

WELLINGTON CITY COUNCIL

SR462159 & SRI455891

NOTICE OF REQUIREMENT: WELLINGTON INTERNATIONAL AIRPORT

MINUTE 2 OF THE INDEPENDENT HEARING PANEL

DATED 3 MAY 2021

INTRODUCTION

1. In Minute 1 (dated 23 March 2021) we requested that all parties advise us of the experts they intend to call, and their corresponding fields of expertise. By the due date (by the 9 April 2021, we had received, via the Hearing Administrator, Ms. Macky Rogers, memoranda from three parties:
 - (a) counsel for Requiring Authority (Ms Dewar);
 - (b) a representative of a submitter (Mr Gillam, Health Protection Officer, Regional Public Health); and
 - (c) the s42A author for the Council (Mr Ashby).
2. Each party set out a list of experts and the availability of such to attend any expert conferencing.
3. We thank the parties for those indications. . However, , before we had time to respond and make suggestions for conferencing, an exchange of emails between the Requiring Authority and the Council and submitters ensued which appears to have has cast some doubt as to whom should be attending the expert conferencing on acoustic matters set down for 6 May. We note that there remains an agreement on the utility of such conferencing. We also note that there is no dispute in relation to the other conferencing topics set down for 10 May; being visual, traffic and planning.
4. The purpose of this Minute is twofold:
 - (a) To provide our ruling on the attendances for expert acoustic conferencing;
 - (b) To outline suggestions for topics and specific questions that the experts may wish to address at the conferencing session; and

- (c) To record details of agreements reached between various submitters and the Requiring Authority and to advise of opportunities by which the submitters can still participate.

5. We now address these matters in turn.

EXPERT ACOUSTIC CONFERENCING

6. On the issue of acoustic conferencing, the following personnel were nominated by their respective organisations:

Requiring Authority:

- Laurel Smith – Acoustics Consultant with Marshall Day

WCC as S42A author:

- Matthew Borich (Council Noise Officer)
- Lindsay Hannah (Council Noise Officer)

Regional Public Health as submitter:

- Dr Stephen Chiles (Acoustics/Environmental Noise Consultant)
- Dr Stephen Palmer (Medical Officer of Health, Public Health Medicine)

7. For the Requiring Authority, Ms Dewar took issue with the eligibility of Dr Palmer for expert acoustic conferencing. She noted that:

Dr Palmer is an employee of Regional Public Health as a Medical Officer of Health. As such he is also an advocate not an independent expert and it is not appropriate for him to be present at a noise expert conference.

8. In response, and in order assist the Panel as to his potential role, Dr Palmer outlined his expertise and experience as follows:

I will be there as Medical Officer of Health, so I am a medical specialist in public health medicine. For the last three decades I have worked in Environmental Health including risk analysis and management, and risk communication. This knowledge and expertise is often absent in technical conversations.

9. He added that:

I hope to bring a people orientated health/medical perspective. I will try to offer a balancing out of the technical noise science.

10. For the record, we note that the Council took a neutral stance on the attendance or otherwise of Dr Palmer at the acoustic conferencing.

11. In considering this matter we have been mindful of the purpose of expert conferencing and the roles and duties of expert witnesses as set out in the Code of Conduct for Expert Witnesses in Part 7 of the [Environment Court's Practice Note](#). In particular, we note the following:

7.2 Duty to the Court

...

(b) An expert witness is not, and must not behave as, an advocate for the party who engages the witness. Expert witnesses must declare any relationship with the parties calling them or any interest they may have in the outcome of the proceeding.

12. On the above basis we have reservations as to the efficacy of Dr Palmer attending the noise conferencing as a health expert supporting Dr Chiles. We are of the view that on principle only expert advisors should be in attendance and that as an employee for Regional Public Health, Dr Palmer is by default the submitter and not attending as an independent expert. In this regard we note (and as will be obvious from our suggested questions for the experts) that the clear and strict focus of the conferencing will be on technical acoustic matters such as noise modeling methodology, reliability of predictions, and acoustic attenuation – all matters for experienced acousticians. The conferencing is not about Public Health matters per se. It is also not about “*balancing out of the technical noise science with Public health*” – That is a matter for evidence and submissions at the hearing.
13. For the above reasons, it is our direction that the expert conferencing on the acoustic topic shall not include Dr Palmer.
14. Whilst we understand that this may be disappointing for Dr Palmer and Regional Public Health, we would add that there is every opportunity for Dr Palmer to “*bring a people orientated health/medical perspective*” during the hearing. To this extent, we note that the expert evidence for all submitters is due on 12 May which is approximately a week after the expert conferencing. We would hope to have a Joint Witness Statement from the parties on the matters of agreement and disagreement by the end of this week (7 May) or Monday at the latest (10 May). That should provide Dr Palmer ample opportunity to familiarise himself with the technical matters recorded in the JWS and use that to inform his evidence on public health issues arising.
15. On the above basis, it is still our preference that expert acoustic conferencing between the Requiring Authority, Submitter and the Council is undertaken and it occurs in accordance with the Code of Conduct for Expert Witnesses as noted above.

16. Ultimately it is our hope that the resultant JWS will identify key matters of agreement and disagreement, which will hopefully assist our understanding of the key acoustic issues in contention and reduce unnecessary duplication in evidence which in turn, should make for a more efficient hearing process overall.
17. To be clear, this is not to undermine the importance of the participation witnesses, such as Dr Palmer, for any party; however, we expect that it would be more productive to hear from those no-acoustic experts in evidence and at the hearing than in conferencing involving no peer being called by other parties.

ACOUSTIC CONFERENCING TOPICS

18. Finally, and in an endeavour to assist the acoustic experts participate in conferencing, we have formulated a series of questions (**attached** to this minute as **Appendix A**) and upon which we would appreciate discussion and feedback on. Participants in conferencing are by no means limited to these questions and participants are best placed themselves to determine what additional questions should be posed.
19. For the above reasons, we make no further requests other than to ask whatever conferencing is undertaken is recorded in the form of a Joint Witness Statement and that this is sent to Ms Rogers at the earliest possible time following the completion of conferencing.

RECENT DEVELOPMENTS

20. Over the last few weeks we have been advised of various outcomes resulting from liaison between the Requiring Authority and certain submitters. We wish to take a moment to record this here and then to outline the opportunities for future involvement of those submitters in the process.
21. We have been advised of the following:
 - (a) Agreement has been reached between the Requiring Authority and Heritage NZ in respect to conditions and in particular conditions pertaining to archaeological matters.
 - (b) Agreement has been reached between the Requiring Authority and Airways Corporation of NZ for certain conditions to be added to the NoRs which resolves the concerns of the submitter.
 - (c) The submission from Generation Zero (Submission 101) was missed in the Combined Submission PDF. However, it is agreed that the submission was lodged correctly and is now included in the final submission count and in the Submission Table.

- (d) Waka Kotahi have advised the requiring Authority that they are satisfied that the potential construction effects of the East Area expansion can be appropriately managed by the inclusion of a new clause in proposed condition 8 dealing with a ECMP. Waka Kotahi have confirmed this relief resolves the issues raised in their submission and they do not require further involvement in the NoR process.
 - (e) Regional Public Health have confirming they are removing item 13 from their submission for the East Side Area dealing with airborne contaminants. This has been passed to the Requiring Authority and the WCC s42A author.
 - (f) Agreement has been reached between the Requiring Authority and Powerco over a new condition. The condition proposed addresses all of the matters outlined in Powerco's submission and Powerco have advised that it withdraws its submission on that basis.
22. Notwithstanding the above agreements, some submitters have enquired as to how they can keep in touch with the process in the lead up to the hearing and in the hearing itself. As no submissions have been formally withdrawn per se, all submitters will be informed of all aspects of the upcoming process including:
- (a) the receipt of submitters evidence (due 5 May);
 - (b) JWSs for the acoustic, visual, traffic and planning conferencing (due between 7 May and 12 May);
 - (c) Evidence form all participating submitters calling expert evidence (due 12 May).
23. There is an opportunity for the Requiring Authority and relevant submitters to comment by way of evidence (for the Requiring Authority) or tabled statement by any submitter who no longer wishes to be specifically heard on their submission as to the specific wording of proposed conditions relevant to the agreements they have reached with the Requiring Authority. This may as be a simple as the relevant submitters confirming proposed wording of conditions in the S42A report or by suggesting revisions to such wording. We leave this matter with the relevant submitters and the Requiring Authority as to how this is best achieved. We note that the tabling of an agreed set of draft conditions at the commencement of the hearing may be one method.

NEXT STEPS

24. As noted above, we direct all conferencing experts to contribute to a Joint Witness Statement for their respective discipline. All JWS' should be signed and forwarded to the WCC administrator as soon as practical following the expert conferencing.
25. The WCC administrator can be reached at planning.admin@wcc.govt.nz or by ringing 04 499 4444.

DATED this 3rd day of May 2021



H A Atkins

Chair – Independent Hearings Panel

For and on behalf of:

Commissioner DJ McMahon

Commissioner R O'Callaghan

APPENDIX A

ACOUSTIC EXPERT CONFERENCING

SUGGESTED THEMES / TOPICS AND QUESTIONS

1. Do the experts agree with the opinion expressed in the Council noise officer's report (Council expert evidence 28 April 2021, Appendix C, section 5) that the predominant sources of noise associated with the East Side Area (ESA) designation would be:
 - a. Auxiliary power units (APUs)
 - b. Single event aircraft taxiing (between the runway and the proposed new aprons)
 - c. Construction noise.

If not, which sources set out above do experts consider will predominate, and what if any additional sources do the experts consider will also predominate?

2. Do the experts agree with the opinion expressed in the Council noise officer's report (section 5.1) that the assessment of effects from APUs operating in the ESA is understated in the Marshall Day Acoustics (MDA) technical assessment report (included as Appendix G to the overall NoR document)? If they do agree that this is the case, then what do they consider to be the implications of that understatement in terms of the subsequent characterisation of adverse effects in both the Council noise officer's report and the MDA report? If they do not agree that the matter is understated, then why not?
3. Do the experts agree that there is a sound technical basis for the opinion expressed in the Council noise officer's report (section 5.2) that, with respect to noise generated by single event aircraft taxiing, residents of sites in Raukawa Street and Bunker Street directly adjoining the boundary of the ESA should be offered a mitigation package (taking the form of both sound insulation and mechanical ventilation) at least 6 months prior to commencement of the operation of the ESA. If not, why not?
4. What opinions do the experts have on the significance of the potential loss of external amenity at various times of the day for residents potentially affected by the operation of the ESA (as covered in section 6 of the Council's noise officer's report)? In the event that experts consider that the loss of amenity would be significant, are they of the opinion that the recommended conditions adequately address the issue? If not, why not, and what alternatives or additions to the conditions would they propose?
5. What if any changes to the ESA conditions recommended in the attachment to the Council noise officer's report (Appendix A: WC

Recommended Draft Conditions – [East Side Area Designations]) do the experts agree with, with respect to:

- a. Earthworks and construction management
- b. Operational noise

For each of the changes over which there is disagreement, what are the matters of difference, reasons for the differing opinions, and what alternatives or additions to the conditions they would recommend?