

Memorandum on Compliance

File	FTC 000008
To:	Sandra Balcombe – Manager Land and Oceans Applications
Copy to:	
From:	Alex Erceg – Senior Advisor
Date:	19 April 2021
Subject:	Papakāinga Development – Kaitaia: Assessment whether the application complies with clause 3(1) of Schedule 6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020

Purpose

1. The purpose of this memo is to assist you in making your decision on whether the application for LP 08 Papakāinga Development – Kaitaia (the project), received by the Environmental Protection Authority (EPA) on 13 April 2021, lodged by He Korowai Trust, complies with the requirements of clause 3(1) of Schedule 6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (the Act).

Conflict of interest

2. I confirm that I do not have any conflict of interest in this matter that would prevent me making this assessment.

The application

3. Projects listed in Schedule 2 (listed projects) are eligible to be considered by an expert consenting panel. Schedule 2 states that the project is a listed project under the Act, and the authorised person who may apply under the Act is He Korowai Trust (supported by Te Puni Kōkiri).
4. The EPA must either provide the consent application to an expert consenting panel (if complete) or return it to the person who lodged it (if incomplete), as set out in paragraphs 12 -15 below.

Project

5. The project seeks to add an additional 24 new dwellings to an existing Papakāinga in Kaitaia.

Fast-track consenting application process

Legislative context

6. Clause 2(1), Schedule 6 of the Act states that a person authorised in accordance with section 15 may apply for a resource consent that would otherwise be required under section 88 of the Resource Management Act 1991 (RMA).
7. Clause 3(1), Schedule 6 of the Act states that *“within 5 working days of receiving a consent application or notice of requirement, the EPA must determine whether the application or notice—*
 - (a) relates solely to 1 or more of the listed projects or referred projects; and*
 - (b) does not breach clause 2(3)(c) or (4); and*
 - (c) contains all the information required under clauses 9 to 13.”*
8. Clause 3(2), Schedule 6 of the Act states that *“if the EPA is satisfied that a consent application or notice of requirement complies with the matters listed in subclause (1), the EPA must provide the application or notice to the panel appointed to determine that application or notice.”*
9. Clause 4(1), Schedule 6 of the Act states that *“if the EPA determines that a consent application or notice of requirement does not comply with the requirements of clause 3(1), it must return the application or notice immediately to the person who lodged it, with written reasons for the EPA’s determination”.*

Prerequisites for the application

10. There are a number of prerequisites for an application to be lodged as set out in this table.

Reference to clause in Schedule 6	Preliminary Matter	Comment	Accept/reject
Clause 2(1) or 2(2)	Application is made by authorised person or requiring authority	Yes	Accept
Clause 2(3)(b)	Application is in approved form and manner	Yes	Accept
Clause 2(3)(c)	Application complies with any restrictions and obligations in either:		
	(i) Schedule 2; or	Yes	Accept
	(ii) Schedule 3 and referral order	N/A	N/A
Clause 2(4)(a)	Applications must not relate to an activity that is classified as a prohibited activity in a:		
	(i) Relevant plan or proposed plan	No relevant prohibited activities	Accept

	(ii) RMA regulations (including any NES)	No relevant prohibited activities	Accept
Clause 2(4)(b)	Applications must not relate to an activity that is to occur within a customary marine title area unless agreed by the appropriate customary marine title group	Site not in, or adjacent to, the coastal marine area, nor the marine and coastal area.	Accept
Clause 3(1)(a)	Relates solely to 1 or more of the listed projects or referred projects	Yes LP 08 in Schedule 2 of the Act	Accept

Conclusions on preliminary matters

11. The application can proceed to an assessment of whether the application contains all the information required under clauses 9 to 13 of Schedule 6 of the Act.

Assessment of compliance table

12. An assessment table against Clauses 9-12, Schedule 6 of the Act is included in Appendix 1.
13. The information provided must be in sufficient detail to correspond to the scale and significance of the effects that the activity is anticipated to have on the environment, taking into account any proposal by a consent applicant or requiring authority to manage adverse effects through conditions, including requiring the preparation of a management plan (Clauses 13(3) and 14 of Schedule 6).
14. The information in the application has been assessed on the basis that the scale of the activity is low, and potentially minor effects on the environment after taking into account mitigation measures and conditions.
15. My view is that the application **does comply** with clause 3(1) and can be provided to the Panel.

Appendix 1: Clause 9

Table 1: Checklist of completeness requirements in Clauses 9 of Schedule 6 of the Act

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
Clause 9			
Clause 9(1)(a)	A description of the proposed activity	Yes – Section 4 Section 2.6 and 2.7? of Addendum 1 ¹ to the application. Appendix 9, 10 and Appendix 11 also provide further detail.	Yes
Clause 9(1)(b)	A description and map of the site at which the activity is to occur	Yes – Section 5	Yes
Clause 9(1)(c)	Confirmation that the consent application complies with clause 3(1).	Yes – Section 6 and Appendix 4	Yes
Clause 9(1)(d)	The full name and address of: i. Each owner of the site and of land adjacent to the site	Yes – Appendix 5	Yes

¹ Addendum 1 to the application is the addendum lodged with the EPA to address issues raised in the preliminary assessment of the draft application. It differs from Appendix 1.

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	<p>ii. Each occupier of the site and of land adjacent to the site who, after reasonable inquiry, is able to be identified by the applicant</p>	<p>Yes</p> <p>Appendix 2 of Addendum 1 identifies occupiers of Whare Ora, being on the land on which the project is undertaken.</p>	<p>Yes</p> <p>Whilst the application does not identify which adjacent properties are owner occupied, or just have an occupier, the applicant did attempt to make inquiries into occupiers via Far North District Council, who did not provide information, citing privacy issues.</p> <p>In order to satisfy this requirement, the applicant has to make reasonable inquiry. As inquiry has been made, I consider the application does satisfy this requirement.</p>
Clause 9(1)(e)	A description of any other activities that are part of the proposal to which the consent application relates	<p>Yes</p> <p>Section 2.8 of Addendum 1</p>	Yes
Clause 9(1)(f)	A description of any other resource consents, notices of requirement for designations, or alterations to designations required for the proposal to which the consent application relates	<p>Yes/ N/A</p> <p>Section 2.7 and 2.8 of Addendum 1</p>	Yes
Clause 9(1)(g)	An assessment of the activity against—		

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
Section 19	a. Part 2 of the RMA	Yes Section 9.1 Section 2.2 of Addendum 1	Yes
	(i) the purpose of this Act	Yes – Section 9.2	Yes
	(ii) the following matters (set out in section 19 of the Act - whether project helps to achieve purpose of Act):	As above	Yes
	(a) the project's economic benefits and costs for people or industries affected by COVID-19	As above	Yes
	(b) the project's effect on the social and cultural well-being of current and future generations	As above	Yes
	(c) whether the project would be likely to progress faster by using the processes provided by this Act than would otherwise be the case	As above	Yes
	(d) whether the project may result in a public benefit by, for example: generating employment; increasing housing supply; contributing to well-functioning urban environments; providing infrastructure in order to improve economic, employment, and environmental outcomes, and increase productivity; improving environmental outcomes for coastal or freshwater quality, air quality, or indigenous biodiversity; minimising waste; contributing to New Zealand's efforts to mitigate climate change; and transition more quickly to a low-emissions economy (in terms of reducing New Zealand's net emissions of greenhouse gases); promoting the protection of historic heritage; strengthening environmental, economic, and social resilience, in terms of managing the risks from natural	As above	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	hazards and the effects of climate change; or any other benefit(s) identified.		
	(e) whether there is potential for the project to have significant adverse environmental effects, including greenhouse gas emissions:	As above	Yes
	(f) [for referred projects only] any other matter that the Minister considers relevant.	N/A – Listed Project	N/A
Clause 9(1)(h)	An assessment of the activity against --	Yes – Section 9.3	Yes
	(a) any relevant provisions in a national environmental standard, including:	Aided by Section 2.7 of Addendum 1	
	i. Any relevant objectives, policies or rules	N/A	As above
	ii. Any requirement, condition, or permission in any rules	As above	As above
	iii. Any other requirements	As above	As above
	(b) Any relevant provisions in any other regulations made under the RMA, including:	N/A	N/A
	iv. Any relevant objectives, policies or rules	N/A	N/A
	v. Any requirement, condition, or permission in any rules	N/A	N/A
	vi. Any other requirements	N/A	N/A
(c) Any relevant provisions in any national policy statement, including:	Yes Section 9.5	Yes	

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
		Section 2.3 of Addendum 1 Assessment against the National Policy Statement for Freshwater Management	
	vii. Any relevant objectives, policies or rules	Yes Section 2.3 of Addendum 1	Yes
	viii. Any requirement, condition, or permission in any rules	N/A	N/A
	ix. Any other requirements	N/A	N/A
	(d) Any relevant provisions in a New Zealand coastal policy statement, including:	Yes/ N/A Section 9.5	Yes – Not relevant to this proposal
	x. Any relevant objectives, policies or rules	N/A	N/A
	xi. Any requirement, condition, or permission in any rules	N/A	N/A
	xii. Any other requirements	N/A	N/A
	(e) Any relevant provisions in any regional policy statement or proposed regional policy statement, including:	Yes – Section 9.6	Yes
	xiii. Any relevant objectives, policies or rules	Yes – Section 9.6	Yes
	xiv. Any requirement, condition, or permission in any rules	N/A	N/A
	xv. Any other requirements	N/A	N/A

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	(f) Any relevant provisions in a plan or proposed plan, including:	Yes Section 9.7 – Far North District Plan Section 2.4 of Addendum 1 – Regional Water and Soil Plan for Northland	Yes
	xvi. Any relevant objectives, policies or rules	Yes Section 9.7 – Far North District Plan Section 2.4 of Addendum 1 – Regional Water and Soil Plan for Northland	Yes
	xvii. Any requirement, condition, or permission in any rules	Yes Section 8 and Appendix 4	Yes
	xviii. Any other requirements	N/A	N/A
	(g) Any relevant provision in any planning document recognised by a relevant iwi authority and lodged with a local authority, including:	Yes Section 9.8	Yes
	xix. Any relevant objectives, policies or rules	Yes – Section 9.8	Yes
	xx. Any requirement, condition, or permission in any rules	N/A	N/A

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	xxi. Any other requirements	N/A	N/A
Clause 9(1)(i)	Information about any Treaty settlements that apply in the project area, including—	Yes Section 9.9 and Appendix 6	Yes
	(i) the identification of the relevant provisions in those Treaty settlements		
	(ii) a summary of any redress provided by those settlements that affects natural and physical resources relevant to the project or project area;	Yes – Section 9.9	Yes
Clause 9(1)(j)	The conditions that the applicant proposes for the resource consent	Yes – Appendix 13	Yes
Clause 9(4)(a)	An assessment of the activity's effects on the environment that includes the following information (set out in clause 10 Schedule 6 of the Act): ²	Yes – Section 10	Yes
	(a) an assessment of the actual or potential effects on the environment		
	(b) if the activity includes the use of hazardous installations, an assessment of any risks to the environment that are likely to arise from such use	Yes/N/A – No hazardous installations Application includes a statement that there will be no hazardous installations – Section 10.2	N/A

² The application does not need to include any additional information specified in a relevant regional policy statement or plan that that would be required in an assessment of environmental effects under Schedule 4 of the RMA.

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	<p>(c) if the activity includes the discharge of any contaminant, a description of—</p> <p>(i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and</p> <p>(ii) any possible alternative methods of discharge, including discharge into any other receiving environment</p>	<p>Yes</p> <p>Section 10 and Appendix 9</p> <p>Addendum 1 to the application provides additional detail</p>	<p>Yes</p>
	<p>(d) a description of the mitigation measures (including safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect of the activity</p>	<p>Yes</p> <p>Section 10.4</p> <p>Section 2.10 of Addendum 1</p>	<p>Yes</p>
	<p>(e) identification of persons who may be affected by the activity and any response to the views of any persons consulted, including the views of iwi or hapū that have been consulted in relation to the proposal</p>	<p>Yes</p> <p>Section 10.5 and Appendix 5</p>	<p>Yes – Noting no consultation of persons who may be affected has been undertaken, although as per Schedule 6 Clause 10(2), a consent applicant is not obliged to consult.</p>
	<p>(f) if iwi or hapū elect not to respond when consulted on the proposal, any reasons that they have specified for that decision</p>	<p>Yes</p> <p>Appendix 3 to addendum 1 of the application</p>	<p>Yes</p>
	<p>(g) if the scale and significance of the activity's effects are such that monitoring is required, a description of how the effects will be monitored and by whom, if the activity is approved</p>	<p>Yes – Section 10.7</p>	<p>Yes – the scale and significance of the activity does not generally warrant it.</p>

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	(h) an assessment of any effects of the activity on the exercise of a protected customary right	Yes – Section 10.8 – not relevant to this proposal	N/A
Clause 9(4)(b)	An assessment of the activity's effects that also covers the following matters (set out in clause 11 of Schedule 6 of the Act):		Yes
	(a) any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects	Yes – Section 10.1 and various Appendices	
	(b) any physical effect on the locality, including landscape and visual effects	Yes – Section 10.1	Yes
	(c) any effect on ecosystems, including effects on plants or animals and physical disturbance of habitats in the vicinity	Yes – Section 10.1	Yes
	(d) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations	Yes – Section 10.1	Yes
	(e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants	Yes – Section 10.1	Yes
	(f) the unreasonable emission of noise	Yes – Section 10.1	Yes
	(g) any risk to the neighbourhood, the wider community, or the environment through natural hazards or hazardous installations.	Yes – Section 10.1	Yes

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
Clause 9(5)	Is there a cultural impact assessment?	No	No
	<p>If a cultural impact assessment is provided, was it prepared by or on behalf of the relevant iwi authority?;</p> <p>OR</p> <p>If a cultural impact assessment is not provided, a statement of reasons given by the relevant iwi authority for not providing that assessment</p>	<p>Yes</p> <p>A Cultural Impact Assessment has not been provided³ as discussed in Section 11.</p> <p>Appendix 3 of Addendum 1 to the application provides statements of reasons from relevant iwi authorities.</p> <p>Section 2.5 of Addendum 1</p> <p>Addendum 1 also states that Ngāi Takato have been approached by the applicant but a response has not been received. The applicant states they will continue to seek a response from Ngāi Takato⁴.</p>	<p>Yes</p> <p>Whilst no response has been received from Ngāi Takato, the applicant has attempted to receive one as detailed in Section 2.5 of Addendum 1 of the application.</p> <p>I consider reasonable attempts have been made to obtain a CIA or a statement of reasons from all relevant iwi authorities, and as such this information requirement is satisfied.</p>

³ In this instance the applicant owns the land as Māori Freehold land, as decided by the Māori Land Court. Appendix 8 contains further information around this decision. “*The founders have proven their whakapapa linksto the land, and by virtue of this whakapapa connection to the land are asserting their mana whenua and whakapapa connection*”.

⁴ I would recommend that the applicant does in fact continue to seek a response from Ngāi Takato, noting they will also be approached to provide a nomination for the expert consenting panel, as well as to provide comment on the application, should they wish.

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
Clause 9(6)(a)	If a permitted activity is part of the proposal to which the consent application relates, a description that demonstrates that the activity complies with the requirements, conditions, and permissions for the permitted activity (so that a resource consent is not required for that activity under section 87A(1) of the RMA)	Yes - Section 12 is named as "Permitted Activities", however appears to discuss the "Permitted Baseline", which the application states is not considered relevant. Appendix 4 discusses the Permitted Activities	Yes
Clause 9(6)(b)	If the activity is to occur in an area that is within the scope of a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, an assessment of the activity against any resource management matters set out in that planning document (for the purposes of clause 30(3))	N/A	N/A
Clause 9(6)(c)	In the case of a referred project, all the additional information required by the relevant referral order. [List the additional information here]	N/A – Listed Project	N/A

ENDS