



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

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

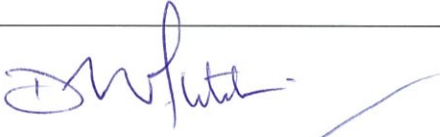


In conclusion:

- 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	