

9 May 2019

Wellington City Council
Resource Consents Team Leader
City Consenting and Compliance

For Bill Stevens

RECONSIDERATION BY THE COUNCIL OF RESOURCE CONSENTS TO THE WELLINGTON COMPANY LIMITED TO REDEVELOP SHELLY BAY

1. We act for The Wellington Company Limited (the Wellington Company) and provide, with this letter, a revised set of documents to enable the Council to reconsider the resource consent application granted by it to the Wellington Company on 18 April 2017 for the redevelopment of Shelly Bay, as directed by the Court of Appeal in its decision in *Enterprise Miramar Peninsula Incorporated v Wellington City Council and the Wellington Company Limited* [2018] NZCA 541 (the Court of Appeal decision).
2. The resource consent application was lodged by The Wellington Company on 15 September 2016. It comprised:
 - (a) the Council's "Scanning Cover Sheet", duly completed;
 - (b) the Council's "Application for resource consent for a qualifying development in an approved Special Housing Area" form, duly completed;
 - (c) a covering letter from The Property Group of 15 September 2016;
 - (d) an application for resource consent under section 25 of the Housing Accord and Special Housing Areas Act 2013 (HASHAA) prepared by The Property Group (and including a planning assessment) dated 15 September 2016;
 - (e) 15 appendices to the application and planning assessment, being supporting documents and expert assessments.
3. In paragraph [100] of the Court of Appeal decision, the decision of the Council granting the Wellington company's resource consent application was quashed.
4. However, it was quashed only because of the manner in which the Council applied s 34 of HASHAA when considering the resource consent

application and, in paragraph [101] of the Court of Appeal decision, the Court said:

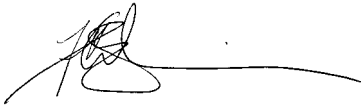
The [Wellington Company's] application for resource consents is remitted to [the Council] for reconsideration.

5. Under section 18 of HASHAA, the special housing area to which the resource consent application related was disestablished on 16 September 2016. However, the Court's order for the Council to reconsider the existing application is such that, in accordance with clause 1 of Schedule 3 of HASHAA, Part 2 of HASHAA continues to apply to the Wellington Company's resource consent application.
6. Accordingly, it is now for the Council to consider the application again through the application of s 34 in the particular ways directed by the Court of Appeal in paragraphs [40] to [59] of its decision.
7. As a result, the Wellington Company does not submit a new application but provides updated information to enable its existing application to be reconsidered in accordance with the guidance given by the Court. To that end, the attached document from Egmont Dixon Limited (Egmont Dixon) provides a revised expert planning assessment on the basis of the guidance provided by the Court on the way in which s 34 should be applied.
8. There are 17 appendices to the document. The appendices, which comprise the certificate of title, the Shelly Bay Master Plan, the proposed Shelly Bay Design Guide and a range of expert assessments, have been revised only to the extent necessary to provide updated factual information given the time that has passed since the application was first lodged.
9. Other than the revised section 34 assessment and the updated factual information, the application remains as it was.
10. In accordance with the decision of the Court of Appeal, is only the Council's s 34 assessment that needs to be reconsidered. The Court of Appeal's findings on all of the other causes of action in the judicial review proceeding by Enterprise Miramar were in favour of the Council. Accordingly, the hearing commissioners need not reconsider other aspects of the Council's 18 April 2017 decision and can draw support from the fact that the Court of Appeal (and the High Court before it) upheld the Council's findings that:
 - (a) the staged 13-year development timeframe is in order (paragraph [33] of the Court of Appeal decision);
 - (b) the inclusion of a boutique hotel and community, commercial and residential activities is in order under HASHAA (paragraphs [34] to [38] of the Court of Appeal decision);

(c) the Council was able to be satisfied under section 34(2) that sufficient and appropriate infrastructure will be provided to support the qualifying development (paragraph [63] to [76] of the Court of Appeal decision).

11. For the reasons expressed in the Egmont Dixon's assessment, the application of s 34 in the manner directed by the Court of Appeal is such that the application, when reconsidered, is in order to be granted once more.

Yours faithfully
GIBSON SHEAT

A handwritten signature in black ink, appearing to read 'Finn Collins', with a long horizontal line extending to the right.

Finn Collins
Partner

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cc: Trevor Knolwes