

Memorandum on Compliance

File	FTC000028
To:	Terry Calmeyer, Acting Manager Land and Oceans Applications
From:	Alex Erceg, Senior Advisor
Date:	4 May 2022
Subject:	Eastern Porirua Regeneration – Infrastructure Works: 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 Eastern Porirua Regeneration – Infrastructure Works (**Eastern Porirua Regeneration**) consent application, received by the Environmental Protection Authority (**EPA**) on 28 April 2022 lodged by the Te Aranga Alliance on behalf of Kāinga Ora (**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. On 18 December 2020, Schedule 9, Eastern Porirua Regeneration – infrastructure works was included in the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020 (**the referral order**).
4. The applicant applied for consents relating to Eastern Porirua Regeneration – infrastructure works on 28 April 2022.
5. The application as lodged relates to the sewer upgrade works portion of the project as described in the referral order only. The other aspects of the project as described in the referral order are either still to be lodged with the Environmental Protection Authority (**EPA**), or will be proceeding down alternative consenting pathways, such as the Resource Management Act (**RMA**) process.
6. 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 14-17 below.

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
8. Clause 3(1) of 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 consent 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		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
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	I have not identified any prohibited activities,	Accept

	(ii) RMA regulations (including any NES)	I have not identified any 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	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 11 of Schedule 6 of the Act.

Assessment of compliance table

13. An assessment table against Clauses 9-11 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 the Act).
15. The information in the application has been assessed on the basis that the scale of the activity is moderate, and potentially minor 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 (once appointed).
17. With regards to my conclusion that the application does comply with clause 3(1) of Schedule 6 of the Act, it must be noted that this application is for the Bothamley Park Sewer Trunk Upgrade, which is only one stage of the project that was referred by the Minister for the Environment. As such, clause 6 of Schedule 9 of the referral order stipulates a number of reports that must be provided with an application, of which part or all of the requirements will not be relevant to this application and have consequently not been provided with this application. Table 14 in section 17 of the application outlines what is relevant to this application and what is not. I have also assessed this and am satisfied that the information requirements relevant to this application have been met.

Appendix 1: Clauses 9-11

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?	Is the information provided in sufficient detail? Y/N
Clause 9			
Clause 9(1)(a)	A description of the proposed activity	Yes Section 4	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 3	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 enquiry, is able to be identified by the applicant 	Yes Section 7 Volume 3 Part 2	Yes
Clause 9(1)(e)	A description of any other activities that are part of the proposal to which the consent application relates	Yes Sections 1, 5 and 6	Yes
Clause 9(1)(f)	A description of any other resource consents, notices of requirement for designations, or alterations to designations	Yes	Yes

Reference to clause in Schedule 6	Requirement	Is the information present?	Is the information provided in sufficient detail? Y/N
	required for the proposal to which the consent application relates	Section 6	
Clause 9(1)(g)	An assessment of the activity against— (i) Part 2 of the RMA	Yes Section 15	Yes
	(ii) the purpose of this Act	Yes Section 16	Yes

Section 19	<p>(iii) the following matters (set out in section 19 of the Act - whether project helps to achieve purpose of Act):</p> <p>(a) the project's economic benefits and costs for people or industries affected by COVID-19</p> <p>(b) the project's effect on the social and cultural well-being of current and future generations</p> <p>(c) whether the project would be likely to progress faster by using the processes provided by this Act than would otherwise be the case</p> <p>(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 hazards and the effects of climate change; or any other benefit(s) identified.</p> <p>(e) whether there is potential for the project to have significant adverse environmental effects, including greenhouse gas emissions:</p> <p>(f) [for referred projects only] any other matter that the Minister considers relevant.</p>	<p>Yes</p> <p>Section 16</p>	<p>Yes</p>
Clause 9(1)(h)	An assessment of the activity against --	Yes	

Reference to clause in Schedule 6	Requirement	Is the information present?	Is the information provided in sufficient detail? Y/N
	(a) any relevant provisions in a national environmental standard, including:	Assessed against the: National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) National Environmental Standards for Freshwater (NESFW) National Environmental Standard for Air Quality (NESAQ) National Environmental Standard for Sources of Human Drinking Water (NESDW)	
	i. Any relevant objectives, policies or rules	Yes NESCS – Sections 5.8 and 14.2.1 NESFW – Sections 5.9 and 14.2.2 NESAQ – Sections 14.2.3 and NESDW – Section 14.2.4	Yes
	ii. Any requirement, condition, or permission in any rules	Yes NESCS – Sections 5.8 NESFW – Section 5.9	Yes

Reference to clause in Schedule 6	Requirement	Is the information present?	Is the information provided in sufficient detail? Y/N
	iii. Any other requirements	N/A	N/A
	(b) Any relevant provisions in any other regulations made under the RMA, 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	N/A
	(c) Any relevant provisions in any national policy statement, including:	Yes Assessed against: National Policy Statement on Urban Development (NPSUD) National Policy Statement for Freshwater Management (NPSFM)	
	i. Any relevant objectives, policies or rules	Yes NPSUD – Section 14.1.1 NPSFM – Section 14.1.2	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?	Is the information provided in sufficient detail? Y/N
	(d) Any relevant provisions in a New Zealand coastal policy statement, including:	Yes Assessed against: New Zealand Coastal Policy Statement (NZCPS)	
	i. Any relevant objectives, policies or rules	Yes NZCPS - Section 14.1.7	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 Assessed against: Greater Wellington Regional Policy Statement	
	i. Any relevant objectives, policies or rules	Yes Section 14.3.1	Yes
	ii. Any requirement, condition, or permission in any rules	N/A	N/A
	iii. Any other requirements	N/A	N/A
	(f) Any relevant provisions in a plan or proposed plan, including:	Yes Assessed against:	

Reference to clause in Schedule 6	Requirement	Is the information present?	Is the information provided in sufficient detail? Y/N
		<p>Greater Wellington Regional Freshwater Plan (RFP)</p> <p>Greater Wellington Regional Plan for Discharges to Land (RPDL)</p> <p>Greater Wellington Regional proposed Natural Resources Plan (Appeals Version) (pNRP)</p> <p>Porirua City Council Operative District Plan (PCDP)</p> <p>Porirua City Council Proposed District Plan (pPCDP)</p>	
	i. Any relevant objectives, policies or rules	<p>Yes</p> <p>Sections 5 and 14</p>	<p>Yes</p>
	ii. Any requirement, condition, or permission in any rules	<p>Yes</p> <p>Section 5</p>	<p>Yes</p>
	iii. Any other requirements	<p>N/A</p>	<p>N/A</p>
	<p>(g) Any relevant provision in any planning document recognised by a relevant iwi authority and lodged with a local authority, including:</p> <p>i. Any relevant objectives, policies or rules</p> <p>ii. Any requirement, condition, or permission in any rules</p> <p>iii. Any other requirements</p>	<p>N/A</p> <p>Section 14.5.4.1 confirms there is planning document recognised by a relevant iwi authority and lodged with a local authority.</p>	

Reference to clause in Schedule 6	Requirement	Is the information present?	Is the information provided in sufficient detail? Y/N
Clause 9(1)(i)	Information about any Treaty settlements that apply in the project area, including— (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 Sections 15.4.4 and 15.4.5 Volume 4 Part 4	Yes
Clause 9(1)(j)	The conditions that the applicant proposes for the resource consent	Yes Section 13 Appendix 7	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 Section 12	Yes
	(a) an assessment of the actual or potential effects on the environment	Aided by various appendices	
	(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 12.8	Yes
	(c) if the activity includes the discharge of any contaminant, a description of—	Yes	Yes

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?	Is the information provided in sufficient detail? Y/N
	(i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and (ii) any possible alternative methods of discharge, including discharge into any other receiving environment	Section 12.6	
	(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 Sections 12 and 13 Appendix 7	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 10 Volume 3 Part 1	Yes
	(f) if iwi or hapū elect not to respond when consulted on the proposal, any reasons that they have specified for that decision	N/A	N/A
	(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 Section 13 Appendix 7	Yes
	(h) an assessment of any effects of the activity on the exercise of a protected customary right	N/A	N/A

Reference to clause in Schedule 6	Requirement	Is the information present?	Is the information provided in sufficient detail? Y/N
Clause 9(4)(b)	<p>An assessment of the activity's effects that also covers the following matters (set out in clause 11 of Schedule 6 of the Act):</p> <p>(a) any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects</p>	<p>Yes</p> <p>Section 12.2</p> <p>Aided by various Appendices</p>	<p>Yes</p>
	<p>(b) any physical effect on the locality, including landscape and visual effects</p>	<p>Yes</p> <p>Section 12.3</p> <p>Volume 4 Technical Report 9</p>	<p>Yes</p>
	<p>(c) any effect on ecosystems, including effects on plants or animals and physical disturbance of habitats in the vicinity</p>	<p>Yes</p> <p>Section 12.4</p> <p>Aided by various appendices</p>	<p>Yes</p>
	<p>(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</p>	<p>Yes</p> <p>Sections 12.2 and 12.5</p> <p>Volume 4 Technical Report 11</p>	<p>Yes</p>
	<p>(e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants</p>	<p>Yes</p> <p>Sections 12.4.2 and 12.6</p> <p>Aided by various appendices</p>	<p>Yes</p>

Reference to clause in Schedule 6	Requirement	Is the information present?	Is the information provided in sufficient detail? Y/N
	(f) the unreasonable emission of noise	Yes Section 12.7	Yes
	(g) any risk to the neighbourhood, the wider community, or the environment through natural hazards or hazardous installations.	Yes Section 12.8 Volume 4 Technical Report 6	Yes
Clause 9(5)(a)	A cultural impact assessment, provided by or on behalf of the relevant iwi authority	Yes (A Cultural Impact Assessment and Cultural Values Assessment by the relevant iwi authority has been provided) Volume 4 Technical Report 4	
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	N/A	
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 5	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

Reference to clause in Schedule 6	Requirement	Is the information present?	Is the information provided in sufficient detail? Y/N
Clause 9(6)(c)	In the case of a referred project, all the additional information required by the relevant referral order ² .		
	An ecological assessment, which must cover— (i) the short- and long-term effects of the project on the Porirua Stream, the Kenepuru Stream, and the significant natural areas within Bothamley Park and Cannons Creek Park; and (ii) the downstream effects of the project on the Porirua Harbour:	Yes Volume 4 Technical Report 1 <i>Note: The ecological assessment is for Bothamley Park and Porirua Harbour which are applicable to this application. As Cannons Creek relates to activities in the referral order not subject to his application, the assessment does not cover that.</i>	Yes
	A contaminated sites assessment	Yes Volume 4 Technical Report 2	Yes
	A traffic impact assessment, which must include a traffic management plan	Yes Volume 4 Technical Report 3 Appendix G	Yes
	A cultural impact assessment by an author approved by the mana whenua of the Kenepuru Stream	Yes	Yes

² Clause 6 of Schedule 9 of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020

Reference to clause in Schedule 6	Requirement	Is the information present?	Is the information provided in sufficient detail? Y/N
		Volume 4 Technical Report 4	
	An assessment of whether the proposed infrastructure will meet current demand and future demand arising from urban growth	Yes Volume 4 Technical Report 5	Yes
	An assessment of the project's likely effects on the hydrology of the Kenepuru Stream and the Porirua Stream, including flooding, erosion, and scour	Yes Volume 4 Technical Report 6	Yes
	An assessment of the project's positive effects on the environment, supported by appropriate technical information, including any net benefits to water quality from the proposed wetland in Cannons Creek Park	Yes Appendix 6 <i>Note: The positive effects assessment does not include the water quality benefits from the proposed wetland in Cannons Creek as that part of the project as described in the referral order is not subject to this application.</i>	Yes
	An assessment of any adverse effects from dewatering	Yes Volume 4 Technical Report 7	
	A landscape and visual assessment of the proposed reservoir	N/A <i>The proposed reservoir will be subject to a separate application, as such, this requirement is not applicable to this application.</i>	

Reference to clause in Schedule 6	Requirement	Is the information present?	Is the information provided in sufficient detail? Y/N
	A construction management plan for the proposed works	Yes Volume 2 Part 3	Yes
	An erosion and sediment control plan, which must— (i) outline the measures that will be taken to avoid or mitigate adverse effects on significant natural areas and any natural wetlands, including the discharge of sediment to Kenepuru Stream, Porirua Stream, and Porirua Harbour; and (ii) be prepared in consultation with Ngāti Toa	Yes Volume 2 Part 3 (Appendix A)	Yes
	A master plan of Bothamley Park and Cannons Creek Park, which must— (i) show how the wastewater trunk main upgrade and the proposed wetland integrate with the wider improvements being considered for the parks; and (ii) have regard to cycleways, recreation areas and facilities, crime prevention through environmental design, safety upgrades, and public access	Yes Volume 4 Technical Report 8 <i>Note: Only the Masterplan for Bothamley Park applicable to this application. The Masterplan for Cannons Creek Park relates to the proposed stormwater wetland, which will be the subject of a separate application and is not applicable to this application</i>	Yes

ENDS