

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**

