

# 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 applicant (**MFC Development Limited Partnership**), has requested that Wellington City Council (WCC) allow the resource consent application relating to the construction of a new Central Area building to be determined by the Environment Court rather than WCC. **This is commonly referred to as a 'request for Direct Referral'.**
2. The proposal relates to the construction of a Central Area building within a listed Heritage Area with associated earthworks. The project requires resource consent from WCC.
3. The direct referral request related to the Application was received by WCC on 3 November 2022.

## SUMMARY OF RESOURCE CONSENTS SOUGHT FROM WCC

### MICHAEL FOWLER CENTRE CAR PARK BUILDING

<u>Site Address:</u>	110 Jervois Quay, Wellington Central
<u>Legal Description:</u>	Lot 1 DP 494594
<u>Applicant:</u>	MFC Development Limited Partnership
<u>Application Reference:</u>	Land use consent sought from WCC
<u>Approx Map Reference:</u>	NZTM: 1748908, 5427517
<u>Service Request No:</u>	510418
<u>File Reference:</u>	1996765

#### Application Summary:

4. Land use consent is sought to construct a new nine-level building comprising three principal building components, which are described below:
  - The Lantern: a ground + 8 levels component and is the highest and most prominent part of the building.
  - **The East Wedge: a ground + 5 levels component located within the 'sharper' eastern portion of the site.**
  - The West Wedge: a ground + 2 levels component with a roof terrace.
5. The proposal relates to the construction of a Central Area building within a listed Heritage Area, with building non-compliances and associated earthworks. The proposal involves the use and development of an identified HAIL site.
6. Overall, the land use consent sought from WCC 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).

## APPLICANTS REASONS FOR DIRECT REFERRAL

7. 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 in the Civic Precinct heritage area, 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

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 by WCC on 17 October 2022. The submission period closed on 21 November 2022. The submission period has been extended to a limited number of parties, who were not served direct notice of the application, until 13 January 2023. The **applicant's request was made using the prescribed form (Form 7A)** and was received by WCC on 3 November 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 applications, WCC is in a position to make a fully informed decision on the applicants 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 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

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. The Civic Precinct Heritage Area is an area of special public significance (as reflected in the District Plan), it is therefore likely that there will be a high level of public interest in the application.
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 any decision on the application made by the consent authority may 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 MFC car park building. This

aligns with the very purpose of sections 87D and 87E, which is discussed further below.

#### Public notification process

18. As mentioned above, submissions on this application close on 21 November 2022. Therefore, the number of submissions is not yet known. However, as discussed above, there is likely to be a high level of public interest in the proposal due to the significance of the Civic Precinct heritage area.

#### Impacts on the parties:

19. 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.
20. 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 any 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.
21. In my view, the concerns above must be balanced with the intentions in the Resource Management Act 1991 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:

22. Although the matters to be determined are not necessarily 'complex' in a planning sense, the matters to be determined may be contentious, and proposals in this area have been the subject of debate in the past and involve an area of special significance to the Wellington community.
23. 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:

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

## RECOMMENDATION

25. **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, it is recommended that WCC grants the applicants request for the applications to be determined by the Environment Court rather than WCC.**

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Report prepared by: Angela Jones, Planning Consultant



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

Date of Decision: 5 December 2022