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.

Opening Legal Submissions on behalf of Wellington International Airport Ltd

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INTRODUCTION

1. These legal submissions are presented on behalf of Wellington International Airport Ltd (**WIAL** or **Requiring Authority**).

2. WIAL is an approved Requiring Authority under section 167 of the Resource Management Act 1991 (**RMA**) for the operation, maintenance, expansion, and development of Wellington International Airport. The approval was provided with the NOR documentation filed with the Council.

3. WIAL is seeking two Notices of Requirement to enable land to be used for airport purposes in relation to:

   (a) The Airport's current landholdings the majority of which is zoned for a wide range of Airport activities as a permitted activity (**Main Site NOR**);

   (b) An eastern extension of the Airport to enable a more limited range of airport activities essentially aircraft taxiing, apron and stand areas (**ESA NOR**).

EVIDENCE

4. Expert evidence has been filed on behalf of WIAL from:

   (a) Matt Clarke, Chief Commercial Officer, WIAL;

   (b) Mike Vincent, Airline Development Officer, WIAL;

   (c) John Howarth, General Manager Infrastructure and Development WIAL;

   (d) Iain Munro, Master Plan and Airport Planner, AirBiz;

   (e) Ken Conway, Head of Environment and Sustainability, AirBiz;

   (f) Laurel Smith, Acoustic Consultant, Marshall Day Acoustics Limited;

   (g) Andrew Reid, Lighting Engineer, Pedersen Read Limited;

   (h) Philip Robins, Geotechnical Engineer, Beca Limited;

   (i) Frank Boffa, Landscape Architect;

(j) Mark Georgeson, Traffic Engineer, Stantec;

(k) John Kyle, Planner, Mitchell Daysh Ltd.

5. All witnesses have prepared very short executive summary statements in addition to their evidence in chief.

KEY POINTS

6. In our submission it is important to highlight the following matters that should be borne in mind when undertaking your statutory assessment to make your recommendations on the NORs.

7. The Airport operates from an extremely constrained site and has managed to make it work by operating extremely efficiently and undertaking detailed master planning processes. However, the time has come where expansion is necessary to create the capacity required to meet future passenger demand and ease congestion at peak times.

8. Given these factors and even accounting for the fallout from the COVID pandemic there is no realistic forecasting or operational scenario that does not involve the need to expand the current footprint of the airport over time.

9. The ESA area is the only sensible place to expand to provide additional apron and taxiing space given its proximity to the Terminal area and because WIAL now owns the land.

WHY THERE ARE TWO SEPARATE NORS?

10. There has been criticism by some submitters about there being two separate NORs for the Airport.

11. The Main Site NOR was originally filed in August 2018. At the time it was prepared WIAL did not have a legal interest in the golf course land that forms the majority of the ESA NOR. The ESA NOR was filed in February 2020.

12. WIAL agreed at the request of the Council to delay the notification of the Main Site NOR so that both NORs could be publicly advertised and heard together.

13. Each NOR is distinct. For the ESA NOR, the types of activities enabled by the NOR are much more limited than for the Main Site NOR and have additional noise conditions. No buildings of any moment are anticipated as this area is fully required for aircraft parking and manoeuvring, the landscape buffer area, and the relocated Stewart Duff Drive.

14. The Main Site NOR provides for a wide range of airport activities and buildings. It largely mimics the majority of the current airport zone rules including the noise rules and does not amend the ANB.

THE NOTICES OF REQUIREMENT

15. The NORs are fully described in the filed NOR documents, the Council Officer's report, and the evidence for the Requiring Authority.

16. You will have noted Mr Kyle's evidence provides an updated set of proposed conditions for each NOR offered by the requiring authority to address concerns raised by submitters, the evidence of other witnesses and in the Section 42A report.

17. Further updated sets are attached to the Planning Joint Witness Statement and reflect amendments following consideration of the evidence for Regional Public Health and other submissions.

18. None of the amendments change the substance of either NOR but rather are designed to further mitigate the potential effects of each NOR and in particular for the benefit of the closest neighbours of the ESA NOR.

GENERAL NATURE OF DESIGNATIONS AND CONDITIONS

19. A designation is a type of consent mechanism (as opposed to a resource consent) for utility operations affecting the public interest.[1] A designation is a powerful planning tool because designated land is, in effect, given its own planning regime within the District Plan.[2]

20. A NOR/designation serves two separate but related purposes:

    (a) it protects the opportunity of using the land for a public work, project, or work, in that no one can undertake an activity that would prevent

[1] *Porirua City Council v Transit New Zealand* (W52/01).
[2] *Section 9(3) RMA does not apply to a project or work undertaken by a requiring authority.*

or hinder the designated work, without the prior written consent of the requiring authority; and

(b) it provides authority for a public work or project or work in place of any rules in the district plan and removes any need for land use consents.

21. Designations can range from being quite specific (identifying particular works on a particular site and containing detailed conditions) to more general, (for example, simply identifying a site as being for a "school" or a "hospital") with the details generally left to be addressed by an outline plan submitted to the territorial authority at a later date prior to construction, depending on the level of effects anticipated.

22. Both of the NORs are more generalised but also include comprehensive sets of conditions including the requirement for various management plans that will ensure later outline plans submitted to the Council will appropriately mitigate effects of the development of the land on the surrounding environment. For the Main Site NOR no outline plan is required for a limited range of works (essentially those activities that are currently permitted by the District Plan and where in all likelihood a waiver under Section 176A(2)(c) would be appropriate) however an outline plan will be required for larger works.

23. There is still some disagreement by the Planning witnesses about conditions particularly with regard to Urban Design conditions with the Council's planner (and urban designer) wanting additional controls.

24. It will be appreciated that conditions are an important component of a designation providing guidance for and a level of control over the requiring authority.

25. However, a key component of a general designation is flexibility, and the detail of any project is generally left to the outline plan process. This is reinforced by Section 176A (2) of the RMA which provides that an outline plan will not be required when "*the details of the … project or work … are incorporated into the designation"* (**Detailed Designation**). So, the details are not required to be included in a designation except where to do so is appropriate in the context of Section 171.

26. Thus, conditions must be cognisant of the nature of the designation sought and neither are a Detailed Designation.

27. It is also important not to treat designation conditions the same as resource consent conditions because resource consents do not have the additional statutory step of an outline plan process to further control adverse effects.

28. In the case in *Minhinnick v Minister of Corrections EnvC A043/04* the Court noted that an appeal under s171 concerns the decision to designate and is not concerned with matters such as design that may be a matter for an outline plan under s176A[3].

29. This can be compared to the more recent decision in *Re Queenstown Airport Corporation [2012] NZEnvC 206* (**QAC Decision)** where the Court found there were insufficient conditions addressing the built form, bulk and location of buildings within the site to be designated.

30. The Court's answer to this was to require additional "*landscape and visual amenity objectives for building and infrastructure design and location*[4]" to be incorporated into an integrated management plan.

31. I note the Court expressly did not require the content of the various plans as it did not think this would be possible without knowing the layout of the site.

32. The final conditions of the QAC Decision contain very few prescriptive conditions, essentially just building height and setback, with all other details to be dealt with via the integrated management plan and outline plan processes.

33. My overall analysis of the relevant caselaw is there should only be sufficient controls:

    (a) through conditions and not necessarily prescriptive conditions;

    (b) that will enable the effective management of effects in light of the surrounding environment and the type of designation sought; and

    (c) which are not appropriate to be left to the outline plan process.

[3] Para [275].
[4] Para [199] *Re Queenstown Airport Corporation [2012] NZEnvC 206. This is the Interim decision and forms part of a suite of decisions concerning "Lot 6".*

34. In my submission management plans are a tried and true method to achieve good environmental outcomes and are well suited to the designation arena when the design/ layout of development is not necessarily known at the outset (unlike a resource consent) and development is/may be staged or take place over a long time period.

35. In my submission WIAL has offered more than sufficient prescriptive conditions including the requirement for Urban Design Principles to be developed that provide the "glue" for the other two levels of protection, namely the management plans and outline plan process.

36. The reality is there are too many possibilities for the development of the Airport over time to have too many, overly prescriptive conditions.

37. In my submission WIAL's conditions have struck an appropriate balance between a desire for certainty and control versus the requiring authority's need for flexibility and the Council's suggested urban design conditions go a step too far.

STATUTORY FRAMEWORK – PART 8 RMA

38. These NORs have been sought via the Part 8 process.

39. The statutory framework for designations under Part 8 of the RMA is as follows:

    (a) Section 168, which sets out the matters to be included in the notice of requirement;

    (b) Section 169, which sets out the territorial authority's notification, further information, the making of submissions and hearing requirements;

    (c) Section 170 which sets out the territorial authority's discretion to include the NOR in a proposed plan process;

    (d) Section 171(1A) which sets out the prohibition on considering trade effects;

    (e) Section 171(1) which sets out the matters to which regard and particular regard should be had by the Council when considering and

making a recommendation to a requiring authority on a notice of requirement;

(f) Section 171(1B) which sets out a discretion to consider positive effects to offset or compensate for adverse effects in certain circumstances;

(g) Section 171(2) which sets out the scope of the territorial authority's recommendation on a requirement;

(h) Section 171(3) which sets out the requirement for the Council to give reasons for its recommendations;

(i) Section 172 which sets the scope of and process for the requiring authority's decision on the requirement;

(j) Section 173 which sets out the Council's notification requirements in respect of the requiring authority's decision;

(k) Section 174 which sets out the appeal process;

(l) Section 175 which sets outs how a designation is to be provided for in a district plan;

(m) Sections 176 which set out the legal effect of a designation; and

(n) Section 176A which sets outs the outline plan procedure.

SECTION 171

40. Section 171 provides the basis for your consideration of this NOR, with the main focus of this consideration provided by subsection (1) as follows:

> (1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—
>
> (a) any relevant provisions of—
>
> (i) a national policy statement:
>
> (ii) a New Zealand coastal policy statement:
>
> (iii) a regional policy statement or proposed regional policy statement:
>
> (iv) a plan or proposed plan; and

> (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—
>
> (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
>
> (ii) it is likely that the work will have a significant adverse effect on the environment; and
>
> (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
>
> (d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

41. These NORs do not bring into play Subsections (1A) (trade competition) or (1B) (offsets and compensation) so I do not consider them further.

42. Two key qualifiers in section 171 (1)(a) are the phrases "*having particular regard to*" and "*subject to Part 2*". These two phrases have been considered in case law and I set out a summary of their treatment below. This subsection also refers to the "*environment*" in the context of the consideration of effects (and Section 5) which is also discussed below.

Meaning of "adequate" and "reasonably necessary"

43. To assist the Panel's interpretation of subclauses (1)(b) and (1)(c) I discuss the meaning of the "*adequate*" and "*reasonably necessary*".

44. The Courts have held that the term "adequate" means sufficient or satisfactory[5].

45. The sufficiency of this assessment will depend on the significance of the adverse effects involved[6].

46. What is required for the requiring authority not to act in an arbitrary or cursory way in relation to the consideration of alternatives[7].

47. The Court has held the test for establishing what is "reasonably necessary" falls between the subjective test of expediency or desirability, at one end,

[5] Basin Bridge.
[6] Basin Bridge.
[7] *Villages of NZ (Mt Wellington) Ltd v Auckland City Council EnvC* A023/09.

and absolute necessity, at the other, allowing some tolerance but not permitting the decision maker to judge the merits of the objectives.[8]

Meaning of "having particular regard to"

48. Section 171(1) uses the phrase *"having particular regard to"* unlike section 104(1) where the "lessor" obligation of *"have regard to"* is used.

49. The Courts have held that "*have particular regard to*" does not mean "give effect to" but means:

    (a) the decision maker may not ignore the matter referred to;

    (b) it must give genuine thought and such weight as the decision maker considers appropriate;

    (c) but having done so, the decision maker can conclude the matter is not of such significance either alone or together with other matters to outweigh other contrary considerations which it must also take into account in accordance with the decision maker's statutory functions[9];

50. The phrase *"having particular regard to"* does not mean extra weight is placed on the matters to be considered but rather *is an injunction to take the matter into account, recognising it as something important to the particular decision and therefore to be considered and carefully weighed in coming to a conclusion*[10].

SUBJECT TO PART 2

51. The phrase "subject to Part 2" has been the subject of a fair amount of judicial discussion in recent years.

52. In the context of a notice of requirement in *NZTA v Architectural Centre Inc. [2015] NZHC 1991* (**Basin Bridge Decision**), the High Court cited with

[8] *Bungalo Holdings v North Shore City Council* A052/01, para [94], following the approach taken by the High Court in *Fugle v Cowie* [1997] NZRMA 395. Gavin Wallace v Auckland Council [2012] NZEnvC 120.
[9] Basin Bridge following Privy Council decision *McGuire v Hastings District Council* [2002] NZLR 577.
[10] Basin Bridge.

approval a passage from *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council [2013] NZHC 2347* which noted that:

(a) *the focal point of the assessment is, subject to Part 2, consideration of the effects of allowing the requirement having particular regard to the stated matters*;

(b) *the purpose, policies and directions in Part 2 set the frame for the consideration of effects on the environment of allowing the requirement*;

(c) in the event of conflict with the directions in s 171, Part 2 matters override them.

53. So, unlike a resource consent where it may be more appropriate to refer to Part 2, or a plan change where it is not appropriate to refer back to Part 2 unless one of the three "King Salmon" caveats are present, for designations, it is mandatory to do so.

54. This reflects the language of Section 171 but also the fact that designations often by their very nature may not fit neatly into a district plan and require a broader assessment beyond the relevant statutory planning documents.

55. The range of matters that can be considered under the Part 2 umbrella is important here particularly in view of submissions and the Section 42A report that refer to climate change.

CLIMATE CHANGE

56. Climate change has been raised by a number of submitters[11], and was addressed by the Wellington City Council's officer in the section 42A report (**Section 42A Report**). In the Section 42A Report, the Council officer noted that:[12]

> *The question of aviation emissions (both domestic and international) exists within a complex local and international environment of legislation and industry initiatives. A designation is not the place for fully resolving the issues, especially as the Airport operator itself is not the emitter.*

[11] As summarised at 9.1.2 of the Section 42A Report.
[12] At 9.1.5.

57. The Council Officer went on to state:[13]

> *However, climate change is widely acknowledged as a significant resource management issue and I consider that it must be given particular regard. Section 7(i) of the Act, as part of considering the NORs under section 171(1), requires the consideration of climate change. In making its recommendation, the Council can attribute such weight as it thinks fit to the effects of climate change, and therefore consider how that could be addressed in the context of the proposed designations.*

58. The extent to which climate change may be considered by the Panel is determined by the statutory framework which sets the scope for consideration of such matters.

59. I note at the outset that the Supreme Court has held that it is not open to territorial authorities (and regional councils) to regulate activities by reference to the effect of climate change of discharges of greenhouse gases which result indirectly from such activities; climate change arguments may only be advanced in relation to rules and consents involving direct discharges.[14]

60. This finding from the Supreme Court should guide the Panel's consideration of any climate change issues, in particular, how the RMA distinguishes between matters to be dealt with at a national, regional and district level.

61. I acknowledge that case was decided in a different context and the Court was not considering a NOR for a designation. Further, some of the sections which the Court considered (namely sections 70A and 104E) will soon be repealed. However, as I set out below, the principles and policy approach from that case will continue to have authority on the Panel in this case.

Section 7(i) and the policy framework

62. Section 7(i) of the RMA was introduced in 2004 to include a requirement that "*all persons exercising functions and powers under the Act to have particular regard to the effects of climate change*."[15]

63. There is authoritative case law on how this provision should be applied by decision-makers in consent applications and designations.

[13] At 9.1.5.
[14] *West Coast Ent Inc v Buller Coal* (2013) 17 ELRNZ 688 at [168] and [175].
[15] RMA section 7(i).

64. In *West Coast Ent Inc v Buller Coal*[16], the Supreme Court stated that section 7(i) is "*a direction to plan for the anticipated effects of climate change, not a direction to seek to limit climate change*"[17]. In essence, the Court rejected an argument that the discharge into the atmosphere of greenhouse gases (in that case from the burning of coal) was required to be considered by the consent authority.

65. In the context of a designation, the decision of the Board of Inquiry for the Northern Corridor Improvements Proposal put this another way[18]:

> *…the law is clear that we are unable to consider the causes of climate change only the potential effects arising from it…*

66. The Supreme Court concluded it that it is very reasonable to assume that climate change arguments could only be advanced in relation to rules and consents involving direct discharges, and that those same arguments could not be made in relation to rules and consents relating to activities which indirectly result in or facilitate the discharge of greenhouse gases.[19] The Court held that:

> [*169] …to allow consideration of climate change under section 104(1)(a) would allow arguments which are off limits in relation to the issues to which they are most closely related (namely, discharges to air) to come in, by the backdoor, in respect of ancillary issues (such as land use, roading and the like). At least in relation to such circumstances, this would subvert the scheme of the legislation which leaves climate change effects to the national government and would thus deprive s104E of practical effect.*
>
> *…*
>
> *[173] We also see this limitation as consistent with the clear legislative policy that addressing effects of activities on climate change lie outside the functions of regional councils and, a fortiori, territorial authorities.*

67. The RMA distinguishes between matters to be considered at a national, regional, and district level. The Act imposes some direct restrictions on particular activities to be imposed nationally through national environmental standards, regionally by regional councils, and some at a district level by territorial authorities.[20]

[16] (2013) 17 ELRNZ 688 at [130].
[17] *West Coast Ent Inc v Buller Coal* (2013) 17 ELRNZ 688 at [130].
[18] Dated 16 November 2017, available here: https://www.epa.govt.nz/public-consultations/decided/northern-corridor-improvements/final-report-and-decision/.
[19] *West Coast Ent Inc v Buller Coal* (2013) 17 ELRNZ 688 at [168].
[20] At [131].

68. Of relevance to this hearing and the role of the Panel, territorial authority's functions are prescribed by section 31 of the RMA. The Supreme Court confirmed that those functions do not extend to the regulation or control of discharges of contaminants to air.[21]

69. This approach is reinforced by the RMA Amendment Act 2020. By way of background, the RMA Amendment Act includes three amendments relating to climate change mitigation which come into force in December this year:

    (a) Removing the statutory barriers to regional councils considering the effects of GHG emissions on climate change when making air discharge rules and assessing applications for air discharge permits (repealing sections 70A, 70B, 104E and 104F of the RMA);

    (b) Requiring local authorities to "have regard to" emission reduction plans and national adaptation plans published under the Climate Change Response Act 2002 (**CCRA**) when preparing regional policy statements, regional plans, and district plans; [22]

    (c) Enabling a Board of Inquiry or the Environment Court to consider the effects of GHG emissions on climate change when a matter is called in as a proposal of national significance.

70. Relevant here is that the RMA Amendment Act will require local authorities to "*have regard to*" emission reduction plans and national adaptation plans published under the CCRA but only when preparing regional policy statements, regional plans, and district plans. These amendments will affect the preparation of regional policy statements (section 60 and 61) and the preparation and change of district plans (section 74). While previously the RMA only dealt with adaptation and natural hazards, it now addresses the contribution that certain activities (i.e. greenhouse gas discharges) will have on climate change.

71. It is important to note that the Government has not indicated that there will be any requirement to "have regard to" emission reduction plans and national adaptation plans when considering a NOR for a designation.

[21] At [131].
[22] See sections 17, 18 and 21 of the Resource Management Amendment Act 2020.

72. As noted in the Section 42A Report, the emission reduction plans and national adaptation plans are still being developed,[23] meaning there are none to 'have regard to' even if that was a relevant matter to consider under 171(1)(d).

73. For completeness, I note section 5ZN of the CCRA which states:

> *If they think fit, a person or body may, in exercising or performing a public function, power or duty conferred on that person or body by or under law, take into account –*
>
> *(a) the 2050 target; or*
>
> *(b) an emissions budget; or*
>
> *(c) an emissions reduction plan.*

74. Notably, this section is worded permissively: "if they think fit" a body performing a public function (such as the Panel) "may" take the 2050 target into account. However, in my submission this provision is aimed at high level policy setting by public bodies; such an approach is consistent with the analysis set out above as to the hierarchy within the RMA as to where climate change is best suited to be considered, and the statutory documents that the RMA Amendment Act target.

75. Obviously, climate change is a serious issue that must be addressed. However, the Government has clearly indicated how it intends to do so and has clearly set out the legislative tools and mechanisms which it intends to use to ensure New Zealand meets its target of 'net zero' greenhouse gas emissions by 2050. Taking climate change into account in the sense suggested by Mr Ashby and submitters for a designation hearing has not been identified as one of those mechanisms to date.

76. If/when, legal obligations relating to greenhouse gas emissions are imposed on WIAL as an airport operator, WIAL is already well advanced and ready to respond. These initiatives have been set out in WIAL's evidence.

77. All of these witnesses are aware that climate change is a significant global issue, that maintaining the status quo is not an option, and that the aviation industry as a whole has an important role to play in the global transition to a low carbon future. However, in my submission the means of achieving these goals is not through a designations hearing.

[23] Section 42A Report at 9.1.3.

78. In light of all of the above, in my submission section 7(i) does not enable consideration of the causes of climate change and that extends to section 171 (1)(d) because to consider it under that subsection would be in conflict with Part 2.

79. However importantly WIAL has volunteered a climate change condition that commits WIAL to report investigate, implement, and report actions that contribute to an ongoing reduction of its carbon footprint because it considers it is the right thing to do in this current environment.

"ENVIRONMENT"/PERMITTED BASELINE FOR DESIGNATIONS

80. This matter is of some importance as the Main Site NOR largely mimics the permitted activities rules of the current zone which together with the ANB provides a baseline of built form and noise effects from the Airport.

81. Therefore, if the permitted baseline is applicable then at least as far as the Main Site NOR is concerned, the environmental effects would not exceed the baseline of acceptable environmental effects.

82. In terms of the ESA NOR, the baseline in terms of noise would not be counted as an adverse effect (or for that matter, effects of permitted development on the Main Site NOR area).

83. However, WIAL has committed to providing ventilation once the ESA land is to be used for Code C (or larger) Aircraft to all affected ESA receivers and the methodology for achieving that considers noise from all Airport Operations and APU usage. This was a matter of disagreement between the acoustics witnesses and will mean that more houses in the vicinity of the ESA will receive ventilation mitigation and sooner.

84. In *Beadle v Minister of Corrections A074/2002* the Court accepted the obligation to apply the permitted baseline extends to a designation[24]. This appears to have been accepted in *Nelson Intermediate School v Transit New Zealand* (2004) 10 ELRNZ 369, but the issue is slightly murky because that case also dealt with discharge consents. In my submission the Court accepted the proposition that the permitted baseline must define the environment under section 5(2)(b) and (c)[25].

[24] At [1002].
[25] At [131].

SUGGESTED APPROACH TO MAKING RECOMMENDATIONS

85. Bearing in mind the interpretation of the terms/phrases discussed above and following the decision in the *Basin Bridge* Decision (and other decisions both before and after), in my submission the following approach to making your recommendations is appropriate when considering each NOR and the submissions received:

(a) identify and set out the relevant provisions of the main RMA statutory instruments that you must have particular regard to under section 171(1)(a), as well as relevant provisions of any non-RMA statutory instruments and non-statutory documents or any other matter you consider reasonably necessary to make your recommendations under Section 171(1)(d);

(b) consider and evaluate the adverse and beneficial effects on the environment informed by the NORs and submissions; relevant provisions of Part 2; relevant statutory instruments; and other relevant matters being the proposed conditions and any non-statutory documents; and in doing so consider whether the adverse effects on the environment are significant for each NOR;

(c) if you find there are significant adverse effects for either or both, consider and evaluate the directions given in Section 171(1)(b) as to whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the works associated with each NOR;

(d) consider and evaluate the directions given in Section 171(1)(c) as to whether the works and designations are reasonably necessary for achieving the objectives for which each designation is sought; and

(e) make an overall judgment subject to Part 2, to consider and evaluate your findings in (a) to (d) above, and to determine whether each NOR achieves the RMA's purpose.

STATUTORY PLANNING DOCUMENTS

86. While a careful assessment of the relevant statutory planning documents is required there is however no particular requirement for a designation to

conform with all of the relevant statutory planning documents listed in section 171(1)(a).

87. By its nature, a designation is a planning mechanism used for certain types of activity which may not ordinarily be provided for by the usual district plan methods in the location sought. That is why designations have a separate and distinct part of the Act with a different process.

88. I should also briefly refer to Policy 24.2.1.1 24.2.1.2 and 24.2.1.3 of the District Plan which although not clear appear to restrict the use of designations except for Council designations. Both planners have suggested that little weight can be given to these policies as they conflict with the statutory rights of other requiring authorities. I agree.

89. In my submission both NORs meet the intention of the relevant statutory planning documents. The Main Site NOR is essentially in line with the permitted activity provisions of the District Plan so could not be said to be in conflict with the relevant policy provisions. In terms of the ESA NOR the amenity of areas close by are sufficiently protected by retaining a buffer area and the proposed conditions relating to restrictions on the use of the site and the requirement for ventilation to be installed.

90. Mr Kyle discusses in his evidence how the Main Site NOR and the ESA NOR meet the intentions of the NPS-UD and the RPS which recognises the Airport as Regionally Significant Infrastructure[26].

OTHER DOCUMENTS

91. In terms of non-statutory documents to consider under Section 171(1)(d) you will be aware that a number of New Zealand Standards have been referred to in the evidence of various witnesses including NZS 6805 and NZS 6802 and related to this issue is the National Planning Standards (2019) which also is of some relevance.

92. The acoustic evidence refers to the WHO Environmental Noise Guidelines for the European Region published in 2018. I agree this document is a relevant non statutory document, but that little weight should be given to it for the reasons below.

[26]At [81].

93. It is clear the RMA does not give NZ Standards any binding status and a decision maker is able to make their own judgement about the weight to be given.

94. A party is also entitled to rely on compliance with a relevant New Zealand Standard as tending to show that effects on the environment of a proposed activity should be acceptable because emissions would not exceed levels set in that document. Conversely another party is not bound to accept that compliance with a NZ Standard would avoid adverse effects[27].

95. However, the courts have held that Standards are "generally accorded respect" given that they are prepared by committees of well-qualified individuals and with consultation with interested sections of the community. So, an assertion of significant environmental harm despite compliance with a relevant NZ standard would usually need to be supported by expert opinion to be worthy of serious consideration[28].

96. Both Ms Smith and Dr Chiles consider that NZS6805 remains relevant for NZ circumstances with Dr Chiles cautioning the research behind the 2018 WHO guidelines was not available when the NZS was published in 1992.

97. Dr Chiles correctly notes that the National Planning Standards only mandates the noise measurement methods and symbols in NZS6805, but this does not mean the Standard is no longer the most relevant, out of date or superseded by a European guideline that does not takes any account of the particular circumstances faced here in NZ.

98. Dr Palmer relies on the 2018 WHO Guidelines to appear to suggest that a 45dB L_{den} contour would be appropriate. Neither Mr Palmer nor Dr Chiles have referenced any reports that raise concerns about the WHO Guidelines approach. Ms Smith has provided a paper by Truls Gjestland published in the International Journal of Environmental Research and Public Health in December 2018, that questions the validity of the WHO Guidelines. I have also asked Matt Clarke to provide some data about the relative size of the European Airports that were used in the WHO research to demonstrate how different Wellington Airport is by comparison.

[27] *McIntyre v Christchurch City Council* (1996) 2 ELRNZ 84 at page 92.
[28] Ibid.

99. In my submission NZS6805 is the best guideline available for New Zealand at the current time. It has been used and accepted by the Courts in airport planning and noise matters in New Zealand for many years.

100. The upcoming District Plan review will revisit the Airport's noise boundary (ANB) and potentially any additional or other acoustic mitigation measures that might result from that process. If these NORs are successful, any changes to the Designations conditions can be dealt with via the "rollover" process under the First Schedule to the RMA to ensure that all provisions work together.

101. Finally, I should note the Wellington International Airport Bylaws Approval Order 1995. Stewart Duff Drive is an Airport Road as defined in the Bylaw and as such the Requiring Authority (quite apart from its rights as the legal owner of the road) has a wide discretion to open or close the road, as well as restrict traffic. This recognises the importance of roads within the Airport and the airport operator's ability to control traffic within the airport campus.

ASSESSMENT OF EFFECTS ON THE ENVIRONMENT

102. As you are aware the environment is broadly defined in section 2 of the RMA and includes people and communities, all natural and physical resources, amenity values, and social, economic, aesthetic, and cultural conditions which affect these matters.

103. The Courts have held that the *Hawthorn* principle applies to notices of requirements so that effects are to be measured against the "future environment"[29] which also can include unimplemented resource consents[30]. In this context the future environment includes increased noise overtime until it reaches the limit imposed by the ANB.

104. This assessment also needs to be considered in the context of the proposed conditions which have changed markedly through the consideration of submissions, expert evidence of the Council and Regional Public Health and expert conferencing.[31]

[29] *Queenstown Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299: [2006] NZRAM 424 (CA) at [54].
[30] *Villages of NZ (Mt Wellington) Ltd v Auckland City Council* EnvC A023/09.
[31] *Minister of Corrections v Otorohanga District Council* [2017] NZ EnvC 213.

105. There are also the positive effects of allowing the NOR to consider which are outlined in the NORs as well as the evidence of Matt Clarke and John Kyle.

CONSIDERATION OF ALTERNATIVE SITES, ROUTES, METHODS

106. The adequacy of consideration of alternatives is only obligatory under section 171(1)(b) if:

(a) the requiring authority does not have an interest in the land sufficient for undertaking the work; or

(b) it is likely that the work will have a significant adverse effect on the environment.

107. I note a decision maker's role in terms of this subsection is to consider whether adequate consideration has been given by the requiring authority to alternatives rather than whether there are alternatives which you or any other person might prefer. It is not for a decision maker to substitute its own policy (or that of another person) for any policy consideration of the requiring authority.[32]

108. As WIAL has an interest in all of the land involved so subsection (1)(a) is satisfied.

109. The consideration required under section 171(1)(b) concerns the adequacy of the process, not the decisions of the requiring authority to discard or advance particular sites, routes, or methods.[33]

110. The decision maker is not itself required to determine whether the site, route or method is the most suitable or best of the available alternatives, but rather to ensure that the requiring authority has carefully considered the possibilities, taking into account relevant matters, and come to a reasoned decision.[34]

111. Finally, the reference to "methods" in this subsection does not enable a consideration of whether plan change, and resource consent processes are to be preferred over the designation process. The word "method" refers to the nature of the public work not the planning process[35].

[32] See *Minhinnick v Minister of Corrections* Decision A043/04 at paras [234 - 235] and the cases cited there.
[33] Ibid, at [237].
[34] *Kett v The Minister for Land Information* (HC, Auckland, AP404/151/00, 28 June 2001, Paterson J).
[35] *Rangi Ruru Girls School Board of Governors and others v Christchurch City Council* C130/2003 at [40] to [41].

112. In terms of subsection (1)(b) in my submission the adverse effects cannot be quantified as being significant for either NOR given the views of the WIAL experts and the effective operation of the suites of conditions that will enable future development on both sites to mitigate adverse effects and provide an appropriate interface for the expanded airport.

113. However, in any event WIAL undertook an alternatives assessment as part of the NORs and the evidence before you detail the approach taken and shows that more than adequate consideration was given to alternative locations.

SECTION 171 (1)(C) - REASONABLY NECESSARY

114. The consideration of whether the works and designations are reasonably necessary is separate and distinct from a consideration of alternative sites under section 171(1)(b). The two considerations should not be combined, as that conflates the distinct considerations of whether the requiring authority has properly considered its options and whether it needs the designation at all.

115. The statutory consideration here is in terms of achieving the requiring authority's objectives. It does not involve what may be reasonable in a broader or popular sense, or in terms of any other persons' goals or theories[36].

116. In *re Queenstown Airport Corporation Limited*[37] the Court observed that the work and designation would be reasonably necessary where[38]:

(a) there is a nexus between the works proposed and the achievement of the requiring authority's objectives for which the designation is sought;

(b) the spatial extent of land required is justified in relation to those works; and

(c) the designated land is able to be used for the purpose of achieving the requiring authority's objectives for which the designation is sought.

[36] *Gavin Wallace v Auckland Council* [2012] NZEnvC 120.
[37] [2017] NZEnvC 46.
[38] *re Queenstown Airport* at paragraph [9].

117. In my submission each NOR can properly be said to be reasonably necessary for WIAL to achieve its objectives, even in the context of the fallout from COVID-19 and in light of the challenges ahead as a result of climate change (to the extent that this is relevant as discussed above).

118. The Courts have recognised that airport development planning is a dynamic and long term exercise[39]. The fallout as a result of COVID-19 is unfortunately an extreme example of how dynamic this can be and the WIAL evidence sets how this will delay growth but does not obviate the need to expand the airport to the east over time.

119. In my submission the evidence clearly shows that Wellington airport operates on a particularly constrained site and it simply needs more space in order to operate efficiently and flexibly and to provide for sustainable growth. Iain Munro in particular details the complex factors that have had to be considered in planning the ESA area.

PART 2 ASSESSMENT

120. As discussed above all of your considerations are subject to Part 2.

121. In terms of Section 5 Wellington Airport is a significant existing physical resource that provides for the social and economic wellbeing of the community through direct and indirect employment opportunities, and through its role in facilitating the movement of people and goods.

122. Each designation will contribute to this by enabling the continued operation and growth of Wellington Airport in a more efficient and sustainable way, and in terms of the ESA NOR on a site that is most suited and located for its intended purpose.

123. There are no relevant Section 6 matters or in respect of the various tangata whenua aspects of Part 2, including sections 6(e), 7(a), 7(aa) and 8.

124. In terms of the relevant subsections of Section 7, in my submission the development enabled by the NOR will sufficiently maintain amenity values and the quality of the environment especially when considering the conditions proposed and the policy framework of the District Plan.

[39] For example, *McElroy v Auckland International Airport Ltd* [2009] NZCA 621.

125. I have already discussed the limitations inherent in the consideration of Section 7(i). To the extent that the effects of climate change are a relevant consideration they have been considered as discussed in the evidence of John Howarth and Philip Robins. Matt Clarke, Mike Vincent and Ken Conway discuss WIAL's broader response and the aviation sector's response to the climate change challenges ahead.

CONCLUSION

126. In my submission both NORs achieve the purpose of the Act when considered in light of Section 171 and are worthy of your positive recommendations with the imposition of the further updated conditions endorsed by Mr Kyle and attached to the Planning Joint Witness Statement.

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