

**Before an Independent Hearings Panel of Wellington District
Council**

Under the Resource Management Act 1991

In the matter of the hearing of submissions and further submissions on the
Proposed Wellington City District Plan (**PDP**)

And

In the matter of Hearing Stream – Wrap Up

LEGAL SUBMISSION NOTES ON BEHALF OF WELLINGTON INTERNATIONAL AIRPORT LIMITED

Hearing Stream – Wrap Up

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Amanda Dewar | Barrister

Phone: 021 2429175

Email: amanda@amandadewar.com

PO Box 7

Christchurch 8140

1. These brief legal submission notes are provided on behalf of Wellington International Airport Limited (**WIAL**), a submitter on the Wellington City Council (**WCC**) Proposed District Plan (**PDP**) in relation to the Wrap up Hearing Stream.
2. WIAL's involvement in this wrap up hearing relates to:
 - (a) the so-called Moa Point Seawall provisions and where they should "reside" within the PDP;
 - (b) the definition of upgrading and regionally significant infrastructure;
 - (c) proposed 'bird strike' provisions;
3. WIAL has filed evidence from:
 - (a) Jo Lester, Planning Manager, WIAL;
 - (b) Dr Michael Anderson, Senior Ecologist, Bioresarches
 - (c) Kirsty O'Sullivan, Partner, Mitchell Daysh Limited.
4. Dr Anderson and Ms O'Sullivan will provide summaries of their evidence and respond to the S42 Report evidence. Ms O'Sullivan's evidence includes an updated Bird Strike rule taking into account Mr Sirl's rebuttal evidence
5. However, I note that Ms McClellan did not provide any primary evidence but has provided a brief of evidence as "rebuttal". This has meant there has been very little time for WIAL's witnesses to properly consider and to respond to her evidence.
6. In these circumstances and in terms of the principles of procedural fairness it may also be necessary for WIAL to provide additional information after WIAL's presentation at the hearing.

WIAL POSITION *vis a vis* SECTION 42A REPORT AND REBUTTAL

7. Mr Sirl and Ms O'Sullivan agree in terms of the two definitional matters.
8. The remaining differences relate to:
 - (a) the Moa Point Seawall provisions;
 - (b) proposed 'bird strike' provisions.

Moa Point Seawall Provisions

9. In terms of the Moa Point Seawall policy provisions and noting Mr Sirl's somewhat agnostic position about including specific policy direction within the Natural Open Space Zone, I simply remind the Panel about the East West Link Decision¹.
10. This clearly demonstrates the forensic analysis undertaken by the Supreme Court of every relevant plan provision. So, unless the District Plan states that the Natural Open Space Zone policy provisions do not apply to infrastructure then at least in the context of the Sea Wall Renewal Project they will be relevant to the statutory assessment required to be undertaken.
11. It is also abundantly clear from the East West Link decision that there will inevitably be a very narrow pathway if at all for infrastructure proposals to be granted where there are directive/ strong avoid provisions from the "*top to bottom in the RMA hierarchy of objectives and policies*"². This being the case, it is important to not inadvertently narrow the eye of the needle even further.

Bird Strike Provisions

12. The Panel will understand from the evidence that WIAL has a statutory responsibility to provide a safe operating Airport environment, and this includes having a programme to minimise or eliminate any wildlife that presents a hazard to aircraft operations at the Airport.
13. This necessarily extends beyond the Airport itself as it is also clear from the evidence that off-airport activities (including those beyond 3kms) can increase bird strike risk if not appropriately managed. In this regard the CAA guidance provided to airport operators in order to meet their statutory obligations, urges operators to make submissions on district plans to manage this risk.
14. In my submission there is sufficient evidence for the Panel to support the relief sought by WIAL. Regardless of whether the risk of bird strike or high or low at Wellington Airport, there is no doubt the risk exists, and it does actually happen.

¹ *Royal Forest and Bird Protection Society v New Zealand Transport Agency* [2024] NZSC 26

² East West Link Decision at [169]

15. It will be apparent that the consequences of bird strike are on a continuum from inconvenience and cost to significant cost and the loss of life if a strike leads to the loss of an aircraft.
16. As such in my submission the Panel should adopt a precautionary approach when considering the potential effects which include but are not limited to effects of low probability, but which would have a high potential impact.
17. In the context of plan provisions in my submission this means you should err on the side of caution when considering the provisions WIAL is suggesting versus the s42A recommendations, especially taking into account s32(2)(c) which requires an assessment of the risk of acting or not acting if there is uncertainty or insufficient information.
18. In my submission there would be no disproportionate burden as a result of the proposed WIAL provisions as the majority of activities affected by the provisions will already require resource consents and the list of activities is deliberately focused. On the other hand if one of these activities led to a serious bird strike event then the burden on the community would be enormous.
19. The Airport is already at a disadvantage in terms of wildlife hazard given its coastal position at two ends of its runway and its comparative small area (where it has effective control of this hazard compared to other NZ international airports). In these circumstances it is important therefore that PDP provisions support the management of these risks to the greatest extent possible.

Amanda Dewar

Counsel for Wellington International Airport Ltd