ENV-2016-WLG-000058

IN THE ENVIRONMENT COURT
WELLINGTON REGISTRY

UNDER	section 274 of the Resource Management Act 1991 ("**Act**")
IN THE MATTER OF	a 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
BETWEEN	**GUARDIANS OF THE BAYS** and **HUE TE TAKA** Applicants for strike out / section 274 parties
AND	**WELLINGTON INTERNATIONAL AIRPORT LIMITED** Respondent to strike out / applicant for consents

---

NOTICE OF APPLICATION TO STRIKE OUT

9 NOVEMBER 2018

Counsel instructed:

JGH BARRISTER

J D K Gardner-Hopkins
Phone: 04 889 2776
james@jghbarrister.com
PO Box 25-160
WELLINGTON

TO: The Registrar
Environment Court
Wellington

AND TO: The applicant for consent

AND TO: The section 274 parties

TAKE NOTICE THAT Guardians of the Bays Incorporated (**"GotB"**) and Hue tē Taka ("**HtT**") hereby apply:

A. under section 279(4)(c) of the Act to strike out the whole of the direct referred proceedings made by Wellington International Airport Limited ("**WIAL**"); and

B. for the costs of and incidental to this application and the proceedings to date.

UPON THE GROUNDS THAT:

1. It would otherwise be an abuse of the process of the Environment Court to allow the direct referred proceedings to be taken further.

2. WIAL has had sufficient indulgence of the Court to obtain the necessary approvals from the Director General of Civil Aviation ("**DG**") in respect of WIAL's proposed runway end safety area ("**RESA**"). The most recent adjournment was granted, despite opposition by GotB, HtH and others, for six months expiring on 31 October 2018.

3. WIAL's assurances at the time its last adjournment was sought were that the DG's decision was expected to be given within six months.

4. The DG has not made its decision and WIAL now seeks a further adjournment to "mid-March 2019", ie for nearly five more months.

5. There is no certainty that the DG will have made his decision by then and so there could be further delays.

6. Even if the DG has made his decision by then, and it confirms a RESA that allows WIAL's application to proceed, the Court has already determined that:

   (a) public notice will again be given of the application, to allow any person who has not yet joined the proceedings the opportunity to do so;

   (b) any directions made towards hearing will allow "generous time" for the section 274 parties to review the information to be advanced by WIAL in support of its proposal; and

   accordingly, any hearing is unlikely to be set down until the third or fourth quarter of 2019.

7. The application was finalised and filed in April 2016. If it proceeds it would therefore be heard some three and a half years or so from its filing, and much longer since many of the relevant assessments were first undertaken or data collected.

8. The delay is inordinate, inexcusable (particularly given WIAL's knowledge of the risks of delay when it lodged its application), and is prejudicial to all section 274 parties as well as the wider public.

9. Further delay is unreasonable in all the circumstances and now amounts to an abuse of process.

10. The appropriate course in the interests of justice at this point in time is to strike out the application. While WIAL may reapply, by requiring it to do so will:

    (a) require it to update its application and supporting material in a comprehensive way;

    (b) enable the councils to seek further information from WIAL under section 92;

    (c) enable the councils to reconsider whether it supports direct referral, which it may not in light of the circumstance that will apply at the time it would "re-make" that decision;

    (d) even if direct referral occurs again, the councils will have the ability to provide new section 87F reports, which will better inform section 274 parties of the issues re-assessed at the relevant time; and

    accordingly, will see the application forward for hearing before the Environment Court (if that is still the outcome) on the proper "footing" anticipated by the statutory scheme.

11. To allow the direct referral to remain "alive" after such a long delay undermines the credibility and integrity of the Court's direct referral process, particularly when measured against the expectation that a consent that is not direct referred is to be returned to an applicant after 130 suspended days for re-lodgment.

AND UPON THE FURTHER GROUNDS / IN RELIANCE ON:

12. Affidavits to be filed in support of this application.

13. The section 21 duty to avoid unreasonable delay.

14. The cases of:

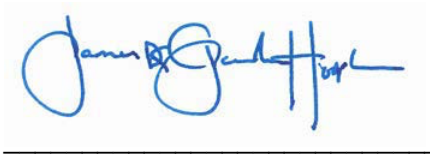
    (a) *Bank of New Zealand v Savril Contractors Ltd* [2005] 2 NZLR 475;

    (b) *Hurunui Water Project Ltd v Canterbury Regional Council* [2016] NZRMA 71;

(c) *Lovie v Medical Assurance Society of New Zealand Ltd* [1992] NZLR 244; and

(d) *Waitakere City Council v Kitewaho Bush Reserve Co Ltd* [2005] 1 NZLR 208.

DATED 9 November 2018



J D K Gardner-Hopkins
Counsel for the GotB and HtT