

Request to Refer Resource Consent Application to the Environment Court

Wellington City Council Decision on request (Section 87E)

REQUEST FOR DIRECT REFERRAL TO THE ENVIRONMENT COURT

1. Pursuant to Section 87D(1) of the Resource Management Act 1991 (the Act), the applicant (Wellington International Airport Limited), has requested that Wellington City Council (WCC) allow the resource consent application(s) relating to the Wellington International Airport Ltd Runway Extension, to be determined by the Environment Court rather than WCC. This is commonly referred to as a 'request for Direct Referral'.
2. The Wellington International Airport Ltd Runway Extension Project covers all activities associated with the construction, operation, and maintenance of the runway extension. The application documents detail the scope of works that make up the overall Project.
3. The project requires resource consents from both WCC and Greater Wellington Regional Council (GWRC), and consents for the overall Project were lodged concurrently with both Councils. This recommendation relates only to the application within the jurisdiction of WCC. However, WCC is aware that this request has also been made to GWRC.
4. The direct referral request was submitted with the application, which was received on 29 April 2016.
5. Given that consent is required from both WCC and GWRC for the Project to occur, it is considered that the all consents should be considered 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.

SUMMARY OF THE RESOURCE CONSENT SOUGHT FROM WCC

WELLINGTON INTERNATIONAL AIRPORT LTD RUNWAY EXTENSION PROJECT:

<u>Site Address:</u>	28 Stewart Duff Drive
<u>Legal Descriptions:</u>	Lot 1 DP 78304 and Section 1, 5 Survey Office Plan 342914, Lot 3 Deposited Plan 78304, Part Lot 1 Deposited Plan 78304, Part Section 1 Survey Office Plan 37422, Section 2-3 Survey Office Plan 37422, Section 3 Survey Office Plan 38205, Lots 24, 26 – 28 and 32 – 34 Deposited Plan 21360, Lot 4 Deposited Plan 78304, Lot 6 Deposited Plan 75384, Lot 7 Deposited Plan 75384, Lot 3 Deposited Plan 2456, & Road Reserve
<u>Applicant:</u>	Wellington International Airport Ltd
<u>Application Reference:</u>	Land use consent for the construction, operation and maintenance of the Runway Extension Project.
<u>Approx Map References:</u>	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)
<u>Service Request No:</u>	357837
<u>File Reference:</u>	1001102

Application Summary:

1. Land use consent to construct, operate and maintain the proposed runway extension. In particular, the works involve the following:
 - Temporary site offices and associated facilities;
 - Laydown and stockpiling areas
 - Construction modification, upgrading and use of internal site access ways
 - Construction, alteration and upgrading of existing network utilities to provide for construction related activities and the long term use of the runway and taxiway;
 - Earthworks, including associated transport, and vegetation clearance;
 - Modification and upgrading of the Moa Point Road underpass and other associated roading upgrades;

- Generation of construction related noise;
 - Construction and use of runway infrastructure and structures on land including (but not limited to) ancillary structures, fencing and navigational aids, beach remediation and landscape/amenity improvements;
 - The continued use of reclaimed land for airport purposes.
2. The site is located in the Airport and Golf Course Recreation Precinct and Open Space B. Overall, the land use consent sought from WCC is a Discretionary (Unrestricted) Activity under the Wellington City District Plan.

APPLICANTS REASONS FOR DIRECT REFERRAL

3. The applicants have requested that the application be referred to the Environment Court for the reasons summarised below:
- (a) *Likely appeals on the Project*
 - (b) *Technical nature of the Project and resource consents required.*
 - (c) *Streamlined decision-making; and*
 - (d) *Cost considerations*

These matters are discussed below.

STATUTORY PROVISIONS RELATING TO THE REQUEST

4. Sections 87C and 87D of the Act allow the applicant to request that a notified resource consent application be determined 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.
5. This application was publicly notified (jointly) by both WCC and GWRC on 1 July 2016. The submission period closes on 12 August 2016¹. The applicant's request was made using the prescribed form (Form 7A of Resource Management (Forms, Fees, and Procedure) Regulations 2003) and was included as part of the resource consent application, which was lodged on 29 April 2016.
6. The request for direct referral is therefore an 'eligible' request under Section 87D of the Act.
7. In my view, the application is complete for the purposes of Section 87E(1) of the Act. Without precluding any requests for further information (under Section 92 of the Act) to enable WCC to undertake a full substantive assessment of the application, WCC is in a position to make a fully informed decision on the applicants request for direct referral.

STATUTORY PROVISIONS RELATING TO THE DECISION

8. There are no specific criteria set out within the Act to guide WCC in deciding whether to **grant** or **decline** an eligible request for direct referral. WCC retains full discretion in this regard.

¹ The submission period was extended to six weeks pursuant to section 37 of the Act at the request of the applicant.

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

CONSIDERATION OF THE REQUEST

10. WCC considers the following criteria to be relevant in considering whether to grant, or decline the request:

The reasons set out by the applicant:

11. The applicant has provided a detailed explanation for their request for direct referral in their application. These points are:

Likely appeals on the project:

- 1.11.1 The proposed Runway Extension Project is a relatively large, high profile project in a complex and sensitive environment. Various groups have publicly stated their intentions to oppose the Project, and it is reasonably likely that such opposition would extend to appeals to the Environment Court.

Technical nature of the Project:

- 1.11.2 Given the technical nature of the Project, particularly the reclamation works, a number of technical experts are required to provide input into the consenting process. The Environment Court is competent in managing a large number of specialist advisors, and ensuring that through mediation and expert conferencing that the number of contested issues is narrowed.

Streamlined decision making:

- 1.11.3 Direct referral will avoid any duplication of hearings as any decisions made by the Environment Court are final, with the exception of any appeals to the High Court on points of law. In this instance, it is highly likely that any decision on the applications made by the consent authorities will come before the Environment Court in any event through an appeal. In such case, the Environment Court would rehear the applications on a de novo basis. In my view, having the applications determined by the Environment Court in the first instance will avoid duplication, cost and delays in processing this application.

- 1.11.4 Furthermore, as Wellington City Council is a shareholder of the Wellington International Airport, direct referral to the Environment Court will ensure independence in the decision making process.

Cost considerations

- 1.11.5 One of the significant outcomes of a streamlined decision making process is the reduction of costs associated with the consent process. Overall, it is considered that the costs for the applicant, regulatory authorities, and submitters, would be lower as a result of only going through one hearing process.

Impacts on the parties and assessment of applicant's reasons:

12. I have given consideration to the impacts on the parties, in terms of time and costs of the application being determined by the Environment Court, as opposed to a Council hearing. My view is that direct referral will allow for a single process and is therefore likely to reduce costs, duplication and delays for all parties. 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.
13. It is possible that some submitters may be deterred from participating through an Environment Court hearing, as may be the case with any subsequent appeal of a Council decision. However, the Environment Court is well practiced in hearing the submissions and evidence of lay submitters and the direct referral process recognises this is all parties 'first' chance to make submissions and call evidence (if any) on the proposal. It has been specifically designed for this purpose. I do not consider that submitters or the applicant will be unduly prejudiced by the application being determined by the Environment Court in the first instance. Submitters have the right to continue their participation in the application process (if they wish) as they would in any Council process. In any case, 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.
14. In my view, any concerns about participation in the Environment Court proceedings must be balanced with the intentions and purpose of the 'streamlining decision-making' provisions of the Act introduced by the Resource Management (Simplifying and Streamlining) Amendment Act 2009, namely, 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.
15. As outlined by the applicant in the direct referral request, the Project involves a number of complex matters, which are likely to be contentious and generate significant debate. This includes, but is not limited to matters related to the runway reclamation, coastal processes, ecology, traffic, and noise. There is also likely to be significant discussion related to the economic benefits of the proposal.
16. Expert evidence will be required to assist in the determination of the applications, which in my view would be best tested through cross examination and through other procedures available to the Environment Court.

Any other relevant matters:

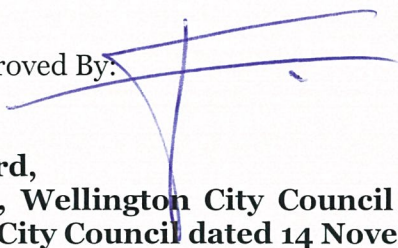
17. There are no other relevant matters or special circumstances that I consider warrant the request for direct referral to be declined by WCC.

RECOMMENDATION

18. 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, it is recommended that WCC **grants** the applicants request for the applications to be determined by the Environment Court rather than WCC.

Report prepared by: Peter Daly

Decision Approved By:


Greg Orchard,
Acting CEO, Wellington City Council (acting under delegated authority from
Wellington City Council dated 14 November 2013)

Date of Decision: **22 July 2016**