and Moa Point as set out in paragraphs 31 to 33.

John Kyle

24 April 2023

Appendix A – Sites and Areas of Significance to Māori



