

IN THE ENVIRONMENT COURT OF NEW ZEALAND
WELLINGTON REGISTRY

ENV-2015-WLG-

UNDER THE

Resource Management Act 1991

IN THE MATTER

of applications for resource consent by **Wellington City Council** for proposed public open spaces at North Kumutoto, Wellington Waterfront (Application 3 SR number 320128; Application 4 WGN150103)

NOTICE OF MOTION FOR PROCEEDINGS UNDER SECTION 87G OF THE
RESOURCE MANAGEMENT ACT 1991

(APPLICATIONS 3 AND 4)



Simpson Grierson

Barristers & Solicitors

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DX SX11174

PO Box 2402

Wellington

To: The Registrar
Environment Court
Wellington

WELLINGTON CITY COUNCIL

APPLIES under section 87G of the Resource Management Act 1991 for the following applications for resource consent it has made to be decided by the Environment Court:

Application 3 (SR number 320128) to Wellington City Council; and
Application 4 (WGN150103) to Greater Wellington Regional Council.

The grounds for the applications are:

- (a) The Wellington City Council (**City Council**) has made a decision granting the applicant's request to allow Application 3 to be determined by the Environment Court instead of by the City Council under section 87E of the Resource Management Act 1991;
- (b) The applicant has considered the report prepared by the City Council under section 87F of the Resource Management Act 1991 and wishes to proceed to have Application 3 heard by the Environment Court;
- (c) The Greater Wellington Regional Council (**Regional Council**) has made a decision granting the applicant's request to allow Application 4 to be determined by the Environment Court instead of by the Regional Council under section 87E of the Resource Management Act 1991;
- (d) The applicant has considered the report prepared by the Regional Council under section 87F of the Resource Management Act 1991 and wishes to proceed to have the Application 4 heard by the Environment Court;

- (e) The project involves a development on Wellington's waterfront, which is an area of significance to the people of Wellington. The project is therefore of significant public interest and from the nature of submissions received is likely to be contentious; and
- (f) It will be more efficient in terms of cost and time for all parties and interested persons to have the matter referred directly to the Environment Court, as the matter may come before the Environment Court in any event through an appeal of any decisions made by the Councils.

The following documents are attached:

- (a) an affidavit of **Michael Patrick Faherty** in support of this application (**Attachment A**); and
- (b) a list of names and addresses of persons to be served with a copy of this notice (**Attachment B**).

Date: 9 April 2015



Duncan Laing/ Lizzy Wiessing
Counsel for Site 10 Redevelopment Limited
Partnership and Wellington City Council

Address for service of applicant:

Wellington City Council
c/- Simpson Grierson
P O Box 2402
Wellington

Attention: Duncan Laing/Lizzy Wiessing

Telephone: (04) 474 4599
Facsimile: (04) 472 6986
Email: duncan.laing@simpsongrierson.com/
lizzy.wiessing@simpsongrierson.com

Notes to applicant

1. You must lodge the original and 1 copy of this notice with the Environment Court. The notice must be signed by you or on your behalf.

You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

2. You must serve copies of this notice and the affidavit on the local authority or consent authority, and on any person who made a submission on the matter, as soon as is reasonably practicable after lodging the notice.
3. As soon as is reasonably practicable after you have served the documents, you must advise the Registrar of the names, addresses, and dates of service of the persons served.

Advice to recipients of copy of notice of motion

How to become party to proceedings

4. You may be heard on this application if you come within section 274(1) of the Resource Management Act 1991. If you are a trade competitor of the applicant, your right to be heard may be limited.
5. You may be heard on the application as a party if,—
 - (a) within 15 working days after this notice of motion was lodged with the court, you lodge a notice in form 33 with the Environment Court and serve copies of your notice on the relevant local authority and the applicant; and
 - (b) within 20 working days after this notice of motion was lodged with the court, you serve copies of your notice on all other parties.

Advice

6. If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Attachment A: Affidavit of Michael Faherty

IN THE ENVIRONMENT COURT OF NEW ZEALAND
WELLINGTON REGISTRY

ENV-2015-WLG-

UNDER THE

Resource Management Act 1991

IN THE MATTER

of applications for resource consent by **Wellington City Council** for proposed public open spaces at North Kumutoto, Wellington Waterfront (Application 3 SR number 320128; Application 4 WGN150103)

**AFFIDAVIT OF MICHAEL PATRICK FAHERTY
IN SUPPORT OF NOTICES OF MOTION UNDER SECTION 87G OF THE
RESOURCE MANAGEMENT ACT 1991
SWORN 9 April 2015**



Simpson Grierson

Barristers & Solicitors

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Email: lizzy.wiessing@simpsongrierson.com

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PO Box 2402

Wellington

I, **MICHAEL PATRICK FAHERTY** of Wellington, Project Director, swear:

Introduction

1. I am the Project Director – Waterfront at Wellington City Council's (**applicant**) urban regeneration unit known as City Shaper, previously a council-controlled organisation known as Wellington Waterfront Limited. I am authorised to make this affidavit on behalf of the applicant.
2. I make this affidavit in support of the applicant's notice of motion for its applications for resource consent to be decided by the Environment Court.

Background

3. The applicant has applied for the following resource consents:
 - (a) Application 3 (SR number 320128) to Wellington City Council (**City Council**); and
 - (b) Application 4 (WGN150103) to Greater Wellington Regional Council (**Regional Council**)(together **the applications**).
4. The applications are part of a project which involves the construction of a building and public open spaces on Wellington's waterfront. The open space component involves new public open spaces, including Site 8, and associated small buildings and structures, including waterfront furniture.
5. Separate applications have been made by Site 10 Redevelopment Limited Partnership for the building component, which involves a new five-level commercial building on Site 10 (10 Waterloo Quay).
6. The applications were made on 10 November 2014. The applications were publicly notified on November 20, 2014. A copy of the public notification is annexed to this affidavit and marked "A".

7. The City Council granted the applicant's request to allow Application 3 (SR number 320128) to be determined by the Environment Court instead of by the City Council under section 87E of the Resource Management Act 1991, on 30 January 2015. A copy of the City Council's decision is annexed to this affidavit and marked "B".
8. The City Council prepared a report on the application under section 87F(3) of the Resource Management Act 1991 dated 7 April 2015. A copy of the City Council's report is available from its website <http://wellington.govt.nz/~media/have-your-say/public-input/files/consultations/2015/03-nth-kumutoto/wccsection87F4report.pdf>
9. The applicant has considered the City Council's report and wishes to proceed to have the application heard by the Environment Court.
10. The Regional Council granted the applicant's request to allow Application 4 (WGN150103) to be determined by the Environment Court instead of by the Regional Council under section 87E of the Resource Management Act 1991, on 30 January 2015. A copy of the Greater Wellington Regional Council's decision is annexed to this affidavit and marked "C".
11. The Regional Council prepared a report on the application under section 87F(3) of the Resource Management Act 1991 dated 31 March 2015. A copy of the Regional Council's report is available from its website <http://wellington.govt.nz/~media/have-your-say/public-input/files/consultations/2015/03-nth-kumutoto/gwrcsection87F4report.pdf>
12. The applicant has considered the Regional Council's report and wishes to proceed to have the application heard by the Environment Court.
13. I understand that Site 10 Redevelopment Limited Partnership will be lodging a similar notice of motion to the Environment Court in respect of its applications.

KG
mf

Reasons for the applicant's notices of motion

14. Based on my knowledge and experience, Wellington's waterfront is an area of significance to the people of Wellington.
15. This is particularly the case for resource consent processes which I have observed invariably attract a great degree of public interest from individuals and groups. Some parties object to or challenge most development proposals put forward for the waterfront.
16. Wellington City Council as applicant has been conscious of this level of public interest in preparing its applications. It has also been conscious of the challenges to its previously proposed Variation 11 to the Wellington District Plan, which attracted significant public interest, including appeals to the Environment Court.
17. Public consultation between January and March 2014 on the project proposal prior to the applications being lodged with the City and Regional Councils attracted 196 submissions. Ninety seven submissions were in support of (approximately 49.5%), and 99 in opposition, to the proposal.
18. During this public consultation stage, I (with representatives of Site 10 Redevelopment Limited Partnership) attended meetings with stakeholders including Shed 21 Body Corporate, Wellington Civic Trust, Accessibility Advisory Group, Wellington Chamber of Commerce, Ambitious for Wellington and NZ Property Council, Wellington Tenth Trust, Brian Galt (owner of Maritime Tower), and New Zealand Historic Places Trust (now Heritage NZ). I also attended meetings with New Zealand Police and CentrePort.
19. These parties expressed significant interest in the project at the meetings.
20. Forty-five submissions were received on the applications, which in my view shows significant public interest. Of the 45 submissions, 38 were opposed or opposed in part to the applications and based on the nature

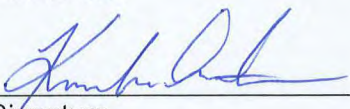
of the submissions received, the applications are likely to be contentious.

21. I see that some of the submissions are from parties that I met with in early 2014. I consider this shows a consistently high level of public interest in the applications.
22. Because of the number and proportion of submissions that are opposed to the applications, if the applications were heard at first instance by the Council, it is possible, if not likely, that there would be appeal(s) and the applications would end up being heard de novo by the Environment Court. Therefore, it is my belief that it will be more efficient in terms of cost and time for all parties and interested persons to have the matter referred directly to the Environment Court.

Signature of deponent:


M P Faherty

Sworn at Wellington on 9 April 2015
Before me:


Signature

Kushani Upeka Gunawardana
Solicitor
Wellington

Name

A Solicitor of the High Court of New Zealand



THE DOMINION POST



Wellington City Council
101 Wakefield Street
PO Box 2199, Wellington 6140
Wellington.govt.nz

**Absolutely Positively
Wellington City Council**
Me Heke Ki Mōkeke

THE DOMINION POST

Wellington.govt.nz

EXHIBIT NOTE

This is the exhibit marked "A" referred to in the annexed affidavit of Michael Patrick Faherty sworn at Wellington on 9 April 2015 before me.

Signature: 

Kushani Upeka Gunawardana
Solicitor
Wellington

A Solicitor of the High Court of New Zealand
(Solicitor to sign in part on exhibit)

EXHIBIT NOTE

This is the exhibit marked "B" referred to in the annexed affidavit of Michael Patrick Faherty sworn at Wellington on 9 April 2015 before me.

Signature: 

A Solicitor of the High Court of New Zealand
(Solicitor to sign in part on exhibit)

B

Kushani Upeka Gunawardana
Solicitor
Wellington

Absolutely Positively
Wellington City Council
Me Heke Ki Pōneke

Request to Refer Resource Consent Applications 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 applicants (Site 10 Redevelopment Limited Partnership and Wellington City Council, respectively), have requested that Wellington City Council (WCC) allow the resource consent application(s) relating to the North Kumutoto Precinct Project, to be determined by the Environment Court rather than WCC. This is commonly referred to as a 'request for Direct Referral'.
2. The North Kumutoto Precinct Project consists of two individual proposals (four resource consent applications). Proposal One (Applications 1 and 2) relate to the development of a new building and associated earthworks on Site 10; and, Proposal Two (Applications 3 and 4), relate to the development of public open space within Site 8 and its immediate surrounds.
3. The project requires resource consents from both WCC (Applications 1 and 3) and Greater Wellington Regional Council (Applications 2 and 4).
4. The request from the applicants that has been received relates only to Applications 1 and 3, being the two applications within the jurisdiction of WCC. However, WCC is aware that a similar request has been made to Greater Wellington Regional Council (GWRC) in relation to Applications 2 and 4 and considers that all applications related to the North Kumutoto Precinct 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.
5. The North Kumutoto Precinct Project consists of two separate but related proposals on sites which adjoin one another. Applications 1 and 2, relating to Proposal One, are interrelated insofar as the consent sought from WCC (Application 1) cannot be implemented without first obtaining the consent sought from GWRC (Application 2). Similarly in relation to Proposal Two, the resource consent sought from WCC in relation to Application 3 cannot be implemented without first obtaining the related consent sought from GWRC (Application 4).
6. Although it is possible for Proposals One and Two to be implemented independently of one another, considering these proposals together will enable joint decision making and provide for a holistic assessment of the effects of the project as a whole.
7. The direct referral request related to Applications 1 and 3 was received by WCC on 19 December 2014.

SUMMARY OF RESOURCE CONSENTS SOUGHT FROM WCC

NORTH KUMUTOTO PRECINCT PROJECT:

Proposal One:

<u>Site Address:</u>	10 Waterloo Quay, Wellington
<u>Legal Description:</u>	Pt Lot 102 DP 65083, Pt Lot 1 DP 363596 and Pt Lot 9 DP 65083
<u>Applicant:</u>	Site 10 Redevelopment Limited Partnership
<u>Application Reference:</u>	Application 1 – Land use consent sought from WCC
<u>Approx Map Reference:</u>	NZTM: 1749052.5428483
<u>Service Request No:</u>	319386
<u>File Reference:</u>	0600 702687

Application Summary:

8. Land use consent to construct, use and maintain a five-storey commercial building at Site 10 within the Lambton Harbour Area and associated earthworks for the construction of a basement level. The proposal involves the use and development of potentially contaminated land and on-site storage of hazardous substances (diesel fuel).
9. Overall, the land use consent sought from WCC (Application 1) is considered as a Discretionary (Unrestricted) Activity under the Wellington District Plan and the Resource Management National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations (2011).

Proposal Two:

<u>Site Address:</u>	59 Customhouse Quay, Wellington
<u>Legal Description:</u>	Pt Lot 102 DP 65083, Pt Lot 1 DP 363596, Pt Lot 9 DP 65083, Pt Lot 1 DP 66836, Pt Lot 1 DP 64676 and a portion of adjoining legal road (Waterloo Quay), Part Harbour Bed (SO 34581) and Part Wellington Harbour (Port Nicholson)
<u>Applicant:</u>	Wellington City Council
<u>Application Reference:</u>	Application 3 – Land use consent sought from WCC
<u>Approx Map Reference:</u>	NZTM: 1748989.5428345
<u>Service Request No:</u>	320128
<u>File Reference:</u>	0600 702687

Application Summary:

10. Land use consent to construct, maintain and use new and modified public open spaces and associated structures at North Kumutoto, including the establishment, maintenance and use of a building (former Toll Booth building) at the Whitmore Street entrance to North Kumutoto, which is to be relocated to the site. The proposal involves earthworks, and the use and development of potentially contaminated land.
11. Overall, the land use consent sought from WCC (Application 3) is considered as a Discretionary (Unrestricted) Activity under the Wellington District Plan and under the Resource Management National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations (2011).

APPLICANTS REASONS FOR DIRECT REFERRAL

12. The applicants have given the following reasons for the request for the application(s) to be referred to the Environment Court:
 - (a) *the project involves a development on Wellington's waterfront, which is an area of significance to the people of Wellington. The project is therefore of significant public interest and from the nature of submissions received is likely to be contentious; and*
 - (b) *it will be more efficient in terms of cost and time for all parties and interested persons to have the matter referred directly to the Environment Court, as the matter may come before the Environment Court in any event through an appeal of any decision made by the Council.*

STATUTORY PROVISIONS RELATING TO THE REQUEST

13. 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.
14. This application was publicly notified (jointly) by both WCC and GWRC on 20 November 2014. The submission period closed on 18 December 2014¹. The applicant's request was made using the prescribed form (Form 7A) and was received by WCC on 19 December 2014.
15. The request for direct referral is therefore an 'eligible' request under Section 87D of the Act.
16. In my view, the application is complete for the purposes of Section 87E of the Act and, without precluding any requests for further information (under Section 92 of the Act) to enable WCC to undertake a full substantive assessment of the applications, WCC is in a position to make a fully informed decision on the applicants request for direct referral.

¹ The submission period was extended to 19 December 2014 under Section 37 of the Act in order to allow three late submissions to be accepted.

STATUTORY PROVISIONS RELATING TO THE DECISION

17. There are no specific criteria set out within the Act to guide WCC in deciding whether it **grants** or **declines** an eligible request for direct referral. WCC retains full discretion in this regard.
18. 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

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

The reasons set out by the applicant:

20. The reasons given by the applicant for the request, outlined above, are considered to be reasonable in the circumstances.
21. Wellington's Waterfront is an area of special public significance (as reflected in the District Plan and Waterfront Framework) and, as highlighted by the nature of submissions, the proposed development in this location is likely to be contentious.
22. In addition, development on the waterfront and the planning provisions which govern development on the waterfront have a long history of litigation and have traditionally generated a high level of public interest and scrutiny.
23. I agree that having the application determined by the Environment Court will be more efficient in terms of cost and time for most (if not all) parties as 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 the applications relating to the North Kumutoto Precinct Project. This aligns with the very purpose of sections 87D and 87E, which is discussed further below.

The extent and nature of submissions:

24. A total of 45 submissions were received in relation to this application. 40 submissions are in opposition (either in full or in part). 5 submissions are in support (either in full or in part).
25. It is clear from the nature and content of these submissions that the application is likely to be contentious. Many parties have expressed strong opposition to the proposal and several parties appear resolute in their views.
26. A total of 21 submitters have requested to be heard in relation to their submissions and therefore a hearing will be required.

Impacts on the parties:

27. 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. As set out above, 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.
28. 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.
29. In my view, the concerns above 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.

Complexity of the matters for determination:

30. Although the matters to be determined are not necessarily 'complex' in a planning sense, the matters to be determined are contentious, have been the subject of much debate in the past (ie, what development is considered to be appropriate on Wellington Waterfront) and involve an area of special significance to the Wellington community. Appropriate development for this very site has already been considered by the Environment Court in previous appeals relating to Variation 11 (which included planning provisions proposed for this site). In that case², the Court noted:

Debates and issues about the development and redevelopment of Wellington City's CBD/Waterfront interface have been loud and contentious for many years. Probably no other part of the City attracts such impassioned scrutiny.

31. 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 in the Court.

Any other relevant matters:

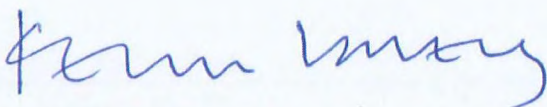
32. There are no other relevant matters or special circumstances that I consider warrant the request for direct referral to be declined by WCC.

² Waterfront Watch Inc v Wellington City Council [2012] NZEnvC 74 at para 5

RECOMMENDATION

33. 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: Ryan O'Leary



Kevin Lavery,
CEO, Wellington City Council (acting under delegated authority from
Wellington City Council dated 14 November 2013)

Date of Decision: **30 January 2015**



greater WELLINGTON
REGIONAL COUNCIL
Te Pane Matua Taiao

MEMO

TO Nigel Corry
COPIED TO Alistair Cross, Sonia Baker
FROM Douglas Fletcher
DATE 30 January 2014
FILE NUMBER WGN/15/0102/1-v1 and WGN/15/0103/1-v1
FOR YOUR ACTION

EXHIBIT NOTE

This is the exhibit marked "C" referred to in the annexed affidavit of Michael Patrick Faherty sworn at Wellington on 9 April 2015 before me.

Signature: 

A Solicitor of the High Court of New Zealand
(Solicitor to sign in part on exhibit)
Kushani Upeka Gunawardana
Solicitor
Wellington

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

1. Introduction

Site 10 Redevelopment Limited Partnership and Wellington City Council (the applicants) have requested that Greater Wellington Regional Council (GWRC) allow the resource consent application(s) relating to the North Kumutoto Precinct Project (NKPP), to be determined by the Environment Court rather than GWRC. The applicants 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 (NKPP) consists of two individual proposals (four resource consent applications). Proposal One (Applications 1 and 2) relate to the development of a new building and associated earthworks on Site 10; and, Proposal Two (Applications 3 and 4), relates to the development of public open space within Site 8 and its immediate surrounds. The project requires resource consents from both GWRC (Applications 2 and 4) and WCC (Applications 1 and 3).

The request received by GWRC only relates to Applications 2 and 4, as these are the two applications within the jurisdiction of GWRC. However, GWRC is aware that a similar request has been made to Wellington City Council in relation to Applications 1 and 3 and considers that all applications related to the (NKPP) should be determined concurrently. The applicant has requested that all applications be processed together to enable joint decision making and both GWRC and WCC have agreed to this approach.

The (NKPP) involves sites which adjoin one another. Applications 1 and 2 are interrelated insofar as the consent sought from WCC (Application 1) cannot be implemented without first obtaining the consent sought from GWRC (Application 2). Similarly, the resource consent sought from WCC in relation to Application 3 cannot be implemented without obtaining the related consent sought from GWRC (Application 4). Although it is possible for Proposal One and Two to be implemented independently, considering these proposals

together will enable joint decision making and provide for a holistic integrated assessment of the effects of the project as a whole.

The direct referral request was received by GWRC on 19 December 2014.

2. Summary of resource consents sought from GWRC for the North Kumutoto Precinct Project

2.1 Proposal One Summary

Location	10 Waterloo Quay, Wellington	
Map Reference	At or about map reference NZTM: 1749052.5428483	
Legal Description	Pt Lot 102 DP 65083, Pt Lot 1 DP 363596 and Pt Lot 9 DP 65083	
Applicant	Site 10 Redevelopment Limited Partnership	
Application Reference	Application 2 – Water permit and Discharge permit sought from Greater Wellington Regional Council	
File Reference	WGN150102	
Consents	[33223]	Water permit to divert and/or take groundwater during the construction of a commercial building, including the basement level. Discretionary Activity under the Regional Freshwater Plan.
	[33224]	Discharge permit for the potential discharge of contaminants to land, including to the reticulated stormwater system; and potential discharge to groundwater during construction of a new commercial building, including basement level. Discretionary Activity under the Regional Discharges to Land Plan and the Regional Freshwater Plan.

2.2 Proposal Two Summary

Location	59 Customhouse Quay Wellington	
Map reference	NZTM: 1748989.5428345	
Legal description	Pt Lot 102 DP 65083, Pt Lot 1 DP 363596, Pt Lot 9 DP 65083, Pt Lot 1 DP 66836, Pt Lot 1 DP 64676 and a portion of adjoining legal road (Waterloo Quay), Part Harbour Bed (SO 34581) and Part Wellington Harbour (Port Nicholson)	
Applicant	Wellington City Council	
Application Reference	Application 4 – Coastal permits sought from Greater Wellington Regional Council	
File Reference	WGN150103	
Consents	[33225]	Coastal Permit to occupy the coastal marine area with new structures associated with the proposed works. Controlled Activity under the Wellington Regional Coastal Plan.
	[33226]	Coastal Permit to construct, maintain and use structures in the coastal marine area, and associated modification to the protected wharf edge and reclamation edge, at North Kumutoto within the Lambton Harbour Development Area. Discretionary Activities under the Regional Coastal Plan.
	[33227]	Coastal Permit to discharge contaminants to the coastal marine area during the construction of the public open spaces in and adjacent to the coastal marine area. Discretionary Activities under the Regional Coastal Plan.

3. Applicants reason for direct referral:

On the 19th of December 2014 both GWRC and WCC received requests from Alistair Aburn of Urban Perspectives Ltd on behalf of Site 10 Redevelopment Limited Partnership and WCC for direct referral of the project to the Environment Court.

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

- a) The project involves a development on Wellington's waterfront, which is an area of significance to the people of Wellington. The project is therefore of significant public interest and from the nature of submissions received is likely to be contentious, and
- b) It will be more efficient in terms of costs and time for all parties and interested persons to have the matter referred directly to the Environment Court, as the matter may come before the Environment Court in any event through an appeal of any decision made by the Council.

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.

This application was publicly notified (jointly) by both GWRC and WCC on 20 November 2014. The submission period closed at 4.30 pm on Thursday 18 December 2014. The request for direct referral was made using the prescribed form (Form 7A) and was received by GWRC on Friday 19 December 2014.

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:

GWRC considers the following criteria to be relevant when considering a request for direct referral.

6.1 The reasons set out by the applicant

I consider the applicant reasons for the requesting direct referral (as outlined above in section 3) to be reasonable in the circumstances.

Developments on Wellington's waterfront have traditionally generated a high level of public interest and scrutiny. This suggests that the Wellington waterfront is an area of public significance. The number and nature of the submissions received for the (NKPP) suggests that this tradition continues and that the project is likely to be contentious in nature.

I agree that having the application determined by the Environment Court will be more efficient in terms of cost and time for most (if not all) parties as 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 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 (NKPP).

6.2 Extent and nature of submissions

A total of 45 submissions were received in relation to this application. 40 submissions are in opposition (either in full or in part). 5 submissions are in support (either in full or in part).

It is clear from the nature and content of these submissions that the application is likely to be contentious. Many parties have expressed strong opposition to the proposal and several parties appear to be resolute in their views.

A total of 21 submitters have requested to be heard in relation to their submissions and therefore a hearing will be required.

6.3 Impacts on parties

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

It is possible that direct referral to the Environment Court may deter participation by submitters or affected parties. However this may be the case with any appeal following a Council decision. The Environment Court is well practiced in hearing the submissions and evidence of lay submitters therefore I do not consider that submitters or the applicant will be unduly prejudiced by the application being determined by the Environment Court. In addition 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.

In my view, the concerns above 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.

6.4 Complexity of matters for determination

The applications submitted to GWRC are not particularly complex in nature as they consist of activities that have been considered and consented by GWRC in the past. However the project as an integrated package is relatively complex as it involves development on Wellington's waterfront which is an area of special significance to the Wellington community.

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

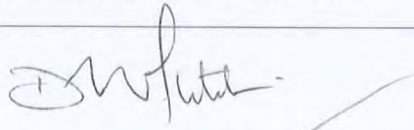

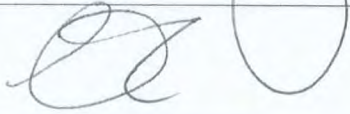

In conclusion:

- 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 the nature and content of the 45 submissions that the North Kumutoto Project is likely to be contentious.
- 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 the applicants request for the applications to be determined by the Environment Court rather than GWRC be **approved**.

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

Decision recommended by:	Doug Fletcher	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	

Attachment B: list of names and addresses of persons to be served with a copy of this notice

1.	Development Planning & Compliance, Wellington City Council (Attn: Halley Wiseman)			PO Box 2199, Wellington
2.	Grant Corleison & Mark Dunajtschik	139 The Terrace	CBD	PO Box 10777, Wellington 6143
3.	Rosamund Averton	12/17 Brougham St	Mt Victoria	Wellington 6011
4.	Andrew Bowman	63 Brougham St	Mt Victoria	Wellington 6011
5.	Robert Lowe	54 Izard Rd	Khandallah	Wellington 6035
6.	Helen Marshall	54 Izard Rd	Khandallah	Wellington 6035
7.	Don and Ann Locke	77 Washington Ave	Brooklyn	Wellington 6021
8.	Julia Burgess	27 William St	Hataitai	Wellington 6021
9.	Virginia Andersen	no address given		
10.	Alexander Gough	7A/245 Wakefield St	Te Aro	Wellington 6011
11.	Mary Munro on behalf of Waterfront Watch Inc	1 Orari St	Ngaio	Wellington 6035
12.	Gayle Cullwick	46A Grafton Rd	Roseneath	Wellington 6011
13.	Philippa Boardman	64 Quebec St	Kingston	Wellington 6021
14.	Pauline and Athol Swann	47 Mairangi Rd	Wadestown	Wellington 6012
15.	Chris Greenwood	9 Tai Paku Paku Rd	Karaka Bays	Wellington 6022
16.	Rachel Underwood	14 Rimu Rd	Kelburn	Wellington 6012
17.	David Underwood	14 Rimu Rd	Kelburn	Wellington 6012
18.	Jean Morgan	29 Porritt Ave	Mt Victoria	Wellington 6012
19.	Sue Watt	91 Majoribanks St	Mt Victoria	Wellington 6011
20.	Ponatahi Trust c/- James Graham & Rebecca Treacy	Apt 3.12 / 28 Waterloo Quay	Pipitea	Wellington 6011

21.	Body Corporate 309984 c/- Allan Pledger	28 Waterloo Quay	Pipitea	PO Box 12-123, Thorndon, Wellington 6144
22.	Allan Pledger	7 Gonville Street	Tawa	Wellington 5028
23.	Peter & Roy Ferguson	Apt 2.08 / 28 Waterloo Quay	Pipitea	Wellington 6011
24.	John Hayes	Apt 2.09 / 28 Waterloo Quay	Pipitea	Wellington 6012
25.	Carlos Constable and Megan Compain	28 Waterloo Quay	Pipitea	Wellington 6012
26.	David / Ruth Barber / Jamieson	106 Warwick Street	Wilton	Wellington
27.	Chris Horne & Barbara Mitalfe	28 Kaihuia Street	Northland	Wellington
28.	Architecture Centre c/- Christine McCarthy	PO Box 24178, Wellington		
29.	Anne Ryan	64 Para Street	Miramar	Wellington
30.	Ann Mitalfe	4 Hadfield Terrace	Kelburn	Wellington
31.	Heritage NZ c/- Jillian Kennemore	PO Box 2629, Wellington, 6140		
32.	PowerCo Ltd c/- Burton Planning Consultants Ltd (Attn: Georgia McPherson)	PO Box 33-817	Auckland 0740	
33.	Alana Bowman	PO Box 24332, Wellington		
34.	David Stevens	63 Rangoon St	Khandallah	Wellington
35.	Francis Lee	24 Orari St	Ngaio	Wellington 6035
36.	NZ Police C/- Senior Sargeant David Houston	PO Box 693	Wellington 6140	
37.	Wellington Civic Trust c/- Alan Smith	P.O.Box 10183 Wellington 6143		
38.	David Zwartz	54 Central Tce	Kelburn	Wellington
39.	Ron England	8/16A Lyndhurst Rd	Tawa	Wellington

40.	Action for the Environment c/- David Lee	PO Box 19 091, Wellington 6037		
41.	Judith M Graykowski	Apt 6/ 123-125 Austin St	Mt Victoria	Wellington
42.	Living Streets Aotearoa c/- Ellen Blake	wellington@living street.org.nz		
43.	Victor Davie	PO Box 19091, Wellington		
44.	Sri Farley	Unit 215	28 Waterloo Quay	Wellington
45.	John Graham Hardie Galloway	26A Rajkot Terrace	Broadmeadows	Wellington 6035