

From: Ian Leary <itl@spencerholmes.co.nz>

Sent: Thursday, 19 August 2021 11:09 am

We are responding to the EPA request for additional further information, following our previous response to submissions

- *A number of comments from parties invited to comment have raised the question of impacts arising from the potential use of Collina Terrace for construction related purposes.*
- *Given that Collina Terrace is owned by a number of different parties, is subject to statutory restrictions on its use, and is currently used for access to a number of properties, what use (if any) does the applicant propose to make of Collina Terrace for construction related purposes, and if so, what measures would the applicant intend to put in place to mitigate construction related impacts on the other landowners and users of Collina Terrace and to remedy any damage to the land? (The applicant's attention is drawn to the legal opinion provided by Ian Gordon, Barrister, as to the nature of the statutory rights and restrictions relating to the use the use of Collina Terrace.)*

Firstly, the project manager has confirmed that Collina Terrace is too narrow to be useful for construction site access and all access will be from Molesworth St. Access through Collina Terrace will be maintained for all parties to a similar degree as it is currently used.

The two questions of information sought by the panel are related to civil issues. The use of Collina Tce for construction would be included.

The civil issues are in my view, matters that fall outside of a typical resource consent process. Whilst this is a Covid Fast-track legislation approval, we would presume that civil issues remain outside of the scope of the consent. Again, because of my understandable unfamiliarity with the Covid 19 Fast-track process, I have presumed that the consent process will not be considering these matters, as it would not have jurisdiction to grant rights over private property and it would be the applicant's issue to address once the consent is issued.

The civil matters that will be addressed once the RMA consents are granted include:

- Crane and scaffold encroachments on adjoining property during construction
- Condition and maintenance of Collina Tce
- Settlement of areas adjacent

Civil rights of access

In respect to a proposed construction crane and scaffold works, these are matters that are civil agreements between neighbours and are agreed with the various parties (including WCC as road administrator) after consents are issued. The construction methodology is often traversed in the Building Consent process (rather than the resource consent), but other than earthworks, is typically outside of the matters of discretion in a resource consent matter. In summary, the operation of the crane or the placement of scaffold on adjoining property is a civil matter. Placement of gantries, scaffold or cranes on legal road is negotiated with WCC outside of the statutory consent process.

Further to this, the applicant currently has leased car parks within Collina Terrace. These are shown in the Figure below:



Any scaffolding or other access required to this side of the building will be largely within the area, already occupied by the applicant in their day to day operation.

In summary, no access for properties on Collina Tce will be impeded in the day to day construction of the building. Any access disruption that does occur, will be subject to civil and private agreements with the relevant properties on Collina Tce.

Condition of Collina Tce

In respect to Collina Tce, there would be an obligation on the applicant to ensure that the works proposed, do not have detrimental effects on the current condition of Collina Tce. This would however be a civil obligation and it would not typically be a matter for a consent authority on similar projects like this. The project manager for the applicant has already confirmed that a condition survey will be undertaken of the road surface of Collina Terrace and if any damage occurs, that this will be reinstated, at least to its current standard.

Settlement of areas adjacent

It is very common on large projects such as 61 Molesworth Street, to set up a monitoring network around the site to observe/report on any settlement/effects on adjoining property. Spencer Holmes are regularly engaged to do this work and therefore have direct knowledge and experience of the process. This is often part of the condition report and protects the developer as well as the neighbouring properties. This site however, would not be particularly difficult, given that there are no buildings immediately adjacent the main site boundary (not including Collina Tce). Ensuring that Collina Tce is not impacted, can be achieved through an appropriate construction methodology that will be considered in the Building Consent process, once the detailed engineering design is done.

Legal Opinion

I have read the legal opinion from Ian Gordon. In my view, Collina Terrace is included in the site. That was also accepted by Wellington City Council (WCC) in the previous application to Council which was discontinued. This was discussed at pre-application meetings and has been agreed by the officers.

In respect to the massing rules, it only makes sense to include Collina Terrace in the site area. The massing rules were introduced to allow Council to control the placement of building mass and mitigate the effects of buildings being placed adjacent to other sites where access to daylight (not direct sunlight) would be removed. The relevant policy is 12.2.5.2. The reason for the massing is discussed in the provisions of the Plan below this policy and they state:

The mass standards have been set at levels that will allow potential adverse effects relating to amenity (access to daylight for the proposed new building), heritage and design, to be avoided, remedied or mitigated on site. It is important to note that the development of new buildings in the Central Area is not a case of 'first in, first served'. All new building works are expected to protect their own amenity by making suitable provision for on-going levels of daylight. New building works will not be permitted to rely on the under-development of adjacent sites as the source of their daylight access. Similarly, it is not intended that the building mass standards will be used to require new building works to set back from boundaries in order to preserve access to daylight for existing buildings on adjacent sites. However it is acknowledged that there are likely to be some situations where a development is proposed adjacent to an existing building that contains residential units with principal windows to habitable rooms located on (or very near) the common boundary.

In this situation Council will work with the developer to explore whether the new building can be sited and massed in a manner that allows the neighbouring residential units to retain some degree of daylight and outlook. In relationship to building mass it is noted that while access to daylight is required to be addressed by building design, access to direct sunlight is not an effect to be specifically considered except with respect to sunlight protection for identified public places under standard 13.6.3.4

As Collina Tce effectively creates an undeveloped zone around the building, it allows daylight to be received by all the adjacent properties as well as setbacks from these areas.

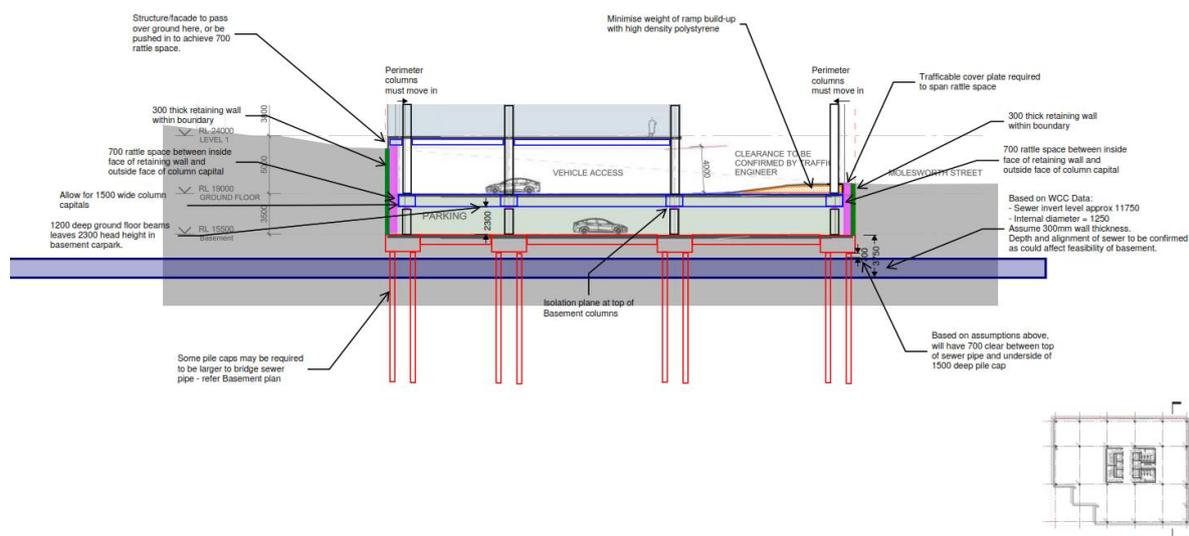
Mr Gordon has stated at 3.5 of his opinion:

Additionally, if Collina Terrace is included in the definition of Site, then the Site would have a boundary adjoining the Inner Residential Area and Standards 13.6.3.1.9 and 13.6.3.1.10 relating to the building recession plane would apply (contrary to a statement by Prime).

PPG accepts that 13.6.3.1.9 and 13.6.3.1.10 applies. In a previous further information response we set out how the building complies with these permitted activity standards.

- *One submitter has raised concern about possibility of damage to the brick sewer traversing the site from east to west. Please provide information as to how far below foundation level is the brick sewer.*
- *Also what contingency measures does the applicant propose to protect the brick sewer from damage during construction or if necessary to replace it?*

I did not consider this submission needed a response as the sewer is a public asset and as such is currently managed by Wellington Water (WWL). WWL would generally comment on a consent and it was also presumed that WCC's submission would have included any comments from WWL. WWL have already had the opportunity to comment in a previous application lodged with WCC. The sewer, its location and requirements are well understood by the design team and the structural engineer. A diagram below, was prepared by Beca Consultants (Structural Engineers) and shows the relationship of the buildings foundations and the sewer. There is a full report available, should the panel feel it necessary, but again we consider this to be a building consent matter.



The diagram shows that on available information, the separation between the sewer and the underside of the 1500 deep pile cap, is 700mm. This is a reasonably good 'margin of safety'. The effects on the sewer would be covered in the building consent process which would also address the connections of the proposed building with the existing sewer and stormwater network.

However, as shown on the diagram, should the information currently held by the design team be incorrect, the worst case scenario would be a reduction in the area of the basement or alternatively, the relaying of the sewer, clear of the building platform.

In any case, the building consent process, may require the old brick sewer to be relaid in new concrete pipe. These matters are typically not covered in the resource consent process as it is detailed engineering design.

- *Does the applicant intend to address the matters raised by the Port Nicholson Block Settlement Trust in terms of ensuring the retention of the mana of Pipitea Pa with artworks/structures and information posts on the site or within the new building, and if so how?*

I have spoken to the applicant and they have agreed that they would endeavour to achieve the installation of artworks/structures or information posts on the site. I have also spoken directly with the submitter, since the submission was made. We agreed that the artwork/sculpture or information post, would be best incorporated into the design by the architect.

Therefore in response, the applicant would propose an additional condition which states:

In consultation with the Port Nicholson Block Settlement Trust (PNBST), the applicant shall:

- **Display pou whenua / other cultural structures and artwork to represent Mana Whenua; and**
- **Install information posts / signage to inform the public of the cultural history of the site.**

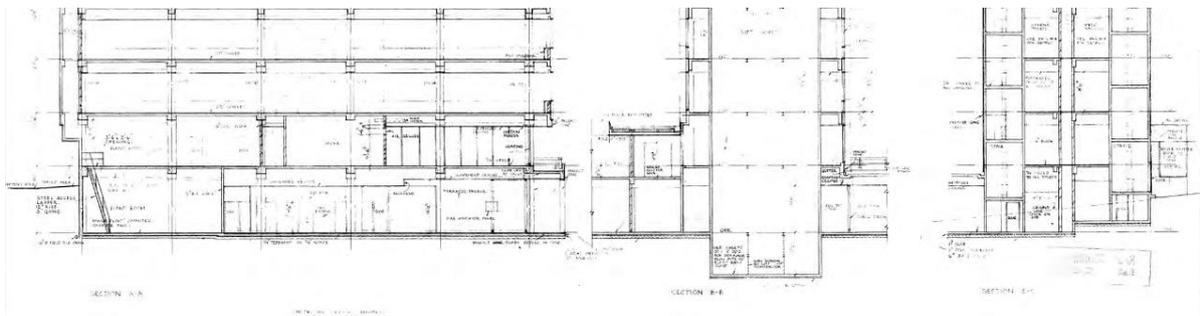
The applicant should incorporate these cultural features into the design of the building and the consultation shall ensure/confirm with the PNBST that they are acceptable and appropriate.

The applicant has already had a Cultural Impact Assessment undertaken. As will be discussed below, the applicant has also engaged Capital Heritage to undertake an application for an archaeological permit, which includes a review of the known history of the site.

- *Please provide an assessment by a suitably qualified person as to the likelihood or otherwise of material relating to pre-1900 activity that occurred when Wellington was developing as a colonial settlement. As part of that assessment, please include information (if possible) as to the depth of excavations undertaken when the previous office building was constructed.*

The applicant has engaged Capital Heritage to undertake an application for an archaeological permit under the Heritage New Zealand Pouhere Taonga Act 2014. This will meet the statutory requirements raised by NZ Heritage in their submission. Due to workloads, they cannot prepare the application for 3-5 weeks from the date of writing. Given we are in a new lockdown period, this may be longer again. It is presumed that this consent is outside of the Covid-19 Fast-track consenting process and is still required as a separate approval.

In respect to the original building, I have reviewed the plans and note the diagram below is taken from that original building design.



It shows that the lowest level went well below the ground level that existed in the 1960's when it was built. It would be difficult to make any conclusions about the likelihood of archaeological artefacts without knowing any other ground disturbances that have occurred in this area since 1900. There are sections of the site which did not have building on it. We can't make any comment as to whether this has the potential for archaeological artefacts to be found in those areas.

The archaeological effects are not a matter generally traversed in the Resource Consent process and it is covered in a separate permit, issued by NZ Heritage. The applicant intends on obtaining that permit, well before the works commence.

We trust this addresses the submission made by NZ Heritage.

- *Please provide details as to what if any arrangements have been made with the Wellington Diocesan Board of Trustees in terms of landscaping the "shared area" at the southern end of the site.*

There has been no discussion with the Wellington Diocesan Board of Trustees. I have discussed the question with the Architects Jasmx and they are unsure as to what the "shared area" actually is and what is being referred to. There is no intention on using any land owned by the Board. Any landscaping proposed as part of this application would be within the subject site. If in future there was a mutually beneficial opportunity to share space, then that might be explored, but it is not intended as part of this application.

The architect reiterated the point that the building is set a metre off the boundary with the Church land, to ensure compliance with the fire regulations, so there is not encroachment of their space.

Conclusion

We trust that all matters are now addressed above. We look forward to the considerations of the Hearing Panel.

Regards

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