

**In the Environment Court
at Wellington**

ENV-2016-WLG-000058

UNDER The Resource Management Act 1991 (the Act)

IN THE MATTER The direct referral of an application for
resource consents associated with an
extension to the runway by

By **Wellington International Airport Limited**

**Memorandum of Counsel
for the New Zealand Air Line Pilots' Association
seeking adjournment of the proceedings**

Dated 1 March 2017

MAY IT PLEASE THE COURT:

1. I refer to my Memorandum of 23 February and the Court's subsequent Minute seeking responses from other parties. The position has altered as a result of the Court of Appeal decision released today in *New Zealand Air Line Pilots' Association v Director Civil Aviation and Wellington International Airport Limited*.¹
2. The decision overturns the Director's decision to approve WIAL's provision of a 90-metre RESA (with no alternative provision for EMAS) for a proposed runway extension at Wellington International Airport. As a consequence, the Director will now need to reconsider whether a longer RESA or EMAS is required in terms of the safety issues within CAA's domain. (I note that this Court has a wider and, in my submission, overlapping jurisdiction in terms of avoiding, remedying or mitigating environmental risks (including to people) arising out of the runway extension).
3. The Court has set out in some detail, how the Director is to consider the matter and what he must consider. Contrary to his past approach, the Director has to start with the 240 metre distance and assess whether it is practicable for WIAL to construct that distance or utilise EMAS. The test is feasibility, not cost. The Court has found that the safety issue was determined when the Rule was made and is not part of his decision - i.e. the Director cannot rewrite the Rule by saying the safety risk is so low a shorter distance will do.
4. He must also consider whether the Rule can be complied with by using an arresting system (EMAS) whether or not that is proposed by WIAL. (to date that system has not been proposed or indeed seriously considered by the WIAL or the Director.)
5. This decision has obvious implications for this Court's hearing as follows:
 - a) WIAL will need to consider whether to amend its proposal to the Director to include EMAS or a longer RESA.
 - b) The Director will need to reconsider the proposal.
 - c) That will inevitably require further evidence of the practicality of the alternatives and the risks associated with various scenarios. In particular that will likely require modelling evidence along the lines of that which NZALPA was intending to commission for the forthcoming hearing.²
 - d) The Director's decision may be some months away depending upon how much additional information he now requires.
 - e) The Consent application will need to be modified if the Director does not approve the current proposal. (A longer RESA is not within the scope of the current application and the AEE and intended evidence assumes no use of EMAS).

¹ CA374/2016 [2017] NZCA 27

² The New Zealand Air Line Pilot's Association (NZALPA) was intending to commission modelling evidence for this hearing which in my submission should have been provided by WIAL. Hopefully that evidence can now be provided by WIAL or the Director and might prove to be uncontentious.

- f) If the Director was to approve the current proposal then, the modelling information provided to or commissioned by the Director will also be relevant to this Court's inquiry into the environmental risks arising out of not providing a full length RESA or EMAS.
6. In the circumstances it would clearly be unfair to the 274 parties who have put in submissions and inefficient for the hearing to proceed as set down. The parties would be expending considerable resources on a proposal which may be withdrawn or altered.
 7. Continuation would also potentially waste considerable public resources on the hearing of a proposal which may need to be abandoned or altered.
 8. The CEO of WIAL has indicated in media statements that the decision is a "speed bump" but that at this stage the advice is to proceed with the application. With respect, it would be an abuse of process to require parties to further prepare for a hearing on the basis of a gamble by the Applicant that the Director may reach the same decision. The responsible approach would be for the application to be parked up behind the speed bump to allow due process to be followed by the Director.
 9. From my client's perspective it does not wish meet the cost of expensive modelling which will likely be required in any event for the Director's decision making.
 10. NZALPA seeks that the current hearing fixture be vacated and the application adjourned until such time as the Director has made his decision and WIAL has decided whether to abandon or modify its current application or proceed as it is.
 11. Depending upon those decisions NZALPA may or may not have an ongoing role in this matter.
 12. NZALPA seeks a direction that WIAL respond to this Memorandum by Friday of this week and that if it seeks to proceed with the hearing, that there be an urgent Judicial Conference next week to hear this application.



Philip Milne
Counsel for NZALPA

Date: 1 March 2017