

## **Notification Report Pursuant to Sections 95A-95F of the Resource Management Act 1991**

<b>Subject:</b>	Establish a 5 ha retirement and care complex within the Main Rural Zone
<b>Applicant:</b>	BUPA New Zealand
<b>Location:</b>	25 and part of 35 Ulyatt Road (being Lot 1 DP 423183, and part of Lot 2 DP 423183)
<b>RM:</b>	170155
<b>Lodgement Date:</b>	26 October 2017
<b>Notification Decision Date:</b>	23 November 2017 – Amended 8 December 2017
<b>Working Days:</b>	19

### **Site Description**

A description of the site is contained within the application (refer to page 3 of the AEE, and a full site/context description at pages 5-8 of the Landscape and Visual assessment by Shafer Design)

The subject site is located at 25 Ulyatt Road. The proposal also includes part of the land title for 35 Ulyatt Road. This is intended to be included within the site subject to a boundary adjustment subdivision that is not included in this application (this would be a Controlled Activity subdivision as each site would meet the 4ha minimum site size).

The existing use of the site is for the commercial production of turf (Instant Green: <http://www.instantgreen.co.nz/>). There are no existing buildings on 25 Ulyatt Road, other than a signage structure. On 35 Ulyatt there is an existing dwelling and a number of accessory building related to the Instant Green business, the existing buildings are clear of the proposed boundary shown on the plans provided.

The surrounding area is characterised by rural and lifestyle residential uses to the east and south. A substantial designated stormwater drain known as the cross-country drain (D143) runs along the western and northern boundaries of the site. The designation does not extend onto the site itself. Just beyond the drain to the west is State Highway 50. Just beyond the drain to the north is a thin reserve approx. 12m wide (Harold Holt Avenue Reserve) and beyond this the back of residential sections from Clarence Cox Crescent, part of the suburb of Pirimai, a well established residential area and zone.

### **Proposal**

In summary, land use consent is sought to establish a retirement village and care home complex within the Main Rural Zone comprising of:

- 99 (single storey), single and double room Retirement villas with integral garages,
- 19 (three level) retirement apartments,
- 19 Separate garages for the apartments in 3 blocks (one of 7 garages, two blocks of 6 garages)
- 49 (two level) care home rooms,
- Associated care facilities including kitchen, nursing stations, communal dining and lounge areas, cafe and visitor, service, reception and administration areas.
- Up to 80,000m<sup>3</sup> of earthworks to develop the site.

- A central green with integrated walkways
- Visitor and staff car parking
- Landscape plantings
- Two road access points to Ulyatt Road
- New footpath and kerb and channel along Ulyatt Road.

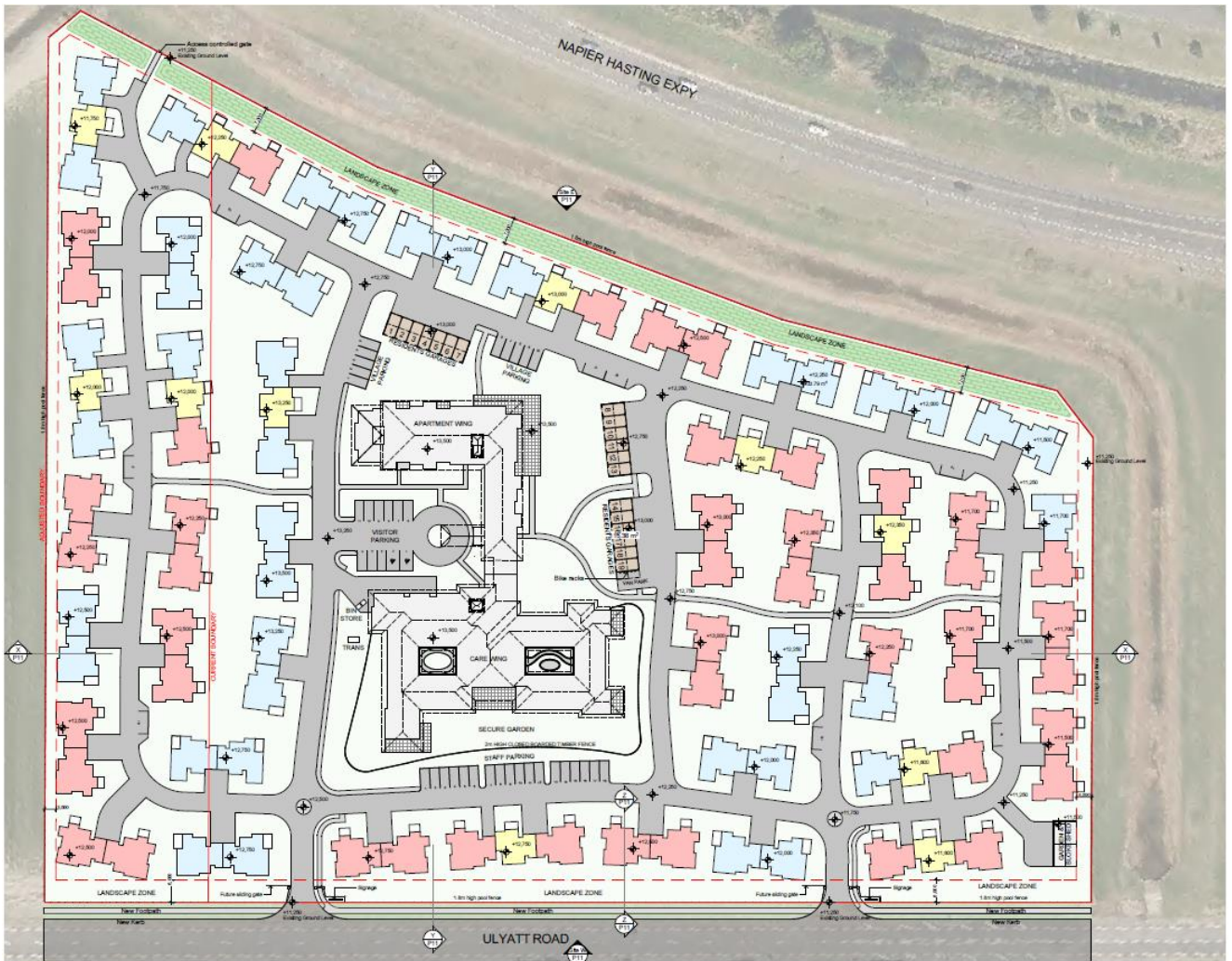


Figure 1. Site plan

### Plan Requirements

The site is zoned Main Rural Zone. No other zone/designation/scheduled site layers apply to the proposed site. The Expressway Noise Boundary is to be mapped by NCC to show the 80m threshold that applies to the site through standard 34.25 (as required by appeal NZTA ENV-2015-WLG-000045). Part of the site (approx. 40m) is within the 80m threshold.

The proposal fails the following landuse rules/performance standards in the City of Napier District Plan (except where stated):

Rule/Performance Standard	Requirement	Proposal
34.21 Density	One dwelling per site	Does not comply <ul style="list-style-type: none"> <li>• 99 single and double room Retirement villas with integral garages,</li> <li>• 19 retirement apartments, with 19 separate garages</li> <li>• 49 care home rooms</li> </ul>
34.22 Yards	7.5m Front yard setback 6m side and rear yard setback	Does not comply

		<p>The siting of the proposed buildings are located:</p> <ul style="list-style-type: none"> <li>• 6 metres from the front boundary with Ulyatt Road in lieu of the 7.5m required,</li> <li>• 3 metres from the southern boundary with Instant Green (proposed subject to a boundary adjustment), in lieu of the 6m required</li> <li>• 4 metres from the northern side boundary with the drain, in lieu of the 6m required</li> </ul> <p>Compliance with the 6m yard requirement on the western boundary with the drain on the State Highway side is met with the villas located no closer than 7 metres from the western boundary.</p>
34.23 Height	9m maximum	<p><u>Does not comply</u></p> <p>The proposed central complex building exceeds the maximum height by up to 1.415 metres for the two level care home building and by up to 4.905 metres for the 3 level retirement apartment building.</p>
34.24 Site coverage	Site coverage must not exceed 10% or 2,500m <sup>2</sup> of the net site area, whichever is the lesser. 2,500m <sup>2</sup> limit applies.	<p><u>Does not comply</u></p> <p>Proposed site coverage is approximately 26% of 5ha. This is approximately 13,000m<sup>2</sup> of building coverage, an exceedance of 10,500m<sup>2</sup>.</p>
34.25 Noise	Expressway Noise Boundary	<p>Complies</p> <p>In accordance with the Acoustic assessment provided by Hegley Acoustics, the proposed habitable buildings will be able to comply with 34.25 Subject to design which can be controlled by conditions.</p>
34.26 – 32 Light spill, vibration, odour and dust, fences, aerials lines and support structures, trees and heritage	Various	Appears to comply, no exemptions sought
34.33 Earthworks	100m <sup>3</sup> per ha of site (per year) = 500m <sup>3</sup> is permitted under the plan across the site per year	<p><u>Does not comply</u></p> <p>Up to 80,000m<sup>3</sup> of earthworks and re-contouring are estimated to make the site development ready (in the Civil and Services assessment, Bonisch Consultants, page 3)</p>
34.34 Signs	2.5m <sup>2</sup>	Signage not included in the application

### NESCS

As the site is currently used by a commercial turf company for growing turf, this activity and previous land uses may have resulted in persistent agrichemical residues in site soils. The applicant therefore included a PSI/DSI by HAIL environmental. This confirmed that in consideration of Clause 5(9) of the NES:CS, given the concentrations of contaminants in the samples are typically comparable to the background range for the region, the NES does not apply: and consent for disturbing soils or changing use of a potentially contaminated site is not required.

### Subdivision

The application does not include a subdivision consent. The applicant would either need to go through a subdivision consent to adjust the boundary of the site to achieve the 5ha site area as proposed or the site would require to be amalgamated or held together under a suitable legal mechanism with 35 Ulyatt Road.

### Overall status

Overall, this application must be assessed as a **Discretionary Activity** in accordance with City of Napier District Plan Land-use Rule 34.14 1 g). Retirement Complex's are recognised in Rule 34.14 alongside a number of other uses including commercial, industrial, camping grounds, places of assembly and so on, as a Discretionary Activity within the Main Rural Zone.

The District Plan prescribes that consent may be declined or granted with or without conditions. The Council will have regard to the objectives and policies of the Plan and the assessment criteria in Chapter 39. The Council's discretion is unrestricted.

The District Plan defines Retirement Complex's as:

*"means LAND and/or BUILDINGS used or intended to be used for the purposes of providing services and facilities including accommodation, recreation, welfare and/or health care for elderly and retired persons. It may include RESIDENTIAL ACTIVITIES, whether subject to care, supervision or not, but does not include a RESIDENTIAL CARE FACILITY, DAY CARE CENTRE, HEALTH CARE CENTRE, or TRAVELLERS' ACCOMMODATION."*

It is noted that rule 34.15 1. b) specifies that "Any land use that does not comply with Condition 34.21 – Density" is a Non-Complying activity, this being the one dwelling and supplementary unit density control within the zone. This doesn't specify if it applies to retirement complex dwellings or just residential uses. It would not be logical for this to apply to retirement complex's given the Discretionary status recognised and that no retirement complex would comply with a one dwelling and one supplementary unit density. Council interprets that the Discretionary Status rule applies to this proposal being rule 34.14 1 g).

### **Notification Assessment**

<i>Step 1 - and 95A (2) (a) and (3)(a) Application must be notified if applicant requests</i>	The applicant has not requested notification.  They have suggested that the application should be subject to limited notification, with certain nearby properties identified through the landscape and visual assessment. They have not consulted with any nearby neighbours. This assessment in part appears to be based on a 10% site coverage assumption permitted baseline which is not correct.  95A (2) (b) and Section 95C do not apply in this case.
<i>Step 2 – and 95A (4), (5), and (6) Public notification precluded in certain circumstances</i>	The application does not meet the preclusion criteria.
<i>Step 3 - and 95A(8)(a) Application must be notified if a rule or NES requires public notification of the application</i>	There are no District Plan rules or national environmental standards that require notification specific to this application.
<i>Step 3 – and 95A(8)(b) The consent authority decides, in accordance with Section 95D, that the activity will have or is likely to have adverse effects on the environment that are more than minor</i>	See assessment of 95D below  The activity is likely to have adverse effects that are more than minor.

<p><i>Step 4 - and 95A(9)</i>  <i>A consent authority may publicly notify an application if it decides that special circumstances exist in relation to the application.</i></p>	<p>Special circumstances <u>are likely</u> to exist in relation to the application that would warrant notification in this instance.</p> <p>This is because the proposal is for a 5ha retirement complex within the Main Rural Zone (near to the Main Residential Zone – but not strictly adjoining because of the SH50, drain, and Harold Holt Avenue Reserve), which would introduce a substantial retirement complex type intensity of development to a low density rural zone (with a permitted baseline density of 1 dwelling and supplementary unit per site, with a 4ha minimum site size).</p> <p>Whilst the site is identified in the latest review and update of HPUDS as a potential reserve area for development, this is indicative only as a possibility up until 2045, and no plan change process or investigation of the suitability of the site for any type and density of retirement development has been undertaken (except by the applicant). Whilst recognising that Retirement complex’s are recognised as a Discretionary activity, it is considered ‘out of the ordinary’ of what might be expected by the greater public.</p> <p>It is noted that the applicant has not consulted (and there is no legal requirement that they do so) the organisations involved in HPUDS (beyond pre-application discussion with NCC), including HBRC, NZTA or Iwi.</p> <p>The site is beyond the Urban limit and Greenfield Growth Areas shown in Appendix 35 of the Napier District Plan, which integrate the direction of the Napier District Plan and public expectation of urban expansion and growth that give effect to the Regional Policy Statement and HBRRMP. The 2017 HPUDS review includes the site as a reserve area, and this has not been translated into Appendix 35, this could possibly occur in the scheduled District Plan review 2020.</p> <p>The site is beyond existing physical barriers or boundaries that form part of and define the Urban Limit currently recognised in the Appendix 35 – being the State Highway, and the substantial open storm water drain (the Cross-country drain) on the southern side of Pirimai. This proposal would effectively extend urban development in the form of a retirement complex beyond this point.</p>
<p><i>95D – Assessment of whether the activity will have, or is likely to have, adverse effects on the environment that are more than minor.</i></p> <p><i>and</i></p> <p><i>95D(a) – any effects on persons who own or occupy the subject site or adjacent land must be disregarded.</i></p>	<p>In assessing the application and AEE, it is considered that the main effects that require greater scrutiny in terms of whether they will have or are likely to have adverse effects on the environment that are more than minor are effects on rural character and amenity, and effects on the soil resource, these are outlined in turn:</p> <ul style="list-style-type: none"> <li>• Rural Character and Amenity</li> </ul> <p>It is considered that the proposal will specifically change 5ha of undeveloped Main Rural Zone land currently used for turf production into a 5ha retirement complex type urban expansion of Napier. The introduction of 99 homes, 19 apartments and a 49 unit care home complex on site with associated facilities will change the site from having rural character and amenity to a retirement complex character and amenity. The development of the site including up to 80,000m<sup>3</sup> of temporary earthworks will also form part of this change. This will be visible to much of the local Napier community.</p> <p>It is considered that this goes beyond the one dwelling and one 80m<sup>2</sup> supplementary unit limit on the site otherwise permitted by the Napier District Plan, and the maximum of 2,500m<sup>2</sup> of building site coverage.</p> <p>It is considered that whether this is an adverse environmental effect is subjective. It is likely that to some (whether they live nearby or pass the site regularly) it will represent a more than minor adverse effect on the existing open rural character and amenity of the site and the zone. It would be extending urban use across from the current urban</p>

	<p>boundaries of Pirimai and Greenmeadows, and confined by the State Highway, Stormwater Drain, and the Harold Holt Avenue Reserve.</p> <p>To others such a retirement development and extension of the nearby urban area may not represent a more than minor effect.</p> <p>Taking some caution it is likely that it will represent a more than minor adverse effect on the existing rural character and amenity of the site and surrounding area, to a reasonable amount of people within the wider community.</p> <p>Whilst recognising the Discretionary resource consent status of the proposal, it also goes beyond what is signalled (as a potential reserve residential area) in HPUDS without first going through a public plan change process, or the other greenfield land identified in HPUDS being developed first.</p> <ul style="list-style-type: none"> <li>• Rural Soil resource</li> </ul> <p>The 5ha development would effectively remove 5ha of productive land from the finite rural soil resource in Napier. The application does not provide a robust assessment of the effects on the soil resource, or the quality of the soils on site for productive purposes (other than for turf production). The Land Use Capability of the site is LUC2 and LUC3.</p> <p>Potentially there could be an adverse effect on the soil resource. Further assessment of the soil resource of the site and context will be required to determine this matter, this can be commissioned subject to s92(2), and the applicant can be notified of this decision, or this information can be sought through s92(1).</p> <ul style="list-style-type: none"> <li>• 95D(a)</li> </ul> <p>Parts of the proposal effects are more localised, including the setback from boundaries, and whilst the RMA enables more localised adverse effects which do not impact in more than a minor way on the wider environment to be considered as part of the limited notification or non-notification process, in this case the proposal as a whole is likely to result in more than minor effects in terms of rural character and amenity.</p>
<p><i>95D(b) Adverse effects may be disregarded if a rule or NES permits an activity with that effect.</i></p>	<p>A permitted baseline case has been identified in the application, but it is not considered as reasonable.</p> <p>The permitted baseline case made does not apply the site coverage standard correctly which permits up to 10% <u>or</u> 2,500m<sup>2</sup> whichever is the <u>lesser</u>. Or that only one residential dwelling and one 80m<sup>2</sup> supplementary unit is provided for in terms of density.</p> <p>Beyond this there is nothing in the Main Rural Zone provisions that allow for development of this site on the scale proposed as a permitted activity, including approximately 13,000m<sup>2</sup> of building coverage, being made up of site facilities, 99 retirement villas, 19 apartments and garages, and a care home complex with 49 care home rooms, with multiple height, yard and earthworks infringements.</p>
<p><i>95D(c) In the case of a controlled or restricted discretionary activity, adverse effects that do not relate to matters of control or discretion must be disregarded.</i></p>	<p>The application is for a Discretionary Activity. As such, all actual and potential adverse effects of the activity are required to be considered.</p>
<p><i>95D(d) A consent authority must disregard trade competition and the effects of trade competition</i></p>	<p>Trade competition and the effects of trade competition have been disregarded.</p>

<p>95D(e) A consent authority must disregard any effect on a person who has given written approval to the relevant application</p>	<p>No written approvals were obtained.</p>
<p>95B (1) Limited notification of consent applications.  And  95E</p>	<p>Doesn't apply as public notification required under s95A as per 95B (1)</p>
<p>95F Affected protected customary rights groups</p>	<p>There appears to be that no holders of customary rights orders are affected and there will be no adverse effects on a recognised customary activity.</p>

**Recommendation**

That the application be publicly notified pursuant to s95A(8)(b), s95D (likely to have adverse effects on the environment that are more than minor) and s95A(9) (Special circumstances) as per the above assessment.

**Report prepared by Shane Lambert, Senior Resource Consents Planner.**

**Report reviewed by Paul O'Shaughnessy, NCC Team Leader Resource Consents.**

**Report approved and recommendation adopted by the NCC Team Leader, Resource Consents, by way of delegated authority, amended 8 December 2017, pursuant to section 34A of the Resource Management Act 1991.**