

MEMO

TO Nigel Corry  
 COPIED TO Alistair Cross, Sonia Baker  
 FROM Jude Chittock  
 DATE 22 July 2016  
 FILE NUMBER WGN/160274/01  
 FOR YOUR ACTION

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**Decision on request for direct referral to the Environment Court under section 87E of the Resource Management Act**

**1. Introduction**

Wellington International Airport Limited (WIAL; the applicant) has requested that Greater Wellington Regional Council (GWRC) and Wellington City Council (WCC) allow the resource consent applications relating to a proposed runway extension, to be determined by the Environment Court rather than the relevant consent authorities. The applicant made their request in accordance with Section 87D(1) of the Resource Management Act 1991 (the Act). This is commonly referred to as a ‘request for Direct Referral’.

The Runway Extension Project requires resource consents from both WCC and GWRC. This recommendation relates only to the applications within the jurisdiction of GWRC. However, GWRC is aware that a similar request has been made to WCC in relation to the applications within its jurisdiction and considers that all applications related to the Project should be determined concurrently. The applicant has requested that all applications be processed together to enable joint decision making and both WCC and GWRC have agreed to this approach.

**2. Summary of resource consents sought from GWRC for the WIAL proposed runway extension**

**2.1 Proposal Summary**

Location	Coastal Marine Area
Map Reference	At or about map references: NZTM: 1751135mE 5421917mN (southern extent of proposed runway extension) NZTM: 1750574mE 5422763mN (middle of Lyall Bay approximately 450m from

	shore) NZTM: 1751400mE 5422263mN (eastern extent of proposed remediation at Moa Point Beach) NZTM: 1751487mE 5422575mN (hillock area and construction and stockpile compound) NZTM: 1751238mE 5421784mN and 1750821mE 5421882mN and 1750822mE 5422163mN (boundary of temporary mooring buoys area)	
Legal Description	Wellington International Airport, land at the south end of the existing runway and Moa Point Beach and parts of the Coastal Marine Area within Lyall Bay	
Applicant	Wellington International Airport Limited	
Application Reference	Coastal permits (x6), Land use consent and Discharge permit sought from GWRC	
File Reference	WGN160274	
Consents sought from GWRC	[34044]	<p><b><i>Reclamation activities (unlimited duration sought)</i></b></p> <p>Coastal permit to reclaim and use approximately 11 hectares of the coastal marine area to the south of the Wellington Airport runway in Lyall Bay including any:</p> <ul style="list-style-type: none"> <li>• associated destruction, disturbance, deposition and discharge of sediment and dust to the foreshore and seabed and air during construction of the reclamation;</li> <li>• diversion and dewatering during construction of the reclamation; and</li> <li>• generation of construction related noise.</li> </ul> <p><b>Discretionary Activity</b> under the Regional Coastal Plan and Proposed Natural Resources Plan</p>
	[34045]	<p><b><i>Permanent structures activities (10 year duration sought)</i></b></p> <p>Coastal permit to construct permanent structures associated with the proposed runway extension and related project works including a submerged surf wave focusing structure in Lyall Bay, a protection structure over part of the Moa Point wastewater outfall pipeline and all other ancillary structures, including:</p> <ul style="list-style-type: none"> <li>• associated destruction, disturbance, deposition and discharge of sediment and dust to the foreshore and seabed and to air during construction of the structures;</li> <li>• disturbance of the foreshore and seabed associated with the mooring of vessels during construction;</li> <li>• diversion and dewatering during construction of the structures;</li> <li>• generation of construction related noise</li> </ul> <p><b>Discretionary Activity</b> under the Regional Coastal Plan and</p>

	Proposed Natural Resources Plan
[34046]	<p><b><i>Occupation of the coastal marine area activities (35 year duration sought)</i></b></p> <p>Coastal permit to occupy the coastal marine area for construction purposes, temporary and permanent structures, and ongoing maintenance works associated with the proposed runway extension and related project works including the toe of the reclamation below mean high water mark, a submerged wave focussing structure in Lyall Bay and a protection structure over part of the Moa Point wastewater outfall pipeline, including:</p> <ul style="list-style-type: none"> <li>• associated destruction, disturbance, deposition and discharge of sediment and dust to the foreshore and seabed and to air from the maintenance of these structures</li> <li>• generation of noise from maintenance activities</li> </ul> <p><b>Discretionary Activity</b> under the Regional Coastal Plan and Proposed Natural Resources Plan</p>
[34047]	<p><b><i>Temporary structures activities (10 year duration sought)</i></b></p> <p>Coastal permit to construct, use and maintain temporary structures including moorings for construction related purposes, lighting structures, site establishment facilities, machinery and equipment in the coastal marine area associated with the construction of the proposed runway extension and associated project works, including:</p> <ul style="list-style-type: none"> <li>• associated destruction, disturbance, deposition and discharge of sediment and dust to the foreshore and seabed and to air during construction of the structures;</li> <li>• diversion and dewatering during construction of the structures;</li> <li>• generation of construction related noise</li> </ul> <p><b>Discretionary Activity</b> under the Regional Coastal Plan and the Proposed Natural Resources Plan</p>
[34048]	<p><b><i>Earthworks activities (10 year duration sought)</i></b></p> <p>Land use consent and discharge permit to undertake earthworks associated with the construction of the proposed runway extension and associated project works including the removal of a hillock to develop a construction compound site and any associated discharges of sediment laden water to land where it may enter water.</p> <p><b>Discretionary Activity</b> under the Proposed Natural Resources Plan</p>

[34049]	<p><b><i>Air discharge activities for construction (10 year duration sought)</i></b></p> <p>Discharge permit to discharge dust to air from earthworks activities associated with the construction of the proposed runway extension and associated project works including the removal of a hillock, stockpiling and handling of fill and construction materials.</p> <p><b>Discretionary Activity</b> under the Regional Air Quality Plan and the Proposed Natural Resources Plan</p>
[34050]	<p><b><i>Beach nourishment activities (10 year duration sought)</i></b></p> <p>Coastal permit to deposit natural materials onto Moa Point Beach foreshore for the purpose of beach and amenity enhancement.</p> <p><b>Controlled Activity</b> under the Regional Coastal Plan and <b>Discretionary Activity</b> under the Proposed Natural Resources Plan</p>
[34051]	<p><b><i>Stormwater discharge activities post construction (35 year duration sought)</i></b></p> <p>Coastal permit to discharge stormwater from the extended Wellington Airport runway directly to the coastal marine area (CMA) and to land adjacent to the CMA where it may enter waters of the CMA.</p> <p><b>Permitted Activity</b> under the Regional Coastal Plan and <b>Discretionary Activity</b> under the Proposed Natural Resources Plan</p>

### 3. Applicant's reason for direct referral:

The following reasons for direct referral were outlined in the request to GWRC:

- a) Likely appeals on the Project due to:
  - the complex existing environment (which includes designations, roads, road reserves, multiple infrastructure and activities within and near the CMA); and
  - the significant media and potential submitter interest both positive and negative
- b) The technical nature of the Project and resource consents required. It is expected that evidence will be provided by multiple expert witnesses on the same environmental effects and it is appropriate for the Environment Court to consider the evidence and arguments for the following reasons:
  - The Environment Court has extensive experience with large complex projects of a highly technical nature
  - The availability of Commissioners who have appropriate expertise

- Weighting of various evidential matters is most appropriately provided by the Environment Court; and
  - The ability of the Environment Court to direct mediation and expert conferencing to narrow the contested issues.
- c) Streamlined decision-making, through:
- the decision being final subject to any appeals on points of law to the High Court;
  - reduced consent processing timeframe; and
  - independent decision makers which is particularly important given WCC are both a consenting authority and shareholder in the Wellington Airport.
- d) Cost considerations:
- There are significant costs involved, from consenting through to construction
  - Part of the consenting costs have been funded by WCC (ratepayer funds) for submitters/interested parties; and
  - A one-stage hearing process will reduce costs overall.

#### **4. Statutory provisions relating to the request:**

Sections 87C and 87D of the Act allow the applicant to request that a notified resource consent application be processed by the Environment Court, rather than the consent authority. The applicant must make this request within the period commencing on the day the application is first lodged and ending 5 working days after submissions close and it must be made on the prescribed form.

The request for direct referral was made in the prescribed form (Form 7A of Resource Management (Forms, Fees, and Procedure) Regulations 2003) and was received by GWRC at the time of lodgement of the consent applications (29 April 2016). The consent applications were publicly notified (jointly) by both WCC and GWRC on 1 July 2016.

The request for direct referral is therefore an 'eligible' request under Section 87D of the Act. In my view, the application is complete for the purposes of Section 87E of the Act.

#### **5. Statutory provisions relating to the decision:**

There are no specific criteria set out within the Act to guide GWRC in deciding whether it grants or declines an eligible request for direct referral. GWRC retains full discretion in this regard.

Section 87C of the Act states that no submitter has a right to be heard on the request received from the applicant.

## **6. Assessment of direct referral request:**

The reasons for the applicant requesting direct referral (refer to section 3.0) as well as criteria GWRC considers relevant when considering the direct referral are discussed below.

### **6.1 Public interest and likelihood of appeals**

Transport upgrades in the Wellington region and reclamation of the coastal marine area (CMA) have traditionally generated a high level of public interest and scrutiny. The significance of the proposed runway extension to the public became apparent during pre-consent application discussions and the level of media attention it generated. Three public open events/forums were attended by over 200 people; approximately 700 written feedback forms were received by the WIAL following pre-application discussions with interested parties and open day forums. A variety of issues were raised, including:

- Benefits of the Project
- Funding concerns
- Project viability
- Construction traffic effects – haulage routes
- Construction noise effects
- Visual and landscape effects
- Effects on the CMA
- Operational noise effects
- Natural hazards and climate change
- Alternatives

A high level of public interest in the consent application is expected due to the proximity of the airport to residential areas and an area of high recreational use. This point is also illustrated by the large number of local residents, stakeholders and interest groups that were directly notified about this consent application (approximately 1,400 people and organisations).

I agree with the applicant that the significant level of public interest and complex issues raised by interested parties generates a real likelihood that any decision on the application made by consent authorities will come before the Environment Court in any event through an appeal. In my view, having the applications determined by the Environment Court in the first instance will avoid duplication, cost and delays in processing the applications relating to the Project. This aligns with the very purpose of sections 87D and 87E and will be more efficient in terms of cost and time for most (if not all) parties.

### **6.2 Technical nature of the proposal**

There are a number of effects (temporary and ongoing) that need to be considered when assessing the application. For example some of the key effects are:

- Construction related amenity effects (such as noise, dust and visual effects). The proposed runway may take up to four years to construct and although amenity effects will be temporary they will likely cause nuisance effect particularly on those living close the construction site and haulage route

- The effect on surfing amenity is likely to be significant although the applicant has proposed to mitigate or offset these effects by constructing a surf wave focussing structure (SWFS) in Lyall Bay. The SWFS has its own associated effects assessment to consider
- Natural character of the coastal environment, particularly around Moa Point and Lyall Bay, will change permanently
- The application contains a substantial economic effects assessment and any ‘benefit’ will need to be considered in terms of relevant planning instruments.

The applicant proposes a framework of management plans to avoid, remedy and mitigate effects, whereby conditions of consent establish relevant parameters and management plans provide the detail as to how a particular parameter will be met. In some cases (i.e. effects on aquatic ecology from reclamation activities and effects on coastal processes e.g. surfing) an adaptive management approach is proposed. Ten management plans are proposed by the applicant, four of these plans have been submitted as “drafts” in the application.

There are also complex planning provisions relevant to the application. In particular:

- Multiple statutory and non-statutory documents (Regional and Territorial)
- The weighting relevance of the Proposed Natural Resources Plan compared to operative regional plans
- The New Zealand Coastal Policy Statement 2010 (NZCPS) states that reclamation should be *avoided* unless the reclamation will provide ‘significant regional or national benefit’. The NZCPS also states particular regard shall be given to ongoing efficient operation of airports.

In my view, having the application determined by the Environment Court will assist the swift resolution of matters of a scientific or technical nature through mediation (if used), cross examination and sworn evidence.

### **6.3 Impact on parties**

It is possible that direct referral to the Environment Court may deter participation by some submitters or affected parties. However, this may be the case with any appeal following a Council decision. Court support is available throughout the Court proceedings to help s274 parties understand the process. In addition, the Environment Court is well practiced in hearing the submissions and evidence of lay submitters and the direct referral process recognises this as all parties 'first' chance to make submissions and call evidence (if any) on the proposal. It has been specifically designed for that purpose. Therefore, I do not consider that submitters or the applicant will be unduly prejudiced by the application being determined by the Environment Court.

It is important to note that submitters have the right to continue their participation in the application process (if they wish) as they would in any Council process. Should any submitter wish not to appear in Environment Court proceedings, their respective written submissions will still be considered by the Court in determining the application.

#### **6.4 Cost considerations and streamlined decision-making**

It is my view that a direct referral process will provide more efficiency in terms of costs and time for all parties as it will only involve a single process.

In my view, the intentions and purpose of the ‘streamlining decision-making’ provisions of the Act introduced by the Resource Management (Simplifying and Streamlining) Amendment Act 2009 are to improve efficiency in the decision making process and to reduce duplication, costs and delays - particularly where an appeal seems likely. In my view, the intentions of these provisions are best met through granting the direct referral request.

#### **6.5 Other relevant matters**

I do not consider there to be any other relevant matters that would warrant the request for direct referral to be declined by GWRC.

### **7. Main findings**

In conclusion:





- The direct referral request is consistent with the Purposes and Principles of the Act and in particular, ‘streamlining decision-making’ provisions of the Act
- It is clear from pre-application discussions with interested parties the nature that the proposed runway extension is likely to be contentious and the issues will be complex
- Direct referral will allow for a single process and therefore likely reduce costs, duplication and delays for all parties
- Submitters have the right to continue their participation in the application process as they would in any Council process and should any submitter wish not to appear in Environment Court proceedings, their respective written submissions will still be considered by the Court in determining the application.

### **8. Recommendation:**

Having considered the applicant’s reasons for the request; the relevant statutory provisions of the Act; the criteria outlined above as relevant to this decision; and, the intentions/purpose of the ‘streamlining decision-making’ provisions of the Act, I recommend that GWRC **grants** the applicants request for the applications to be determined by the Environment Court rather than GWRC.



By way of approving the recommendation of this memorandum, please sign below.

Decision recommended by:	Jude Chittock	Senior Resource Advisor, Environmental Regulation	
	Kirsty van Reenen	Resource Advisor, Environmental Regulation	
Recommendation reviewed by:	Sonia Baker	Team Leader, Environmental Regulation	
Recommendation reviewed by:	Alistair Cross	Manager, Environmental Regulation	
Decision approved by:	Nigel Corry	General Manager, Environmental Management	