

Minute for WCC Website

Applicant:	The Wellington Company Limited
Location:	232, 264, 270 and 276 Shelly Bay Rd
Application Number:	Service Request 368659
Subject:	Information on the Process

Introduction

This purpose of this Minute is to provide information for the public and all interested parties on the process for reconsideration of the application by The Wellington Company Limited ("*Applicant*") for a development at Shelly Bay, Wellington.

Attachments

The following documents are posted on the Wellington City Council website ("*WCC website*"):

- Resource consent application.
- Minutes 1 – 5 issued by the Commissioners to the parties.
- Section 42A Report.
- Independent legal advice from Buddle Findlay lawyers.

Background

The application relates to resource consents granted by Wellington City Council ("*Council*") on 18 April 2017. The application was assessed under the provisions of the Housing Accords and Special Housing Areas Act 2013 ("*HASHAA*").

Enterprise Miramar Peninsula Inc. ("*Enterprise*") filed proceedings in the High Court for judicial review of the decision. The High Court, on 9 April 2018, released its judgement dismissing the application for judicial review and upholding the Council's decision to grant consent.

Enterprise subsequently filed proceedings in the Court of Appeal. The Court of Appeal, on 3 December 2018, released its judgment to allow the appeal. It quashed the decision granting consent for the development at Shelly Bay, and directed that it be reconsidered.

On 4 February 2019 the Applicant met with Council officers to advise it wished to have the application reconsidered. Due to the time that had elapsed the applicant advised it would provide updated information to supplement the information in the original application.

On 10 May 2019 the updated information for the application was received.

Appointment of Commissioners

Independent Commissioners were appointed on 5 April 2019 to consider and make a decision on the application.

Review of information and site visit

The Commissioners have reviewed all available relevant information, including the Wellington City Council's resource consent decision (SR 368659), the Court of Appeal decision (CA 218/2018), and the application and its accompanying specialist assessments. We have also read relevant statements of evidence presented at the Court hearing.

The Commissioners visited the site on 23 May 2019.

Reporting

A section 42A Report (dated 17 June 2019) has been prepared by Council officers to assist the Commissioners in their deliberations. This is posted on the Council website.

The report contains an assessment of all relevant HASHAA and Resource Management Act 1991 ("RMA") considerations, and includes a comprehensive assessment of effects on the environment. That report is accompanied by a suite of specialist assessment reports, and it provides an overall recommendation for the resource consents to be granted with conditions.

Further Information Requested

The Commissioners requested further information, on 26 June 2019, from both the Applicant and the Council's reporting officers (refer Minute 5 on Council website), as follows:

- The Council reporting officers to provide a more thorough assessment of the proposals against the relevant objectives, policies, and assessment criteria of the Wellington City District Plan;
- The Applicant to respond to matters relating to public infrastructure upgrade works, and the consenting framework for regional consents in particular;
- The Applicant to provide an assessment of an appropriate minimum floor level for both habitable buildings and non-habitable buildings on the site; and
- The Reporting Officer and the Applicant to confer and provide a list of agreed recommended conditions, and that any disagreement be stated.

That information is expected to be received by 31 July 2019, and will assist the Commissioners in determining the applications.

Meeting with the Applicant

HASHAA provides that only certain persons (listed under section 29(3)) may be notified of an application for resource consent under HASHAA; and that a hearing may only be held if one or more of those persons submits on the application, and indicates a wish to be heard. In this situation, the application has not been notified to any of the persons under section 29(3) and therefore a hearing is prohibited.

However, the Commissioners have signalled that we may request a meeting with the Applicant and the Council reporting officers in case we have any questions to assist in our understanding of the reports and information. It is anticipated that such a 'questions and answers' meeting would be held late in August or early September 2019, following receipt of the information requested as outlined above.

A decision would be issued following that, when the Commissioners consider we have sufficient information and understanding of the proposals to deliberate and make our decision.

Correspondence from other parties

To date, the Commissioners have received some correspondence from parties other than the Applicant and the Council reporting officers. We have sought independent legal advice as to whether we are able to consider and respond to such enquiries and advice (refer legal advice from Buddle Findlay on the WCC website).

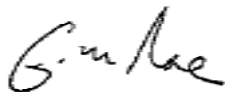
The advice is that it would be unlawful under the provisions of HASHAA for the Commissioners to receive and consider communications from these other parties. HASHAA is intended to provide a streamlined RMA consenting process and to limit the situations in which an application should be notified and a hearing held. It follows that we should not take into account any matters raised by parties other than those that have been determined to be affected parties, in terms of the matters set out in HASHAA.

We are however conscious of the high degree of public interest in this project, and have therefore decided to post this advice for the general public and any interested parties as to the process and timeframes.

Conclusion

The further information requested from the Applicant and from the Council reporting officers will be posted on the WCC website when it is received.

We will then provide a further update as to the process in August 2019.



Gary Rae
Chair of Hearings Panel, on behalf of
Commissioners Helen Atkins and Ray O’Callaghan

9 July 2019