

**IN THE ENVIRONMENT COURT
WELLINGTON REGISTRY**

ENV-2016-WLG-000058

Under section 274 of the Resource Management Act 1991

In the matter of the Resource Management Act 1991 of Notice of Motion under section 87G requesting the granting of resource consents to **WELLINGTON INTERNATIONAL AIRPORT LIMITED** for the Wellington International Airport Extension of Runway: Construction, Operation and Maintenance

**MEMORANDUM OF COUNSEL FOR
GUARDIANS OF THE BAYS INCORPORATED**
7 February 2017

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May it please the Court:

Introduction

1 This memorandum is filed by counsel for Guardians of the Bays Incorporated (**GOTB**) in advance of the pre hearing conference on 9 February 2017. It is supported by Hue tē Taka Incorporated (**HtT**) and the Surfbreak Protection Society Incorporated (**SPS**).

Timetable

2 GOTB, HtT and SPS have conferred and respectfully propose a timetable as follows:

Date	Step/Process	Brief comment
17 February 2017 [No change]	All parties to formally identify issues in dispute (arising out the pre-hearing conference)	Reasonable to have a high-level identification of issues. Detail for some parties may need to await expert input, following confirmation of ELA funding.
- [WIAL had proposed mediation in the week of 27 February]	Mediation prior to evidence exchange.	Mediation is considered premature at this stage – see discussion below for further detail.
3 March 2017 [2 weeks earlier than proposed by WIAL]	Applicant to exchange its evidence	WIAL has had considerable time to prepare its case and evidence. It has a number of matters to respond to in identified in the s 87F reports, and the s 274 notices – as well as various information requests made to it by the parties. The sooner WIAL exchanges its evidence the better.
24 March 2017 [1 week earlier than proposed by WIAL]	Councils to exchange their evidence	This provides 3 weeks for the Councils to provide their evidence, as sought by the Councils.
21 April 2017 (including Easter) [The same date as sought by WIAL]	Section 274 parties to exchange their evidence	This provides 4 weeks for s 274 parties, although the practical time is less given that it includes Easter. It is also reasonable to provide 4 weeks for the s 274 parties production of evidence particularly if WIAL are presenting any new

Date	Step/Process	Brief comment
		material or updating its evidence.
<p>Weeks of 8 May 2017 and 15 May 2017</p> <p>[WIAL had proposed conferencing in weeks of 1 and 8 May, and further mediation in the week of 15 May]</p>	Expert conferencing and/or mediation	At this stage, some flexibility should be given for conferencing and mediation to occur in a “block”. Final details can be resolved closer to the time in light of the evidence produced.
<p>2 June 2017</p> <p>[1 Week later than WIAL proposed]</p>	Rebuttal evidence to be exchanged	Rebuttal evidence can be significantly focused depending on the outcomes of conferencing and mediation.
<p>26 June 2017</p> <p>[two weeks later than proposed by WIAL]</p>	Hearing commences (tentative – subject to the Court’s availability)	<p>Further narrowing and discussions can occur after the exchange of rebuttal. This provides a greater opportunity for that, to maximise efficiency at the hearing.</p> <p>It is likely that there will be a significant amount of evidence, some of it complex, and this start date also gives the Environment Court a greater opportunity to pre-read and consider it.</p>

3 In respect of mediation:

3.1 GOTB, HtT, and SPS consider that mediation in the early stages of this process (as originally proposed by WIAL) is premature; will not assist in narrowing the issues at that stage; and will be an inefficient use of resources (which are limited to GOTB, HtT, and SPS, if not other submitters).

3.2 Reasons for this include that the Environmental Legal Assistance (ELA) panel is not expected to make its decision until approximately 1 March 2017 (being six weeks following the application date of 17 January 2017). Any parties awaiting the result of the ELA funding

decisions will not have the benefit of engaging fulsomely on the issues in dispute, as a number of proposed expert witnesses or legal counsel may not have been formally engaged in the process if mediation were to occur before mid-March 2017.

3.3 Greater progress, however, will be likely if mediation occurs later, following the exchange of evidence. This could be at or around the same time as expert conferencing occurs – which will also provide some efficiencies for parties like GOTB, HtT, and SPS; as some of their witnesses may also usefully be able to attend mediation at the same time. (It is not uncommon for a party to want to have advice from its experts at mediation.)

4 Counsel have provided a draft of the above proposed timetable to counsel for Wellington International Airport Limited (**WIAL**). Given counsel's other commitments, there has been no opportunity to discuss the timetable further. However, counsel for WIAL confirmed they cannot agree to GOTB's proposed date for the exchange of WIAL's evidence (ie 3 March 2017).

Proposed witness schedules

5 The Court's directions in its Minute of 30 January 2017 require for each party wishing to give evidence at the substantive hearing to provide a schedule of proposed witnesses at the pre-hearing conference.

6 In accordance with this direction, the proposed witnesses of GOTB, HtT and SPS are attached to this memorandum at **Schedule A** (taking into account GOTB, HtT, and SPS are awaiting a decision on ELA funding). Witnesses are identified as expert and non-expert or "lay" witnesses, although the latter may have some expertise or experience (but may not be fully independent, for example, because they are directly affected). The list also includes some witnesses who are s 274 parties in their own right. It may be that they give evidence on their own behalf rather than under GOTB, HtT, or SPS.

7 These witness schedules are still being finalised and may be subject to further amendments. If any amendments are made, the Court and other parties will be notified of any amendments as soon as practicable.

Proposed agenda for pre-hearing conference

8 The Parties agree with the Court's proposed agenda for the pre-hearing conference, as set out in its Minute of 30 January 2017.

Additional matter – order and 'hot-tubbing' of witnesses at the hearing

9 GOTB, HtT, and SPS also wish to raise the question of order, and any 'hot-tubbing' of witnesses at the hearing. This may be resolved at a later date, but GOTB, HtT, and SPS consider that in general:

9.1 WIAL should present its case first, followed by supportive parties;

9.2 The Councils should then present their cases, followed by opposing parties.

9.3 Provided that some topics, such as forecasting and economics, would be suitable to be dealt with on a topic, rather than party, basis in the normal order (ie as set out in paragraphs 7.1 and 7.2). That would also allow the opportunity for hot-tubbing. This evidence should be heard at an early stage of the proceedings, as they set the foundation for all of the purported benefits of the proposal.

9.4 Parties should all be given an opportunity to close, to the extent necessary to address matters arising since giving their opening submissions.

DATED 7 February 2017



J D K Gardner-Hopkins / C R Gubb

Counsel for Guardians of the Bays Incorporated

Schedule A

Guardians of the Bays Inc.

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List of Expert Witnesses

- 1 Professor Tim Hazeldine – Economics
- 2 Stephen Brown – Natural Character and Landscape
- 3 Paul Kennedy – Coastal ecology
- 4 Malcolm Hunt – Noise
- 5 Hamish Rennie – Planning
- 6 Professor James Renwick – Climate Change

List of Lay Witnesses

- 1 Dr Sea Rotmann – Community representative, amenity and recreational impacts, marine ecology
- 2 Martyn Howells – Community representative
- 3 Elise Webster – Community representative
- 4 Leigh Webster – Community representative, kai moana gatherer
- 5 Stan Andis – Community representative, noise effects
- 6 Jim Mikož - Recreational fisher
- 7 Daryl Sykes - Commercial rock lobster fisher in Lyall Bay/Moa Point
- 8 Nicole Miller - Wellington Underwater Club
- 9 Susan Hanieal – Community representative, tsunami risk
- 10 Marine Pomerade - Lazy Seals free diving club

Hue tē Taka Inc.

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Surfbreak Protection Society Inc.

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List of Expert Witnesses

- 1 Dr Shaw Mead - Environmental Scientist / Consultant.
- 2 Dr Hamish Rennie - RMA planner.

List of Lay Witnesses

- 1 Paul Shanks - President of the Surfbreak Protection Society Incorporated (SPS).
- 2 Mark Shanks - SPS Committee Member, Wellington surfer resident, and life member of Surfing New Zealand.
- 3 Gary Hurrying - Local surfer / NZ Olympic and Commonwealth swimmer.
- 4 Allen Pidwell QSM - SPS committee member / experienced surfer.
- 5 Carol Quirk QSM - Lyall Bay surf lifesaver; life member of Surf Lifesaving New Zealand.
- 6 Michael Gunson - SPS Administration officer/ experienced Lyall Bay surfer.