

Memorandum on Compliance

File	FTC 000068
To:	Richard Preece, Acting Manager Land and Oceans Applications
From:	Alex Erceg, Senior Advisor
Date:	13 June 2022
Subject:	Te Arika Tahī Sugarloaf Wharf upgrade: 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 Te Arika Tahī /Sugarloaf Wharf upgrade (**the project**) application, received by the Environmental Protection Authority (**EPA**) on 3 June 2022, lodged by Arika Tahī Sugarloaf Wharf Limited (the applicant) 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.
4. On 1 April 2022, Schedule 47 was included in the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020 (**the Referral Order**).
5. The applicant applied for consents relating to the project on 3 June 2022.
6. The EPA must either provide the consent application to the expert consenting panel (if complete) (once appointed) or return it to the person who lodged it (if incomplete), as set out in paragraphs 13-17 below.

Project

7. The scope of the project is to upgrade the existing wharf facilities at Te Arika Tahī/Sugarloaf Wharf, including excavation and dredging of the Coastal Marine Area (CMA), deposition of fill in the CMA, construction of a seawall, construction, and operation of separate commercial and

recreational facilities as well as other activities. The full scope and description of the project can be viewed in Schedule 47 of the Referral Order¹.

Fast-track consenting application process

Legislative context

8. 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**).
9. 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.*”
10. 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.*”
11. 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/ notice of requirement]

There are several 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		Accept
Clause 2(3)(b)	Application is in approved form and manner		Accept
Clause 2(3)(c)	Application complies with any restrictions and obligations in either:		
	(i) Schedule 2; or		N/A
	(ii) Schedule 3 and referral order		Accept

¹ [COVID-19 Recovery \(Fast-track Consenting\) Referred Projects Order 2020 \(LI 2020/255\) \(as at 06 May 2022\) Schedule 47 Te Ariki Tahi/Sugarloaf Wharf upgrade – New Zealand Legislation](#)

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 prohibited activities have been identified	Accept
	(ii) RMA regulations (including any NES)	No prohibited activities have been identified	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
Clause 3(1)(a)	Relates solely to 1 or more of the listed projects or referred projects		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 9-12 of 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 of Schedule 6 of the Act).
15. The information in the application has been assessed on the basis that the scale of the activity is large and potentially significant 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) of Schedule 6 of the Act and can be provided to the Panel.
17. However, I note with relation to the assessment of the application against a National Environmental Standard (as required by clause 9(2)(a) of Schedule 6 of the Act) and whether the National Environmental Standard for Freshwater (NESF) is applicable to this application;
- that section 4.6 with respect of the NESF states, “[f]or completeness, it is noted that *Pisces Consulting Limited* have confirmed in the ecological assessment that there are coastal wetlands within, or within 100 m of, the footprint of Arika Tahī”.

- It appears the statement has incorrectly stated that “*there are coastal wetlands*”, when in fact it should say “*there are not*”, as per Section 1.5 of the Ecology and Water Quality Assessment (Appendix D) referred to.
- For clarity, this compliance assessment is based on the presumption that the statement in section 4.6 is incorrect, and therefore I am satisfied that an assessment against the NESFW (or the NPSFM) is not required.

Appendix 1: Clauses 9-12 of Schedule 6 of the Act

Table 1: Checklist of completeness requirements in Clauses 9-12 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 3 Part B Section 4 Part A	Yes
Clause 9(1)(b)	A description and map of the site at which the activity is to occur	Yes Section 2	Yes
Clause 9(1)(c)	Confirmation that the consent application complies with clause 3(1) of Schedule 6 of the Act.	Yes Section 1.4	Yes
Clause 9(1)(d)	The full name and address of: <ul style="list-style-type: none"> 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 inquiry, is able to be identified by the applicant <p>Were reasonable inquiries made?</p>	Yes Section 2.3	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(1)(e)	A description of any other activities that are part of the proposal to which the consent application relates	Yes Section 3	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(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 Section 2 Part A indicates that all necessary resource consents are being applied for	Yes
	An assessment of the activity against— (i) Part 2 of the RMA	Yes Section 9.2	Yes
	(ii) the purpose of this Act	Yes Section 9.1	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
	(a) any relevant provisions in a national environmental standard, including:	<p>National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS)</p> <p>National Environmental Standards for Freshwater (NESF)</p> <p>The application in Sections 4.5 and 4.6 finds that neither the NESCS nor NESF are applicable to the application.</p> <p>I note that section 4.6 with respect of the NESF states, “[f]or completeness, it is noted that Pisces Consulting Limited have confirmed in the ecological assessment that there are coastal wetlands within, or within 100 m of, the footprint of Arika Tahi”. It appears the statement has incorrectly stated that “there are coastal wetlands”, when in fact it should say “there are not”, as per Section 1.5 of the Ecology and Water Quality Assessment (Appendix D) referred to.</p>	
	<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 	N/A	N/A
	<p>(b) Any relevant provisions in any other regulations made under the RMA, including:</p> <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 	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
	(c) Any relevant provisions in any national policy statement, including: <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 	N/A	
	(d) Any relevant provisions in a New Zealand coastal policy statement, including:	Yes Section 8.2	Yes
	i. Any relevant objectives, policies or rules	Yes Section 8.2	Yes
	ii. Any requirement, condition, or permission in any rules	N/A	N/A
	iii. Any other requirements	N/A	N/A
	(e) Any relevant provisions in any regional policy statement or proposed regional policy statement, including:	Yes Section 8.3	Yes
	i. Any relevant objectives, policies or rules	Yes Section 8.3	Yes
	ii. Any requirement, condition, or permission in any rules	N/A	N/A
	iii. 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 ² or proposed plan, including:	Assessed against: Waikato Regional Coastal Plan (RCP) Waikato Regional Plan (WRP) Proposed Thames Coromandel District Plan (pTCDP)	
	i. Any relevant objectives, policies or rules	Yes RCP Sections 4.2 and 8.4 WRP Sections 4.3 and 8.5 pTCDP Sections 4.4 and 8.6	Yes
	ii. Any requirement, condition, or permission in any rules	Yes RCP Section 4.2 WRP Section 4.3 pTCDP Section 4.4	Yes
	iii. Any other requirements	NA	NA

² Thames Coromandel District Council is currently operating under two district plans. For the purpose of this resource consent application, the provisions within the Operative Thames Coromandel District Plan are not relevant and the following assessment only relates to the objectives and policies of the Proposed Plan

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 relevant provision in any planning document recognised by a relevant iwi authority and lodged with a local authority, including: <ul style="list-style-type: none"> i. Any relevant objectives, policies or rules 	Yes Section 8.7	Yes.
	<ul style="list-style-type: none"> ii. Any requirement, condition, or permission in any rules iii. Any other requirements 	N/A	N/A
Clause 9(1)(i)	Information about any Treaty settlements that apply in the project area, including— <ul style="list-style-type: none"> (i) the identification of the relevant provisions in those Treaty settlements 	Yes Section 6.3	Yes
	<ul style="list-style-type: none"> (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 6.3	Yes
Clause 9(1)(j)	The conditions that the applicant proposes for the resource consent	Yes Appendix Q	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(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): ³	Yes Section 7	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 Section 7	Yes
	(c) if the activity includes the discharge of any contaminant, a description of—	Yes Section 7	Yes
	(i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and	Aided by various Appendices (in particular Appendix H)	
	(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 Section 7 Aided by various Appendices (in particular Appendix Q)	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 Section 2 and Section 5	Yes	

³ 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
	(f) if iwi or hapū elect not to respond when consulted on the proposal, any reasons that they have specified for that decision	Yes Appendix K	
	(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 Appendix Q	Yes
	(h) an assessment of any effects of the activity on the exercise of a protected customary right	N/A	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 Section 7 (mainly Sections 7.3, 7.4 and 7.11))	Yes
	(a) any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects		
	(b) any physical effect on the locality, including landscape and visual effects	Yes Section 7.4 Appendix M	Yes.
	(c) any effect on ecosystems, including effects on plants or animals and physical disturbance of habitats in the vicinity	Yes Section 7.8 Appendices D and E	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 7	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
		Aided by various Appendices	
	(e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants	Yes Section 7 Aided by various Appendices (in particular Appendix H)	Yes
	(f) the unreasonable emission of noise	Yes Section 7.7 Appendix G	Yes
	(g) any risk to the neighbourhood, the wider community, or the environment through natural hazards or hazardous installations.	Yes Sections 7.9 and 7.10 Appendix F	Yes
Clause 9(5)(a)	A cultural impact assessment provided by or on behalf of the relevant iwi authority.	Yes Cultural impact assessments provided by Ngaati Whanaunga and Ngāti Tumutumu (Appendices I and J)	
Clause 9(5)(b)	If a cultural impact assessment is not provided, a statement of reasons given by the relevant iwi authority for not providing that assessment	Yes Section 6 Appendix K	

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 4	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))	NA	NA
Clause 9(6)(c)	In the case of a referred project, all the additional information required by the relevant referral order ⁴ .		
	An assessment of the effects of the project on the ecology of the area within and near the project site, including an assessment of— (i) the effects of the project on the benthic ecology and coastal birds within and near to the project site; and (ii) the biosecurity risks arising from the project; and	Yes Appendices D and E	Yes
	An assessment of the effects of the project on coastal processes; and	Yes Appendix F	Yes
	An assessment of the effects of the project on water quality due to sedimentation and the discharge of heavy metals from— (i) seabed disturbance; (ii) ongoing stormwater discharges:	Yes Appendix E	Yes

⁴ Clause 6 of Schedule 47 of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020.

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	(iii) discharges from the boat maintenance grid facility; and		
	An assessment of how the project aligns with the Waikato Regional Council's Climate Change Guideline: Integrated Catchment Management (September 2017); and	Yes Sections 10 and 11	Yes
	An acoustic assessment of the project, including an assessment of the effects on the people in the neighbourhood of operational noise from the proposed commercial wharf.	Yes Appendix G	Yes
	Information is also required on the applicant's legal right to access and use existing reclaimed land at Te Ariki Tahī/Sugarloaf Wharf, including any relevant procedural or legal requirements under the Resource Management Act 1991 or the Marine and Coastal Area (Takutai Moana) Act 2011.	Yes Appendix C	Yes
Clause 12			
Clause 12(2)(a)	The location of the area to be reclaimed	Yes Section 3	Yes
Clause 12(2)(b)	If practicable, the position of all new boundaries	Yes Section 3	Yes
Clause 12(2)(c)	Any part of the reclaimed area to be set aside as an esplanade reserve or esplanade strip	Yes Section 3	Yes

ENDS