

Memorandum on Compliance

File FTC000021

To: Elliott Thornton, Acting Manager Land and Oceans Applications

Copy to:

From: Elliott Dennett, Senior Advisor

Date: 04 June 2021

Subject: Molesworth Street Office Development: 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 Molesworth Street Office Development resource consent application, received by the Environmental Protection Authority (EPA) on 28 May 2021 lodged by Primeproperty Group Limited, 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. A project referred to a panel by a referral order is eligible to be considered by an expert consenting panel. On 13 November 2020, Schedule 5 was inserted into the COVID-19 Recovery (Fast-track Consenting) Referral Order 2020 for the Molesworth Street Office Development, pursuant to section 27 of the Act.
4. The applicant applied for resource consent relating to Molesworth Street Office Development on 28 May 2021.
5. The EPA must either provide the consent application to the expert consenting panel (if complete) or return it to the person who lodged it (if incomplete), as set out in paragraphs 13 - 16 below.

Project

6. The scope of the project is to construct a 12-storey office building that includes—

- (a) retail or cafe space; and
- (b) a lobby; and
- (c) loading bays; and
- (d) a basement carpark.

Fast-track consenting application process

Legislative context

7. 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).
8. 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.*”
9. 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.*”
10. 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

11. 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	N/A – not a listed project	N/A

	(ii) Schedule 3 and referral order	<p>Clause 6 of the Referral Order requires seven further information requirements to be provided with the application.</p> <p>These have been provided as part of the application in accordance with the requirements of the referral order</p> <p>No regional council consents are required for this application</p>	Accept
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	The application does not identify that any of the activities are prohibited.	Accept
	(ii) RMA regulations (including any NES)	The application does not identify that any of the activities are prohibited	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	N/A – the Project is not within a customary marine title area.	Accept
Clause 3(1)(a)	Relates solely to 1 or more of the listed projects or referred projects	I am satisfied the draft application relates to the project as described in the Referral Order	Accept

Conclusions on preliminary matters

12. 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

13. An assessment table against Clauses 9-11, Schedule 6 of the Act is included in Appendix 1.

14. 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).
15. The information in the application has been assessed on the basis that the scale of the activity is medium, and potentially low effects on the environment after taking into account mitigation measures and conditions.
16. My view is that the application **does** comply with clause 3(1) and can be provided to the Panel.

Appendix 1: Clauses 9-11

Resource consent application

Table 1: Checklist of completeness requirements in Clauses 9-11 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 This has been provided in section 1a, pages 5-9.	Yes
Clause 9(1)(b)	A description and map of the site at which the activity is to occur	Yes This has been provided in section 1b, page 9-12.	Yes
Clause 9(1)(c)	Confirmation that the consent application complies with clause 3(1)	Yes This has been provided on page 4.	Yes
Clause 9(1)(d)	The full name and address of:	Yes This has been provided in section 1d, Pages 13 – 15.	Yes
	i. Each owner of the site and of land adjacent to the site		
	ii. Each occupier of the site and of land adjacent to the site who, after reasonable enquiry, is able to be identified by the applicant	Yes This has been provided in section 1d, Pages 13 – 15	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
	Were reasonable inquiries made?	Yes	Yes
Clause 9(1)(e)	A description of any other activities that are part of the proposal to which the consent application relates	Yes This has been provided in section 1e, page 15 The applicant notes that there are no other activities that are part of the proposal to which the consent application relates.	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	Yes This has been provided in section 1f, page 15. The applicant notes that there are no other resource consents, notices of requirements or designations to which the consent application relates.	Yes
Clause 9(1)(g)	An assessment of the activity against— (i) Part 2 of the RMA	Yes This has been provided in section 1g, pages 14 – 15. This is supported by attachment 11	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 19	(ii) the purpose of this Act	Yes This has been provided in section 1g, pages 16-17	Yes
	(iii) the following matters (set out in section 19 of the Act - whether project helps to achieve purpose of Act):	Yes This has been provided in section 1g, pages 15-17.	Yes
	(a) the project's economic benefits and costs for people or industries affected by COVID-19	Yes This has been provided in section 1g, pages 15-17.	Yes
	(b) the project's effect on the social and cultural well-being of current and future generations	Yes This has been provided in section 1g, pages 15-17.	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	Yes This has been provided in section 1g, pages 15-17.	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	Yes This has been provided in section 1g, pages 15-17.	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
	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 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:	Yes This has been provided in section 1g, pages 15-17.	Yes
	(f) any other matter that the Minister considers relevant.	N/A The Minister has not included in the Referral Order any additional matters related to the purpose of the Act which need to be addressed.	N/A
Clause 9(1)(h)	An assessment of the activity against --	Yes	Yes
	(a) any relevant provisions in a national environmental standard, including:		
	i. Any relevant objectives, policies or rules	This has been provided in section 1h page 17 and section 3a page 19.	
	ii. Any requirement, condition, or permission in any rules		
	iii. Any other requirements	This is support by appendix 8.	

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	(b) Any relevant provisions in any other regulations made under the RMA, including:	Yes	Yes
	i. Any relevant objectives, policies or rules	This has been provided in section 1h page 17.	
	ii. Any requirement, condition, or permission in any rules		
	iii. Any other requirements	The applicant identifies no other relevant provisions in any other regulations made under the RMA	
	(c) Any relevant provisions in any national policy statement, including:	Yes	Yes
	i. Any relevant objectives, policies or rules	This has been provided in section 1h, page 17 and section 3a pages 19 – 20.	
	ii. Any requirement, condition, or permission in any rules		
	iii. Any other requirements		
	(d) Any relevant provisions in a New Zealand coastal policy statement, including:	Yes	Yes
	i. Any relevant objectives, policies or rules	This has been provided in section 1h, page 17.	
	ii. Any requirement, condition, or permission in any rules		
	iii. Any other requirements	The applicant identifies that there are no relevant provisions in the New Zealand coastal policy statement that applies to this project.	
	(e) Any relevant provisions in any regional policy statement or proposed regional policy statement, including:	Yes	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
	<ul style="list-style-type: none"> i. Any relevant objectives, policies or rules ii. Any requirement, condition, or permission in any rules iii. Any other requirements 	This has been provided in section 1h, page 17 and section 3a pages 20 – 21.	
	(f) Any relevant provisions in a plan or proposed plan, including:	Yes	Yes
	<ul style="list-style-type: none"> i. Any relevant objectives, policies or rules ii. Any requirement, condition, or permission in any rules iii. Any other requirements 	This has been provided in section 1h, page 17 and section 3a pages 22 – 33.	
	(g) Any relevant provision in any planning document recognised by a relevant iwi authority and lodged with a local authority, including:	Yes	Yes
	<ul style="list-style-type: none"> i. Any relevant objectives, policies or rules ii. Any requirement, condition, or permission in any rules iii. Any other requirements 	<p>The applicant has identified that there are no planning documents recognised by a relevant iwi authority and lodged with a local authority</p> <p>This has been provided in section 1h, page 17.</p>	
Clause 9(1)(i)	<p>Information about any Treaty settlements that apply in the project area, including—</p> <ul style="list-style-type: none"> (i) the identification of the relevant provisions in those Treaty settlements 	<p>Yes</p> <p>This has been provided in section 1i, page 17.</p>	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
	(ii) a summary of any redress provided by those settlements that affects natural and physical resources relevant to the project or project area	N/A No redress is affected by the proposed project	N/A
Clause 9(1)(j)	The conditions that the applicant proposes for the resource consent	Yes This has been provided in section 1j pages 17-18	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): ¹	Yes This has been provided in section 4a, pages 34-42	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 This has been provided in section 4a, page 41.	Yes
	(c) if the activity includes the discharge of any contaminant, a description of—	Yes	Yes
	(i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and	This has been provided in attachment 8 and 10.	

¹ 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
	(ii) any possible alternative methods of discharge, including discharge into any other receiving environment		
	(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	Yes This has been provided in section 4a, pages 34-42	Yes
	(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	Yes This has been provided in section 1d, pages 12-14	Yes
	(f) if iwi or hapū elect not to respond when consulted on the proposal, any reasons that they have specified for that decision	Yes This has been provided in appendix 9 and appendix titled <i>200110-Email-Ngati Toa – 26 Jan 2021</i> .	Yes
	(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	Yes This has been provided in section 4a, page 42.	Yes
	(h) an assessment of any effects of the activity on the exercise of a protected customary right	N/A – the Project is not within a customary marine title area.	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	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
	(a) any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects	This has been provided in section 4a pages 34-42	
	(b) any physical effect on the locality, including landscape and visual effects	Yes This has been provided in section 4a, pages 34 - 39.	Yes
	(c) any effect on ecosystems, including effects on plants or animals and physical disturbance of habitats in the vicinity	Yes This has been provided in section 4a, page 41.	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 This has been provided in appendix 5 and appendix 9	Yes
	(e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants	Yes This has been provided in section 6c, page 41 and attachment 8 and 10.	Yes
	(f) the unreasonable emission of noise	Yes This has been provided in section 1a page 9.	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
	(g) any risk to the neighbourhood, the wider community, or the environment through natural hazards or hazardous installations.	Yes This has been provided in section 4a, page 34	Yes
Clause 9(5)	<p>Is there a cultural impact assessment?</p> <p>If a cultural impact assessment is provided, is 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>The applicant has provided a cultural impact assessment prepared by Morris Love on behalf of Taranaki Whānui ki te Upoko o te Ika (Port Nicholson Block Settlement Trust).</p> <p>This have been provided in attachment 9.</p> <p>The Addendum named – <i>200110 – Email – Ngāti Toa – 26 Jan 2021</i> provides correspondence between the applicant and Ngāti Toa Rangatira who have been invited to provide a cultural impact assessment but have not provided further correspondence to the applicant</p>	Yes
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	Yes	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
	permissions for the permitted activity (so that a resource consent is not required for that activity under section 87A(1) of the RMA)	This has been provided in section 6a, page 41.	
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 – the Project is not within a customary marine title area.	N/A
Clause 9(6)(c)	<p>In the case of a referred project, all the additional information required by the relevant referral order. Provide the following information with any application for the Molesworth Street Office Development project lodged with the Environmental Protection Authority (EPA) under clause 2 Schedule 6:</p> <p>a. a heritage report prepared by a heritage expert that considers—</p> <p>i) the location of the site and proposed building; and</p> <p>ii) the heritage context of the site and proposed building, if they adjoin a listed heritage building; and</p> <p>b. a summary of any consultation undertaken with iwi or Heritage New Zealand Pouhere Taonga; and</p> <p>c. a preliminary site investigation or detailed onsite investigation report for a contaminated site in accordance with</p>	Yes	Yes
		<p>Yes</p> <p>a. a heritage report prepared by a heritage expert that considers—</p> <p>(i) the location of the site and proposed building; and</p> <p>(ii) the heritage context of the site and proposed building, if they adjoin a listed heritage building;</p> <p>This has been provided in section 6c, page 42. This is supported by attachment 5</p>	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
	<p>the requirements of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (the NES), showing how compliance with the NES will be achieved; and</p> <p>d. a design statement, including a statement as to how the proposal achieves design excellence given that the building height exceeds the permitted height, but is within the 15% design excellence allowance; and</p> <p>e. a written approval from Wellington Water Limited, if the proposal involves a discharge of dewatered water or stormwater to the stormwater network during works; and</p> <p>f. an earthworks management plan; and</p> <p>g. any additional information that the Wellington City Council and the Wellington Regional Council would require had the application been submitted in accordance with the standard process under the Resource Management Act 1991.</p>	<p>Yes</p> <p>b. a summary of any consultation undertaken with iwi or Heritage New Zealand Pouhere Taonga;</p> <p>This has been provided in section 6c, page 42.</p> <p>This is supported by attachment 9</p> <p>Yes</p> <p>c. a preliminary site investigation or detailed on-site investigation report for a contaminated site in accordance with the requirements of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (the NES), showing how compliance with the NES will be achieved;</p>	<p>Yes</p> <p>Yes</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
		<p>This has been provided in section 6c, page 42. This is supported by attachment 8.</p>	
		<p>Yes</p> <p>d. a design statement, including a statement as to how the proposal achieves design excellence given that the building height exceeds the permitted height, but is within the 15% design excellence allowance;</p> <p>This has been provided in section 6c, page 42. This is supported by attachment 4.</p>	<p>Yes</p>
		<p>Yes</p> <p>e. a written approval from Wellington Water Limited, if the proposal involves a discharge of dewatered water or stormwater to the stormwater network during works;</p> <p>This has been provided in section 6c, page 42. The applicant has identified that</p>	<p>Yes</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
		<p><i>“the preliminary site assessment of the surrounding area indicates that the proposal will not require dewatering for foundation construction. Wellington Water approval is not required for small scale sites of this nature.”</i></p>	
		<p>Yes</p> <p>f. an earthworks management plan;</p> <p>This has been provided in section 6c, page 42</p>	<p>Yes</p>
		<p>Yes</p> <p>g. any additional information that the Wellington City Council and the Wellington Regional Council would require had the application been submitted in accordance with the standard process under the Resource Management Act 1991.</p>	<p>Yes</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
		<p>This has been provided in section 6c, page 42.</p> <p>The applicant meets the requirements provided by Wellington City Council to the Minister when considering the project as eligible under fast-track – This has been confirmed by Wellington City Council.</p> <p>No regional council consents are required for this application</p>	

ENDS