

# Memorandum on Compliance

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<b>File</b>	FTC 000039
<b>To:</b>	Sandra Balcombe, <b>Manager Land and Oceans Applications</b>
<b>From:</b>	Alex Erceg, <b>Senior Advisor</b>
<b>Date:</b>	15 October 2021
<b>Subject:</b>	Ōmāhu Residential Development: Assessment whether the application complies with clause 3(1) of Schedule 6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020

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## Purpose

1. The purpose of this memo is to assist you in making your decision on whether the consent application for the Ōmāhu Residential Development (**the project**), received by the Environmental Protection Authority (**EPA**) on 15 October 2021, lodged by Urban Resort Limited and Icon Co Pty (NZ) (**the applicants**) 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.
4. On 13 August 2021, Schedule 22 for the Ōmāhu Residential Development was inserted into the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020 (**the referral order**).
5. The applicants applied for consents relating to the project on 15 October 2021.
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.

## Project

7. The application seeks resource consents to construct a housing development, together with retail facilities, in Epsom, Auckland, including associated infrastructure.

## 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

12. 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

13. 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

14. An assessment table against Clauses 9-12, Schedule 6 of the Act is included in Appendix 1.
15. 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).
16. The information in the application has been assessed on the basis that the scale of the activity is low to medium and could potentially have minor effects on the environment after taking into account mitigation measures and conditions.
17. 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.

## Appendix 1: Clauses 9-12

**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
<b>Clause 9</b>			
Clause 9(1)(a)	A description of the proposed activity	Yes Section 6	Yes
Clause 9(1)(b)	A description and map of the site at which the activity is to occur	Yes Section 4 Aided by various appendices	Yes
Clause 9(1)(c)	Confirmation that the consent application complies with clause 3(1).	Yes	Yes
Clause 9(1)(d)	The full name and address of:	Yes	Yes Appendix 20
	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		
	Were reasonable inquiries made?		

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 6.10	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 Section 6.11	Yes
Clause 9(1)(g)	An assessment of the activity against— (i) Part 2 of the RMA	Yes Section 15	Yes

Section 19	<p>(ii) the purpose of this Act</p> <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) <b>[for referred projects only]</b> any other matter that the Minister considers relevant.</p>	<p>Yes</p> <p>Section 14</p>	<p>Yes</p>
Clause 9(1)(h)	An assessment of the activity against --	Yes	See below

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>Assessed against the:</p> <ul style="list-style-type: none"> <li>• Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCO)</li> <li>• Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (NESAQ)</li> <li>• Resource Management (National Environmental Standards Freshwater) Regulations 2020 (NESFW)</li> </ul>	

Reference to clause in Schedule 6	Requirement	Is the information present? (include section/page reference)	Is the information provided in sufficient detail? Y/N
	i. Any relevant objectives, policies or rules	Yes NESCS – Sections 7.3 and 12.1 NESAQ – Sections 7.4 and 12.1 NESFW – Sections 7.5 and 12.1	Yes
	ii. Any requirement, condition, or permission in any rules	Yes NESCS – Section 7.3	Yes
	iii. Any other requirements	N/A	N/A
	(b) Any relevant provisions in any other regulations made under the RMA, including:	N/A	N/A
	iv. Any relevant objectives, policies or rules	N/A	N/A
	v. Any requirement, condition, or permission in any rules	N/A	N/A
	vi. Any other requirements	N/A	N/A
	(c) Any relevant provisions in any national policy statement, including:	Yes Assessed against:	See below

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"> <li>• National Policy Statement for Urban Development 2020 (NPSUD)</li> <li>• National Policy Statement for Freshwater Management (NPSFM)</li> </ul>	
	vii. Any relevant objectives, policies or rules	Yes NPSUD – Section 12.2 NPSFM- Section 12.3	Yes
	/iii. Any requirement, condition, or permission in any rules	N/A	N/A
	ix. Any other requirements	N/A	N/A
	(d) Any relevant provisions in a New Zealand coastal policy statement, including:	Yes	See below
	x. Any relevant objectives, policies or rules	Yes Section 12.4	Yes
	xi. Any requirement, condition, or permission in any rules	N/A	N/A
	xii. 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
	(e) Any relevant provisions in any regional policy statement or proposed regional policy statement, including:	Yes  Assessed against the Auckland Regional Policy Statement	See below
	xiii. Any relevant objectives, policies or rules	Yes  Sections 12.6  Appendix 27	Yes
	xiv. Any requirement, condition, or permission in any rules	N/A	N/A
	xv. Any other requirements	N/A	N/A
	(f) Any relevant provisions in a plan or proposed plan, including:	Yes  Assessed against the Auckland Unitary Plan	See below
	xvi. Any relevant objectives, policies or rules	Yes  Section 7.2	Yes
	xvii. Any requirement, condition, or permission in any rules	Yes  Section 7.2	Yes
	xviii. 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
	(g) Any relevant provision in any planning document recognised by a relevant iwi authority and lodged with a local authority, including:	Yes  Assessed against Ngāti Whātua Ōrakei Iwi Management Plan ( Te Pou o Kahu Pokere)	See below
	xix. Any relevant objectives, policies or rules	Yes  Section 9.1	Yes
	xx. Any requirement, condition, or permission in any rules	N/A	N/A
	xxi. Any other requirements	N/A	N/A
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  Section 9.3	Yes
Clause 9(1)(j)	The conditions that the applicant proposes for the resource consent	Yes  Appendix 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
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): <sup>1</sup>	Yes Section 11 Aided by various appendices	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	N/A	N/A
	(c) if the activity includes the discharge of any contaminant, a description of—		Yes
	(i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and	Yes Section 11	
	(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 Various sections (namely Section 11) Aided by various appendices and proposed conditions of consent (Appendix 1)	Yes

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<sup>1</sup> 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
	(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 8 Appendices 20 and 21	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 Section 8.7 (Table 8) Appendix 21	
	(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 Proposed conditions of consent (Appendix 1)	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 11	Yes
	(a) any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects	Aided by various appendices (namely Appendix 11)	
	(b) any physical effect on the locality, including landscape and visual effects	Yes Sections 11.2, 11.3 and 11.4	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
		Appendix 11	
	(c) any effect on ecosystems, including effects on plants or animals and physical disturbance of habitats in the vicinity	Yes Section 11.15 Appendix 7	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 Sections 11.11 and 11.12	Yes
	(e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants	Yes Section 11	Yes
	(f) the unreasonable emission of noise	Yes Section 11.10.2 Appendix 15	
	(g) any risk to the neighbourhood, the wider community, or the environment through natural hazards or hazardous installations.	Yes Section 11 Appendix 12	Yes
Clause 9(5)	Is there a cultural impact assessment?	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
		Appendix 19	
	<p>If a cultural impact assessment is provided, was it prepared by or on behalf of the relevant iwi authority?;</p> <p><b>OR</b></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>Refer Table 8 for statements of reasons.</p>	
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)	<p>Yes</p> <p>Section 6.12</p> <p>Appendix 17</p>	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
Clause 9(6)(c)	In the case of a referred project, all the additional information required by the relevant referral order <sup>2</sup> .		
	An integrated transport assessment, including modelling and analysis, that covers the impact of the project on the surrounding road network, including—	<p>Yes</p> <p>Appendix 8</p>	Yes

<sup>2</sup> Clause 6 of Schedule 22 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
	(i) queuing effects; and  (ii) a road safety assessment of Great South Road and Omahu Road, Auckland;		
	A geotechnical assessment, including the results of groundwater monitoring (to help identify whether a water permit is required);	Yes  Appendix 4 and Appendix 18	Yes
	An acoustic assessment, which must include a draft construction noise and vibration management plan	Yes  Appendix 14 and Appendix 15	Yes
	An infrastructure report, including an assessment of the existing condition and capacity of the infrastructure for three waters services	Yes  Appendix 6	Yes
	A flood risk assessment and a stormwater capacity assessment	Yes  Appendix 12	Yes
	A preliminary site investigation or detailed 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), that shows how compliance with the NES will be achieved	Yes  Appendix 5	Yes
	A heritage report, prepared by a heritage expert, which must include an assessment of whether the 2 dwellinghouses on the site are pre-1900 heritage buildings (as defined in paragraph	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) of the definition of heritage building in section 7 of the Building Act 2004);	Appendix 10	
	Plans that identify assets to be vested in Auckland Council	N/A  Section 6.13 confirms there are no assets proposed to be vested in Auckland Council subject to this application.	N/A
	An assessment of whether consent is required under rules E7.4.1(A20), E30.4.1(A7), E36.4.1(A55), E38.4.1(A4), and E40.4.1(A24) of the Auckland Unitary Plan	Yes  Section 7.2	Yes

ENDS