

# Request to Refer Resource Consent Application 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 applicant (His Majesty the King) has requested that Wellington City Council ('WCC') allows the resource consent application for the Future Accommodation Strategy ('FAS') Project lodged under Service Request No. 514663 to be determined by the Environment Court rather than WCC. This is commonly referred to as a 'request for direct referral'.
2. The FAS Project relates to the construction of new buildings on the Parliament Grounds at 1 Molesworth Street, Pipitea, with associated earthworks and landscaping. The project requires resource consent from WCC.
3. The direct referral request relates to the application that was received by WCC on 9 December 2022.

### SUMMARY OF RESOURCE CONSENTS SOUGHT FROM WCC

#### Future Accommodation Strategy Project:

<u>Site Address:</u>	1 Molesworth Street, Pipitea
<u>Legal Description:</u>	Section 1 SO Plan 38114
<u>Applicant:</u>	His Majesty the King C/- Simpson Grierson
<u>Application Reference:</u>	Land use consent sought from WCC
<u>Approx. Map Reference:</u>	NZTM: 1748764, 5428881
<u>Service Request No:</u>	514663
<u>File Reference:</u>	1199795

#### Application Summary:

4. Land use consent to redevelop the western portion of Parliament Grounds, including the construction of two new buildings, alterations to Parliament House, and associated site works, including relocation of a heritage tree, earthworks, landscaping, and modifications to site access.
5. The proposal relates to the construction of new Central Area buildings within a listed Heritage Area, with building non-compliances and associated earthworks and use and development of potentially contaminated land.

6. Overall, the land use consent sought from WCC is being considered as a Discretionary Activity under the operative Wellington District Plan and the Resource Management National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations (2011).

#### APPLICANT'S REASONS FOR DIRECT REFERRAL

7. The applicant has given the following reasons for the request for the application to be referred to the Environment Court:
  - (a) *The project involves redevelopment of part of the Parliamentary Precinct in order to address a shortfall in Parliamentary accommodation and to improve the long-term security, resilience, performance and utility of the Precinct.*
  - (b) *There is some urgency to the project, as there is currently insufficient floorspace on the Parliamentary Precinct to accommodate the necessary Parliamentary functions, and development is required to ensure that the Precinct is fit for purpose.*
  - (c) *Parliamentary Service needs certainty as to when construction might be able to occur, to enable appropriate planning for the redevelopment project and the continued use of the Precinct before, during and after the project.*
  - (d) *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

8. 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.
9. This application was publicly notified on 7 November 2022. The submission period closed on 5 December 2022. **The applicant's request was made using the prescribed form (Form 7A) and was received by WCC on 9 December 2022.**
10. **The request for direct referral is therefore an 'eligible' request under section 87D of the Act.**
11. 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 application, WCC is in a position to make a fully informed decision on the applicant's request for direct referral.

#### STATUTORY PROVISIONS RELATING TO THE DECISION

12. 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.
13. Section 87E(7) of the Act states that no submitter has a right to be heard on the request received from the applicant.

## CONSIDERATION OF THE REQUEST

14. 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:

15. The reasons given by the applicant for the request, outlined above, are considered to be reasonable in the circumstances.
16. Parliament Grounds is an area of special public significance (as reflected in the District Plan) and as highlighted by the nature of submissions, the proposed development in this location is contentious.
17. 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 application made by the consent authority will come before the Environment Court in any event through an appeal. In such case, the Environment Court would rehear the application on a de novo basis. In my view, having the application determined by the Environment Court in the first instance will avoid duplication, cost and delays in processing the application relating to the FAS Project. This aligns with the very purpose of sections 87D and 87E, which is discussed further below.

### The extent and nature of submissions:

18. A total of five submissions were received in relation to this application. Four submissions are in opposition (either in full or in part). No submissions are in support (either in full or in part). One submission is neutral.
19. It is clear from the nature and content of these submissions that the application is contentious. The persons opposed to the application have expressed strong opposition to the proposal and appear resolute in their views.
20. A total of four submitters have requested to be heard in relation to their submissions and therefore a hearing will be required.

### Impacts on any persons:

21. I have given consideration to the impacts on the persons involved in the application 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 persons.
22. 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 persons '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.

23. 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 and does not unreasonably impact on any person.

Complexity of the matters for determination:

24. 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, and involve an area of special significance to the Wellington and nationwide community.
25. Expert evidence will be required to assist in the determination of the application, which in my view would be best tested through cross examination and through other procedures available in the Court.

Any other relevant matters:

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

RECOMMENDATION

27. **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 applicant's request for the application to be determined by the Environment Court rather than WCC.**

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Report prepared by: Matthew Brajkovich



Mark Pattemore  
Manager City Consenting & Compliance, Wellington City Council (acting under delegated authority from Wellington City Council dated 5 December 2022)

Date of Decision: 22 December 2022