

Decision Report

Bupa New Zealand

Application
to
Napier City Council

August 2018

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Appendix One: Consent Conditions

1 Appointment

- [001] The Napier City Council (Council or NCC), acting under s34A of the Resource Management Act 1991 (RMA), appointed Robert van Voorthuysen¹ to conduct a hearing into a resource consent application lodged by Bupa New Zealand (Bupa or the applicant) to develop a retirement village and care home complex at 25 Ulyatt Road on the southwest fringe of Napier.

2 Description of the proposal

- [002] The proposal was well described in the application documents,² the Section 42A Report,³ and the applicant's evidence.⁴ I recommend that readers of this decision refer to those documents for a full description of the proposal.
- [003] By way of overview, the proposal comprises 99 single storey retirement villas (in groups of 2 or 3 with internal garaging), 19 retirement apartments and associated detached garages, 49 care beds, communal facilities⁵ and support facilities.⁶ The care beds will accommodate aged persons who are either unable to support themselves or require some level of assistance for their daily needs. The apartments will cater for aged persons with a higher level of independence, with support services such as meals and cleaning provided as necessary. The care beds and apartments beds will be located in larger central buildings two or three storeys high respectively. The larger central buildings will have part recessed and part extended balconies and a façade with differing materials and colours intended to demonstrate a residential scale. The site will have two accessways onto Ulyatt Road (with no gates), a perimeter fence, landscaped grounds, a maintenance shed and resident's workshop. Around 80,000m³ of earthworks will be required to develop the site.

- [004] The aerial photograph overleaf illustrates the layout of the proposal.

3 Management plans

- [005] From the application documents it is evident that the applicant proposes to prepare and rely on several management plans that would be certified by NCC at a later date. These include a:
- Construction Management Plan;
 - Sediment Control Plan; and
 - Landscape Plan.
- [006] In my view management plans are an appropriate mechanism to ensure that conditions of consent are complied with and they avoid the necessity for excessive detail in the consent conditions, particularly with regard to the detail of how certain construction works or mitigation actions will occur. The caveat is that each suite of management plan conditions should generally specify the purpose of the plan, the minimum contents of the plan, how it is to be prepared and who should be involved in that process.

¹ Commissioner van Voorthuysen is an experienced independent commissioner, having sat on over 275 hearings throughout New Zealand since 1998. He has qualifications in natural resources engineering and public policy and was a full member of the New Zealand Planning Institute (NZPI) from 1998 to 2016.

² Architect's Design Statement, *jerram + tocker + barron architects Ltd*, 16/10/2017; Retirement Village & Carehome Complex, Bupa New Zealand, 25 Ulyatt Road, Napier, Resource Consent Application, Wasley Knell Consultants Limited, October 2017, section 1 and 2, pages 2 and 3.

³ Paragraphs 7 and 15 to 18.

⁴ Including Marc Barron (paragraphs 15 to 24), Richard Stephenson (paragraph 12), Ian Constable (paragraphs 14 to 18)

⁵ Café, dining room, lounge area, and activity spaces located on the ground floor of the central buildings.

⁶ Reception, offices, nursing stations, kitchen, laundry (all also on the ground floor of the central buildings), plant, transformer, rubbish, staff and visitor parking, bike racks.



- [007] The conditions should also specify that each management plan is to be submitted to the Council and thereafter certified. A process should be set out for reviewing or amending the plans.
- [008] I asked the NCC reporting officer if the recommended conditions met those requirements. In response, both the reporting officer and the applicant's planner helpfully proposed a number of amendments to the conditions they each originally recommended.

4 Consent category

- [009] The proposal meets the definition of a 'Retirement Complex' in the City of Napier District Plan (CNDP). The proposed site is located in the Main Rural Zone of the CNDP and the activity is categorised as a discretionary activity under Rule 34.14(g).

5 Process issues

5.1 Notification, submissions and written approvals

- [010] The application was publicly notified on 13 December 2018 and individual notification letters were sent to a number of properties located along Ulyatt Road, Clarence Cox Crescent, Bill Hercock Street and Harold Holt Avenue. Fourteen submissions were received: seven in support, six in opposition and one unclear.⁷ Only three submitters originally wished to be heard.⁸

- [011] The issues raised by the submissions were summarised in the Section 42A Report.⁹ I adopt those summaries, but do not repeat them here for the sake of brevity. I record that I read all the submissions in full.

- [012] No written approvals were obtained. No pre-hearing meeting was held, but I understand that the applicant consulted with a number of parties prior to the hearing.¹⁰

5.2 Pre-circulation of evidence

- [013] The Section 42A Report was pre-circulated on 25 July 2018 in conformance with section 103B of the RMA and a procedural and timetabling Minute that I issued.¹¹ The applicant's evidence was pre-circulated on 9 August 2018.

5.3 Officer's recommendation

- [014] The NCC reporting officer, Shane Lambert, recommended granting the application, subject to the imposition of conditions of consent.

5.4 Hearing, appearances and site visit

- [015] A hearing was held in the Crown Hotel in Napier on Tuesday 21 August 2018. I closed that same afternoon, having satisfied myself that I did not require any further information from any party. I undertook a site visit of the subject site in my own time, viewing it from adjacent public roads.

⁷ Hawke's Bay Regional Council (HBRC) did not state whether they supported or opposed the application.

⁸ HB Fruitgrowers Association Inc, HBRC and NZTA. NZTA withdrew their wish to be heard following agreement with the applicant on conditions of consent relating to noise. See section 6.1.8 of this decision. HBRC also withdrew their wish to be heard. One submitter, Robert Arrell, did not originally want to be heard, subsequently asked to be heard, then on Sunday 19 August advised he could not attend the hearing after all, advising (by email) that his original concerns remained (water supply and nursing levels).

⁹ Paragraphs 38 to 48.

¹⁰ NZTA, HBRC, HB Fruitgrowers, and Robert Arrell as noted at paragraph 12 of the Section 42A Report.

¹¹ Napier City Council, Bupa New Zealand, Directions of the Commissioner, Minute 1.

- [016] At the hearing the applicant's counsel Ms Hamm spoke to her pre-circulated opening legal submissions. The only submitter who appeared at the hearing was HB Fruitgrowers Association¹². The applicant's Reply submissions were given verbally on the day.
- [017] Copies of the legal submissions, statements of evidence, my written questions and the answers provided to them are held by the Council. I do not summarise all of the matters covered here, but I refer to or quote from that material as appropriate in the remainder of this report. I took my own notes of any answers given to verbal questions that I posed to counsel, witnesses and the reporting officers. However, I record that I have had regard to all the matters raised by submitters, both in their original submissions and in the evidence provided to me at the hearing.

6 Section 104 and 104B matters

- [018] I now address the relevant aspects of the application in terms of section 104 and 104B of the RMA. As the application was received by NCC on 26 October 2017 the version of the RMA that applies incorporates the 2017 amendments.

6.1 Actual and potential effects on the environment

- [019] Having reviewed the documentation and the issues of concern raised by submitters I find that there are a number of matters that I need to assess. I now address these in turn.

6.1.1 Landscape, visual effects and rural amenity

- [020] If the application is approved, the development of the retirement complex will unavoidably alter the existing landscape and rural amenity of the site. The site will change from being a predominantly open¹³ grassed 'turf production' area (akin to a grazed paddock but without any stock) to an urban village. This effect needs to be weighed when considering whether to grant consent.
- [021] Consequently, rather than dwell on whether or not the existing landscape and rural amenity will be affected, I consider it more appropriate to ensure that any potentially adverse visual effects of the proposal are mitigated as far as practicable. In response to a query from me, Ms Hamm (counsel for the applicant) advised that was a reasonable approach.
- [022] The applicant undertook a 'landscape and visual assessment'¹⁴ and the applicant's landscape architect met with NCCs' Urban Design Lead¹⁵ on two occasions to discuss landscape and urban design matters. The outcome of those meetings informed the layout of the site, internal circulation routes, planting interfaces with the perimeter boundary (particularly the north and west boundaries which overlook the public footpath in the stormwater reserve adjoining the site), the placement of larger trees in the centre of the site (for mitigation purposes as well as amenity for residents), and the location of the taller buildings in the centre of the site to address the potential effects of over height buildings.¹⁶

¹² Represented by Diane Vesty.

¹³ There is a large advertising sign located on the western boundary and there are two plane trees located in the north east and north west corners of the site. There is a planting of palm trees along the northern boundary available for purchase and so they are not a permanent feature. The site is enclosed by a post and wire boundary fence. There are no existing structures.

¹⁴ Napier Care Home, Apartment & Retirement Village 25 Ulyatt Road, Landscape & Visual Assessment, Shafer Design Ltd, 20 October 2017 – RC Issue [landscape assessment].

¹⁵ Georgina King, a qualified and experienced landscape architect.

¹⁶ EIC, Paul Murphy, paragraph 11.

- [023] The applicant's landscape assessment noted that all building facades of the apartment and care wing will be treated to break up the scale of the buildings using a variety of materials, balconies and various roof forms to present a more residential appearance. Wide eaves, low roof pitches and the choice of cladding material will also be in keeping with residential architecture. While the stepped arrangement of the villas may introduce a view of more roof elements (differing in character to the existing surrounds and giving more apparent bulk) the angle of view from below the site level is likely to reduce this potential effect and only the exterior row of villas will be visible.¹⁷ I note that is evident from the two Shafer Design Limited street view montages supplied by the applicant.
- [024] The proposal will exceed the CNDP Main Rural Zone 9.0m permitted activity height limit by a maximum of 4.9m. However, the maximum area of exceedence is for the roof apex (4.2m over the 9.0m limit) and it represents only a small part of the view of the main central building. The location of this over height wing of the main building in the centre of the site allows for numerous layers of landscaping between it and the potential viewing audience. The maximum 4.9m infringement is associated with a lift shaft and represents a very small element.¹⁸
- [025] Landscaping will include the perimeter of the site and internal spaces within the site, including around the villa development. Centrally located large growing specimen trees will offset the scale of the main building. The extensive internal landscaping will also soften the building forms.¹⁹ The inclusion of single level villas around the site perimeter will integrate with the existing residential character to the north and west of the site.²⁰
- [026] The landscape assessment noted that the nearby viewing audience was limited, and potential views of the development were limited to transient views from the public road network (primarily from Ulyatt Road and SH50) and a small number of occupants of residential properties in the local area.²¹ A significant separation from existing residential neighbourhoods to the north and west is proposed to avoid any effects of dominance, loss of privacy or shading. Views beyond the site are largely unaffected with the proposed building height infringement forming only a small part of the overall development and resulting in only a small loss of view over the site.²²
- [027] The landscape assessment also noted that the visual impact of the development would diminish with distance and there are limited clear views of the site from the wider catchment. Any views from distant locations would only be of the upper level of the apartment building and the roof of the care wing. The flat contour and density of development will serve to limit those views. The angle of view and the setback of the apartment wing will reduce the potential effects of the over height roof.²³
- [028] The Section 42A Report referred to the applicant's visual assessment and the report author concluded that while there would certainly be a change in view, outlook and character, that was not considered to be a more than minor adverse effect in context.²⁴

¹⁷ Landscape assessment, section 3.2.

¹⁸ Ibid.

¹⁹ Ibid, section 3.2 and 5.1.

²⁰ Ibid, section 3.3.

²¹ Ibid, section 4.4.

²² Ibid, section 5.1.

²³ Ibid, section 3.2.

²⁴ Paragraph 124.

[029] Despite public notification of the application and the direct service on households in adjoining streets, only one submitter raised visual or landscape concerns, referring briefly to the proposal not retaining a rural outlook.²⁵

[030] Having regard to the expert evidence, I am satisfied that the potentially adverse visual effects of the proposal have been mitigated as far as is practicable.

6.1.2 Traffic and roading

[031] The applicant undertook a Traffic Impact Assessment (TIA).²⁶ The TIA noted that the 99 villas will be used by aged persons who are reasonably mobile and who are more likely to own a motor vehicle. Each villa will have a garage attached. There will also be room for parking on the concrete aprons in front of each garage. There will be 68 parking spaces spread around the site, including 19 spaces in garages for apartment residents. The total parking provision for the village and care home combined will be 167 spaces.²⁷ There will also be a service area attached to the care home.²⁸

[032] The site will have two 6m wide vehicle crossings,²⁹ two pedestrian footpaths off Ulyatt Road, and a gated pedestrian access to a cycle/footpath NCC constructed along the Napier-Hastings Expressway boundary. The southern crossing will be the main access to the site providing direct access to the care home, apartments and the southern part of the complex. The northern crossing will provide access to the northern part of the complex. The available sight distances from both vehicle crossings exceed 300m in both directions, due to the straight road alignment.³⁰ A network of internal roadways³¹ and footpaths will provide access to and between the care home and the various parts of the complex.³²

[033] Ulyatt Road is classified as a collector road in Appendix 22(a) in the CNDP. It is a straight, level, two laned rural road with no footpaths. It is estimated to carry less than 5,000 vehicles per day.³³ The applicant intends to kerb and channel Ulyatt Road along its western side adjacent to the site frontage and a footpath will be provided. Near the southern end of the site the change from rural to urban will be denoted with "Slow" or similar signs.

[034] The TIA advised that under the CNDP the proposal requires 126 car parks, which is less than the 167 that will be provided. Two disabled car parks will be provided in accordance with NZS 4121:2001 "Design for Access and Mobility – Buildings and Associated Facilities". No cycle parks³⁴ will be provided because cycles can be stored in the garages.

[035] The TIA estimated that the proposed retirement complex would generate traffic flows of approximately 500 vehicle trips per day and a peak hourly flow of about 50 vehicle trips per hour, which would be well within the capacity of Ulyatt Road. The estimated

²⁵ Melinda and Adam Turner. This submitter did not wish to be heard.

²⁶ Proposed Care Home, Serviced Apartments and Retirement Villas 25 Ulyatt Road, Napier Traffic Impact Assessment, Traffic Solutions Limited, 20 October 2017 [TIA].

²⁷ All parking spaces will be at least 5m long to a wall and 2.6m wide and maneuvering aisles will be at least 7.3m wide complying with the dimension requirements in Appendix 23 in the District Plan.

²⁸ CNDP Rule 61.15 requires one loading space and the service area meets that requirement.

²⁹ Complying with Figure M2.8 in the Napier City Code of Practice.

³⁰ Exceeding the 160m of sight distance specified in Diagram M2.11 in the Napier City Code of for access points on collector roads operating at 100 km/h.

³¹ The main driveways from the vehicle crossings and the driveway to the care home will be 6.0m wide providing for two-way vehicle flow, including larger vehicles such as service trucks. The other driveways will all be 5m wide, enabling two-directional vehicle flow at slower speeds.

³² TIA, pages 3 and 4.

³³ TIA, section 4.

³⁴ CNDP Rule 61.14B requires 1 cycle park per 5 carpark spaces so with 49 carparks 10 cycle parks are required.

usage of the two accessways does not occasion a need for auxiliary left or right turn lanes.

- [036] During construction there will be a number of heavy vehicle movements with the potential to affect neighbours and other road users in terms of traffic generation, noise and dust.³⁵ For each stage of the development the applicant proposes to utilise a Construction Management Plan (CMP) for traffic control, signage, dust control, cleanliness and contact details for complaints. I note that is an appropriate and typical approach for large scale developments such as this and I discussed management plans in general in section 3 of this decision.
- [037] Several submitters raised concerns regarding existing speeding cars on Harold Holt Avenue, Uyatt Road and Tannery Road.³⁶ In response the applicant's traffic engineer advised:³⁷

“The maximum increase in traffic flow at any one time on Ulyatt Road is estimated to be about 30 vehicle trips per hour (two-way) north of the site and about 20 tph south of the site³⁸. These flows are expected at times of peak demand of the care home and village, and lower flows will occur during the weekday commuter peaks. Even the highest flow equates to one additional vehicle every two minutes on average, which I consider will be almost unnoticeable and will not exacerbate current traffic safety concerns.”

- [038] The Section 42A Report also noted that NCC is considering changes to the speed limits in the area, but illegal driver behaviour was an issue that the police were aware of and it needed their intervention to resolve. I consider that existing speeding cars are outside the scope of my consideration.
- [039] The Section 42A Report advised that NCC transport engineers had reviewed the TIA and agreed with it, including the upgrade of the frontage of the site, stating “*Harold Holt Avenue and Ulyatt Road both have the capacity and infrastructure in place to easily accommodate current demands and the anticipated increase in demand likely to be generated by the proposed development.*” and “*BUPA have proposed to construct the footway along their frontage with Ulyatt Road through to the existing footway network at Harold Holt Avenue. This will then provide a continuous link between Harold Holt Avenue and Burness Road in Jervoistown via the pathway alongside The Expressway.*”³⁹
- [040] On the qualified evidence before me I find that the traffic and parking effects of the proposed retirement living complex will be no more than minor.

6.1.3 Geotechnical

- [041] The proposed retirement complex site is located in an area which is generally underlain by liquefiable sand and silt soils and shallow groundwater. Accordingly, the applicant commissioned a geotechnical assessment of the site.⁴⁰ The assessment noted that the site is underlain by Holocene estuary deposits, comprising unconsolidated mud, sand, and peat; it is approximately 3.5 km to the northwest of the active trace of the Awanui Fault; it is located in a zone of “very high” liquefaction susceptibility and the soils are generally soft and liquefiable to a depth of at least 20m below ground level.⁴⁰

³⁵ HB Fruitgrowers Association expressed concerns about dust at the hearing.

³⁶ Including Cheryl Newman, A Currie and Melinda and Adam Turner.

³⁷ EIC, Ian Constable, paragraph 48.

³⁸ Appendix H to the Section 42A Report, quoted at page 19.

³⁹ Preliminary Geotechnical Assessment, RDCL, 19 October 2017.

⁴⁰ Ibid, sections 2.1, 2.1.1, 2.1.2 and 4.8.

Should liquefaction occur, then primarily due to the nearby open drains, the site would be subject to both vertical and lateral displacements.⁴¹

- [042] Should the development proceed then it is obvious that building foundation designs will need to take into account the geological setting and risks. The assessment noted that would need to include ground improvement and enhanced foundations for buildings.⁴² A higher risk zone was delineated within 50m of the open drains.⁴³ The assessment identified ground improvement and foundation technical options for the villas and multi-storey buildings and concluded by recommending that due to ground conditions and effects of liquefaction, a suitably qualified geotechnical professional be engaged in the overall development of this project.⁴⁴ I agree.
- [043] The Section 42A Report advised that the site can be safely developed under expert geotechnical supervision, at the cost of the developer.⁴⁵
- [044] The risk of liquefaction was mentioned in the submission from HBRC. However, the only relief requested was that the applicant review the Natural Hazards Property Report on the HB hazard Portal. I understand that has occurred.
- [045] Having regard to the evidence, I find that potential adverse effects arising from geotechnical constraints at the site can be suitably mitigated through the imposition of specific conditions of consent.

6.1.4 Earthworks, erosion and sediment control

- [046] The applicant commissioned an assessment of the site earthworks required. The assessment noted that there would likely be between 70,000m³ and 80,000m³ of earthworks activity within the development site. Re-contouring of the site would be required for the efficient management of services, stormwater and building foundations.⁴⁶
- [047] In my experience it is more common for a Sediment Control Plan to be submitted with any application involving significant earthworks so that it can be assessed by the consent authority. This did not occur here and was not requested by NCC under s92 of the RMA. Having said that, the site is flat and the preparation of a suitable Sediment Control Plan should be a straight forward matter.
- [048] The Section 42A Report addressed construction noise associated with the earthworks.⁴⁷ The author stated that appropriate conditions of consent could be implemented to ensure earthworks and construction are limited to the hours of 7.00 am - 5.00 pm Monday – Friday, and 8.00 am – 5.00 pm Saturday and that all earthworks operations must comply with the provisions of New Zealand Standard NZS 6803: 1999 Acoustics – Construction Noise. I note that to be a very common approach to construction noise associated with large scale developments such as this.
- [049] I am satisfied that potential adverse effects associated with the proposed site earthworks can be appropriately avoided or mitigated through the imposition of routine

⁴¹ Ibid, section 4.4

⁴² Comprising reinforced gravel rafts, varying in depth depending on building type and location within the site. EIC, Boyd Wilson, paragraph 36.

⁴³ Ibid, section 5.2

⁴⁴ Ibid, sections 5.3 and 5.4.

⁴⁵ Paragraph 92.

⁴⁶ Bupa New Zealand ,25 Uylatt Road, Napier Civil Works and Servicing Assessment, Bonish Consultants, (undated), section 3.0.

⁴⁷ Paragraph 134.

conditions of consent applying to earthworks. I also note, as was pointed out by the S42A report author, that the earthworks also need to comply with RRMP permitted activity Rule 48⁴⁸ which will provide additional safeguards.⁴⁹ In that regard, the applicant has advised that all the conditions of Rule 48 will be complied with.⁵⁰ The reporting officer has also advised that as far as he can assess Rule 48 is not triggered by the proposal.

6.1.5 Contaminated soil

- [050] As noted previously, the development site is currently used to grow turf. Prior to that it was used for maize growing and pastoral grazing. Those land uses may have resulted in persistent agrichemical residues in the soils. Accordingly, the applicant commissioned a Preliminary and Detailed Site Investigation (DSI)⁵¹ of the potential soil contamination.
- [051] The assessment stated that based on a review of publicly available records,⁵² and the collection and analysis of a soil samples, it was concluded that common agrichemicals were present at concentrations typical of natural background levels for the region. Concentrations were also well below the criteria set out in the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil) Regulations 2011 (NESCS) for residential and high density residential use.⁵³ Accordingly, pursuant to clause 5(9) of the NESCS a consent was not required for either disturbing the site's soil or changing the site's current land use.
- [052] The Section 42A Report noted⁵⁴ that some details of the DSI were queried in a request for further information and that the queries were addressed by the applicant.⁵⁵ The NCC queries related to questions raised in the submission from HBRC regarding DDT and ethofumesate. The applicant advised that ethofumesate was the principal herbicide in use at the site at the time of the DSI. It was expected to have a relatively short half-life in soil of around 90 days, and low human toxicity. Ethofumesate residues would degrade and pose no further environmental risk within a year or two of their use ceasing. There is no known soil guideline value for ethofumesate.
- [053] Regarding DDT, the applicant advised that the site was in low-intensity pastoral use during the 1950s-1970s, the period when DDT was typically added to superphosphate fertiliser. However, since then the site's surface had been stripped and turned several times in the process of turf production. Accordingly, while DDT could still be present at trace levels, it would be highly unlikely to pose a significant risk to human health. Testing was undertaken for more modern organonitrogen and organophosphorus pesticides that could have been used during turf production and none of these pesticides were detected.
- [054] Based on the evidence referred to above, I conclude that consent is not required under the NESCS.

⁴⁸ Rule 48 is a permitted activity rule controlling the discharge of solid contaminants, including cleanfill, onto or into land in circumstances that will not result in any contaminant entering water.

⁴⁹ That rule precludes deposition within 20m of any surface water body which would include the Cross Country Drain to the north and east of the Bupa site.

⁵⁰ EIC, Boyd Wilson, paragraphs 32 to 34.

⁵¹ Preliminary and Detailed Site Investigation, 25 Ulyatt Road, Napier, Bupa Care New Zealand, HAIL Environmental, 17 October 2017.

⁵² The site is not listed on the HBRC HAIL register.

⁵³ The applicable standards to protect human health are the NESCS for high density residential use and residential use with 10% homegrown produce consumption scenarios

⁵⁴ Paragraph 28.

⁵⁵ In a letter from HAIL Environmental to Wasley Knell Consultants Limited dated 11 July 2018 forming Appendix D to the S42A report.

6.1.6 Loss of production land

- [055] The Bupa development will remove 5ha of Land Use Capability (LUC) Class 3 land from productive use. This was a matter of concern to several submitters⁵⁶. To address this issue the NCC commissioned a report on the site's soils from Agfirst.⁵⁷
- [056] The Agfirst report refers to a soil map of the Heretaunga Plains prepared by E Griffiths which delineates the soil on site as "27, Meeanee Clay loam". In terms of the LUC Class 3 classification, the land has moderate limitations, shallow soils, low fertility not easily corrected, low moisture holding capacity, wetness or continued water logging after drainage, and moderate salinity. The report described the nature of the land as follows:

"Among the Heretaunga Plains soils, the soil type on this site is one of the least versatile. Apart from its present use for turf harvest, it would be best suited to summer cropping. As the soil is very difficult to manage when wet and can suffer from pugging and compaction, trying to farm it through the wet winter period would present problems, even in regard to using it for winter grazing as it would not stand high stocking rates due to pugging and soil compaction."

To the best of my knowledge, there are no vineyards or tree fruit orchards planted on soil type 27, Meeanee clay loam. Incidentally, there are a number of high performing orchards in Meeanee. These are planted on the Farndon soil series, not the Meeanee soil series."

- [057] It concluded:

"In conclusion, it is my opinion that loss of this site to urban development will have minimal impact on the life supporting capacity of the wider plains soil resource."

- [058] Interestingly, the submission from HBRC addressed the loss of productive soils by referring to the Agfirst report and stating:

"It [the Agfirst report] concludes that the loss of the site to urban development will have minimal impact on the life supporting capacity of the wider plains soil resource. This [Agfirst] report would appear to align with the identification of the site within HPUDS as a reserve area broadly suitable for residential development in the future."

- [059] The loss of production land was initially of concern to the Hawke's Bay Fruitgrowers Association. However, at the hearing Ms Vesty advised verbally that "... *the land will never be used for fruit production as its topsoil has been striped and as a piece of production land it does not hold a lot of value*".

- [060] Consequently, while the loss of 5ha of production land is an adverse effect, it is not one that I find to be significant in the context of this particular site which has been shown to have soil limitations which would presumably preclude more intensive land uses such as horticulture.

- [061] I address the loss of production land further in section 6.7 of this decision.

⁵⁶ Including the HB Fruitgrowers Association and Susan Rogerson.

⁵⁷ "Effects of the Bupa retirement complex on the soil resources at 25 & 35 Ulyatt Road, Napier. Prepared for Napier City Council. John Wilton, 19 January 2018" attached as Appendix B to the Section 42A Report.

6.1.7 Noise

- [062] The applicant commissioned an assessment of noise effects⁵⁸ which noted that Rule 34.25.2(2) Noise of the CNDP applied to the site. That rule imposes acoustic insulation conditions for all new noise sensitive activities within the Expressway Noise Boundary. The assessment used the Brüel & Kjær Predictor programme v11.10 to calculate noise levels from the Napier – Hastings Expressway (State Highway 50).⁵⁹
- [063] The modelled noise level at the most exposed façade of the closer units was between 55dB and 60dB LAeq(24hr) and so where 55dB LAeq(24hr) was exceeded the units would need to be designed to satisfy the requirements of CNDP Rule 34.25.2(a)(i). However, the screening effects of the front row of units adjacent to the expressway boundary resulted in the external noise exposure for all other units being less than 55dB LAeq(24hr) and so no acoustic treatment would be necessary for them.⁶⁰
- [064] The assessment recommended minimum external sound insulation requirements for the building cladding and glazing. It also noted that where the external level exceeded 55dB LAeq(24hr) the windows and external doors of any habitable room would need to be kept closed and so it might be necessary to provide an alternative ventilation system.⁶¹
- [065] NZTA submitted on the proposal given its location within 80m of the Napier-Hastings Expressway. NZTA requested that the noise provisions outlined in the Assessment of Noise Effects be required as a condition of consent, inclusive of some amendments. The applicant offered amended conditions⁶² to NZTA which they have accepted⁶³ and as a result NZTA no longer wished to be heard at the hearing. I have reviewed those conditions and I am satisfied that they are generally appropriate and reflect the recommendations of the Hegley Acoustic Consultants report. I note that the offered conditions additionally include noise screening (such as a noise bund) being constructed so that noise levels measured at the location of any building housing noise sensitive activities do not exceed 55 dB LAeq (24hour) outdoors.
- [066] I am satisfied that potential adverse effects relating to noise within the proposed complex resulting from the adjacent expressway have been suitably addressed.
- [067] With regard to noise generated by the proposal, the Section 42A Report stated that noise would be residential in nature arising from pedestrian and vehicle movements by occupiers, visitors and service vehicles.⁶⁴ The author anticipated that noise from the proposed development would generally comply with the underlying CNDP standards. Given the commonly acknowledged quite nature of retirement complexes arising from the age of their occupants, I have no reason to conclude otherwise.
- [068] Construction related noise was considered in section 6.1.4 of this decision.

⁵⁸ Bupa Care Services, 25 Ulyatt Road, Napier, Assessment of Noise Effects, Hegley Acoustic Consultants, (undated).

⁵⁹ Ibid, section 3.

⁶⁰ Ibid.

⁶¹ Ibid, sections 4, 4.1 and 4.2.

⁶² Letter from Wasley Knell Consultants Ltd to NZTA dated 19 June 2018 and attached as Appendix J to the Section 42A Report titled "Bupa Ulyatt Road Proposed NZTA Acoustic condition (10)".

⁶³ Email from NZTA to Wasley Knell Consultants Ltd 21 June 2018 and attached as Appendix J to the Section 42A Report titled "NZTA email agreement matters resolved(1)".

⁶⁴ Paragraph 136.

6.1.8 Effects from adjoining productive land (reverse sensitivity)

- [069] Some submitters⁶⁵ were concerned about the ‘reverse sensitivity’ effects of having a retirement complex located adjacent to production land. Hawke’s bay Fruitgrowers Association did not mention that in their written submission, but they raised it as a concern at the hearing.
- [070] The land is currently owned by Leighton and Lisa Curry who are selling the land for the retirement complex to Bupa and retaining the balance of the site themselves. By their actions I presume they are not concerned about ‘reverse sensitivity’ issues impacting on their ongoing business (turf production), however that situation could change if their turf production land was sold.
- [071] There were no submissions from any adjoining or nearby production land owners.
- [072] The Section 42A author considered that a 6m separation (recognising the CNDP context for the Main Rural Zone) on the southern boundary of the site would provide a sustainable separation between the retirement complex and continued production land uses on the balance of the site.⁶⁶ The applicant has also offered a ‘no complaints covenant’ which (paraphrased by me) requires that the property owner (of the retirement complex) will not undertake any proceedings for damages, negligence, nuisance, trespass or interference arising from the use of the adjoining land for rural activities; and no complaints or legal proceedings relating to land based primary production activity on the surrounding land will be lodged.⁶⁷
- [073] I also note, as was pointed out by Ms Hamm, that the Agfirst report referred to in section 6.1.6 of this decision advised:⁶⁸

“For this particular site, reverse sensitivity issues will be low due to its location adjacent to the Napier City urban zone to the north and the expressway to the west. The east and south sides are adjacent to the rural zone at present but properties in these areas, due to the limitations of the soil type are not intensively used for purposes so unlikely to be severely impacted by reverse sensitivity issues.”

- [074] I am satisfied that the imposition of a 6m separation buffer on the southern boundary of the site and the offered ‘no complaints’ covenant are appropriate means of dealing with potential future ‘reverse sensitivity’ effects.

6.1.9 Stormwater

- [075] The applicant undertook an assessment of servicing requirements, including stormwater.⁶⁹ The assessment stated that a primary stormwater system would be designed to convey flows in a 10-year return event and a secondary overflow system would accommodate the 50-year event.⁷⁰ In the 10-year event the site’s stormwater runoff would increase by 195 L/s compared to pre-development runoff. In the 50-year event it would increase by 285 L/s.⁷¹
- [076] It is proposed that stormwater runoff, including secondary overland flows, will discharge through three outlet structures to the existing open storm water channel

⁶⁵ Susan Rogerson.

⁶⁶ Paragraph 111.

⁶⁷ Appendix D to the Section 42A report titled “Proposed conditions offered by Bupa (1)”

⁶⁸ Ibid, section 6.0 titled “reverse Sensitivity”, page 4.

⁶⁹ Bupa New Zealand ,25 Uylatt Road, Napier Civil Works and Servicing Assessment, Bonish Consultants, (undated)

⁷⁰ The secondary flow path discharge will be to the internal roading network, and then to the CCD.

⁷¹ Ibid, section 6.0.

(called the Cross Country (Purimu) Drain or CCD) running along the site's western and northern boundaries⁷². The assessment stated that, based on NCC advice, the development would not be required to incorporate stormwater attenuation,⁷³ but stormwater treatment would be required. Accordingly, the applicant proposed that stormwater 360 StormFilter cartridges or a similar product would be installed within StormFilter Vaults or manholes to treat the stormwater discharge at the three locations where it would discharge to the CCD.⁷⁴ The stormwater treatment infrastructure will remain in Bupa ownership and Bupa will be responsible for its maintenance.⁷⁵

- [077] The HBRC submission raised a number of concerns regarding stormwater. HBRC initially appeared to be seeking a hydraulically neutral option for the site (namely that post-development peak runoff should not exceed pre-development peak runoff). The HBRC rationale is not clear from their submission, given that the site stormwater will discharge into the CCD which is a NCC stormwater asset that is fully consented and NCC are willing to receive the site stormwater. HBRC appeared to be concerned about any possible "*change in storage on upstream locations*" and "*any permanent reduction of the ability of the receiving channel to convey flood flows*".⁷⁶
- [078] Following the lodgment of the HBRC submission negotiations occurred between the applicant, HBRC and NCC. That resulted in the applicant offering to undertake landscape or amenity planting on the land adjoining the CCD (which is owned by NCC) to a maximum value of \$30,000. The applicant also offered to construct small wetlands on the margins of the CCD where the site stormwater will be discharged⁷⁷ and to use inert roofing materials. At the hearing, Mr Wilson noted verbally that the small wetlands serve no stormwater treatment purpose, instead they cater to HBRC's desire for 'more open water in the CCD'.
- [079] On 14 August 2018 HBRC wrote⁷⁸ to NCC advising that they no longer wished to be heard in support of their submission, and if "*the five conditions offered by the Applicant*" were imposed they would have no further objection to the application being granted. On 15 August HBRC wrote again to NCC clarifying that the 'five conditions' referred to were conditions 25, 26, 31, 34 and 35 attached to the evidence of Greg Knell for the applicant.⁷⁹
- [080] With regard to those 'five conditions', it is not apparent to me that the amenity planting sought by HBRC and agreed to by the applicant relates to any actual or potential effects of the proposed stormwater discharge, nor that it can be required under the CNDP's financial contribution provisions or the NCC Development Contributions Policy. The planting appears instead to relate to HBRC's understandable desire to beautify the reserve area adjacent to the CCD.⁸⁰ Nevertheless, as the planting has been offered by the applicant and it will improve the amenity of the area, I see no reason not to include the applicant's offer to undertake it by way of an advice note on the consent document.
- [081] While I consider that consent conditions relating to various covenants (discussed in section 6.1.8 of this decision) should note that they were offered by the applicant under

⁷² NCC own the land occupied by the Cross Country Drain (also known as the Purimu Drain).

⁷³ Namely to limit site runoff to pre-development levels.

⁷⁴ Ibid.

⁷⁵ EIC, Boyd Wilson, paragraph 24.

⁷⁶ HBRC submission, page 2, fourth and fifth (unnumbered) paragraphs under the heading of 'Stormwater'.

⁷⁷ Section 42A Report, Figure 5, page 15 and Appendix D titled "Bonisch SW Concept Rev B(1)".

⁷⁸ Letter from Gavin Ide (HBRC Manager Policy and Planning) to Shane Lambert at NCC dated 14 August 2018.

⁷⁹ Letter from Gavin Ide (HBRC Manager Policy and Planning) to Shane Lambert at NCC dated 15 August 2018.

⁸⁰ Refer to Appendix D of the Section 42A Report titled 'HBRC concept page 8(1)".

the *Augier* principle, I do not think that need apply to conditions relating to inert roofing material.

[082] In light of the above agreement reached with HBRC, I enquired whether the applicant would still be required to install stormwater 360 StormFilter cartridges or a similar product within StormFilter Vaults or manholes and whether the small wetlands shown on Figure 5 of the Section 42A Report would still be required. The applicant advised that these treatment devices and wetlands would be provided within the boundary of the subject site with their ownership and maintenance being retained by Bupa.⁸¹

[083] In conclusion, NCC and HBRC have agreed that the stormwater from the site can be adequately treated and then discharged to the CCD. On that basis, and in the absence of any qualified evidence to the contrary, I conclude that the stormwater related effects of the applicant's proposal are no more than minor.

6.1.10 Natural hazards

[084] I dealt with the issue of liquefaction in section 6.1.3 of this decision. In this section I deal with flooding and tsunami risks.

[085] The Section 42A Report noted that a minimum floor level of RL 12.2m would normally be recommended for this Main Rural Zone site to avoid the risks of flooding. The applicant has advised that all finished floor levels will be at RL 12.2m or above.⁸² An exception to that will be where a lower minimum floor level is certified by NCC Infrastructure as being appropriate to provide protection from flooding in a 50-year return period event.

[086] The submission from HBRC raised the issue of tsunami risk, stating that a care-home complex and retirement village with elderly people would be difficult to evacuate in a timely manner. The Section 42A Report observed that the tsunami risk at the Bupa site is no greater than that existing in many other parts of urban and rural Napier and a tsunami warning is provided through the mechanisms of the Civil Defence Network.⁸³ In response to a s92 information request the applicant offered a condition of consent requiring that prior to the occupation of the village, an evacuation plan for residents would be provided to NCC and maintained as part of the operation of the village. I find that to be a suitable response to the acknowledged city-wide tsunami risk.

[087] On the evidence outlined above, I find that the natural hazard risks relating to flooding and tsunami can be suitably mitigated through the design of the care-home complex and retirement village (the ground floor level) and the imposition of consent conditions relating to site evacuations.

6.1.11 Other infrastructural services

[088] The applicant undertook an assessment of the capacity of NCC's existing infrastructure to cater for the proposed development and to investigate and provide guidance on what upgrades and civil works would be required to develop the site.⁸⁴ Earthworks, roading and stormwater were addressed earlier in this decision.

[089] The assessment advised that at the time of its writing NCC were considering allowing the development to connect to NCC sanitary sewer under Clarence Cox Crescent.⁸⁵

⁸¹ EIC Boyd Wilson, paragraph 24.

⁸² EIC Marc Barron, paragraph 30.

⁸³ Paragraphs 96 and 100.

⁸⁴ Bupa New Zealand ,25 Ulyatt Road, Napier Civil Works and Servicing Assessment, Bonish Consultants, (undated).

⁸⁵ Ibid, section 5.0.

The Section 42A Report advised that a wastewater pump station would be required due to the size of the site and lack of available fall, and Bupa would need to design the wastewater system so that the discharge only occurred during off peak hours. The pump station will remain in Bupa ownership and Bupa will be responsible for its maintenance.⁸⁶ Subject to those caveats, the site could be suitably serviced for wastewater by way of the NCC wastewater network system.⁸⁷

- [090] In terms of potable water and firefighting hydrants, the assessment advised that the development could connect to the existing 200mm NCC watermain on Bill Hercock Street.⁸⁸ The Section 42A Report advised that the proposed connection was suitable subject to conditions requiring conformity with the NCC engineering Code of Practice.⁸⁹
- [091] One submitter⁹⁰ expressed concern regarding the existing NCC water supply system and its capacity in the context of a November 2017 water restriction event. The Section 42A Report noted that to be a one-off event (caused by unexpectedly high demand coinciding with existing maintenance works on the network) that was not a true reflection of the capacity of NCC's water infrastructure.⁹¹
- [092] Having regard to the above matters I am satisfied that the Bupa proposal can be adequately serviced in terms of wastewater disposal and potable water supply.

6.1.12 Effects on Maori cultural values and interests

- [093] The Section 42A Report advised that the site does not contain any known features of cultural or heritage value or any archaeological sites. Interestingly, despite Te Taiwhenua o Te Whanganui-a-Orotū and Ngāti Pārau hapū being directly notified, no iwi or hapū parties submitted on the application. Consequently, I am not aware of any adverse effects on Maori cultural values and interests that I need to consider.

6.2 National environment standards and other regulations

- [094] The NESCS is potentially relevant and I dealt with that in section 6.1.5 of this report.
- [095] No other relevant national environmental standards or regulations were brought to my attention and I am not aware of any.

6.3 National policy statements

- [096] The NPS for Freshwater Management 2014 is not directly relevant.
- [097] The National Policy Statement on Urban Development Capacity 2016 (NPSUDC) is relevant. I understand that Napier is a 'medium-growth urban area' and so while all objectives of the NPSUDC are relevant, only Policies PA1 – PA4, PB1 – PB7, PC1 – PC4 and PD1 – PD 2 are applicable. I note that the relevant NPSUDC provisions are, in general, about ensuring that urban environments enable people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing; that there are sufficient opportunities for the development of housing and business land to meet demand; and that land use, development, development infrastructure and other infrastructure are integrated with each other.

⁸⁶ EIC Boyd Wilson, paragraph 19.

⁸⁷ Paragraphs 56 to 59.

⁸⁸ Ibid, section 7.0.

⁸⁹ Paragraphs 68 and 69.

⁹⁰ Robert Arrell.

⁹¹ Paragraphs 70 to 72.

[098] The Bupa proposal is not inconsistent with those requirements. I note that was also the conclusion reached by the Section 42A author⁹² and the applicant's planner Mr Knell.⁹³

6.4 New Zealand Coastal Policy Statement

[099] The New Zealand Coastal Policy Statement is not relevant.

6.5 Hawke's Bay Regional Policy Statement

[100] The Hawke's Bay Regional Policy Statement (RPS) is relevant and is contained within the Hawke's Bay Regional Resource Management plan (RRMP). The application documents⁹⁴ addressed the RPS as did the Section 42A Report.⁹⁵

[101] The most relevant part of the RPS⁹⁶ in this case is Chapter 3.1B titled "Managing the Built Environment". It refers to the Heretaunga Plains Urban Development Strategy (HPUDS2010) noting that its purpose is to assist, in a collaborative manner, local authorities to plan and manage growth on the Heretaunga Plains.⁹⁷ As I will discuss in section 6.7 of this decision, HPUDS2010 has been superseded by a new 2017 HPUDS document. However, the RPS has not yet been changed to accommodate the 2017 HPUDS document and in that regard the RPS is 'incomplete' or 'out of sync' with it HPUDS2017.

[102] Accordingly, HPUDS2017 document can only be considered as a relevant 'other matter' under s104(1)(c) of the RMA. Nevertheless, given its recent promulgation and formal adoption by both NCC and HBRC, I find that regard to HPUDS2017 is reasonably necessary to determine the Bupa application.

[103] Returning to the RPS, I note that Chapter 3.1B contains a plethora of provisions potentially relevant to the Bupa application. The themes to emerge are the need for quality built environments, managing reverse sensitivity effects, avoiding unnecessary encroachment of urban activities on versatile land of the Heretaunga Plains, avoiding or mitigating risks from natural hazards;⁹⁸ avoiding inappropriate urban activities in rural parts of the Heretaunga Plains;⁹⁹ and retaining versatile land for primary production purposes.¹⁰⁰

[104] I note that, in general terms, many of the relevant themes in the RPS have been addressed in section 6.1 of this decision and all of those themes are mirrored in provisions of the CNDP which I assess in section 6.7 of this decision. Consequently, I do not dwell on the RPS provisions any further here, but I record that RPS POL UD12 sets out some seventeen effects based matters to have regard to when making decisions on the urban development of land. Not all of those matters are relevant here, but I have had regard to the ones that are in section 6.1 of this decision.¹⁰¹

⁹² Section 42A Report, paragraph 191.

⁹³ Appendix D to the Section 42A Report titled "Applicants s92 response WKCL 26.6.18."

⁹⁴ Section 5.2, pages 24 and 25.

⁹⁵ Paragraphs 210 to 222.

⁹⁶ Other chapters largely deal with matters more relevant to HBRC section 30 RMA functions.

⁹⁷ The Section 42A report describes HPUDS (paragraph 202) as "HPUDS aims to manage urban growth on the Heretaunga Plains by taking a longer term view of land use and infrastructure to 2045. A key principle is to ensure that settlement avoids versatile soils, sensitive natural environments and significant landscapes. This requires a transition from largely greenfields development to intensification over time. HPUDS therefore seeks to promote a range of densities in new residential areas and more intensive redevelopment of existing areas"

⁹⁸ OBJ UD1.

⁹⁹ OBJ UD4.

¹⁰⁰ OBJ UD1.

¹⁰¹ Including urban design, transportation connectivity, stormwater management, visual amenity, reverse sensitivity, use of infrastructure, and the appropriate relationships in terms of scale and style with the surrounding neighbourhood.

6.6 Regional plan

- [105] The relevant plan is the RRMP. However, the provisions of the RRMP largely deal with matters directly relevant to HBRC's s30 RMA functions. The RRMP's land management provisions are targeted at maintaining soil health, avoiding soil erosion, and avoiding adverse effects on water quality. They are not directly relevant here other than in terms of ensuring any earthworks associated with the Bupa activity are undertaken in accordance with recognised erosion and sediment control guidelines, as discussed in section 6.1.4 of this decision.

6.7 City of Napier District Plan

- [106] As required by s104(1)(b)(vi) I must have regard to the relevant provisions of the CNDP.
- [107] As noted earlier, the proposal is located within the Main Rural Zone of the CNDP. Chapter 33 of the CNDP contains the objectives and policies relating to rural environments. Relevantly¹⁰² in this case, and unsurprisingly, many of those provisions seek to protect rural land from inappropriate subdivision, use and development;¹⁰³ ensure that rural land is maintained for productive land uses;¹⁰⁴ maintain rural character;¹⁰⁵ manage reverse sensitivity effects;¹⁰⁶ restrict activities that deplete the versatility and productivity of the soil resource;¹⁰⁷ maintain and enhance the character and amenity values of the rural environment including a sense of openness and privacy;¹⁰⁸ manage effects on the capacity of existing infrastructure;¹⁰⁹ and avoid, remedy or mitigate adverse effects (including cumulative effects).¹¹⁰
- [108] The CNDP also directs that within the Main Rural Zone, residential subdivision and development is to be avoided outside the residential growth areas identified in CNDP Appendix 35.¹¹¹ The Bupa site is not within one of those residential growth areas.
- [109] While the Bupa proposal is clearly inconsistent with some of those CNDP provisions; it does appropriately manage reverse sensitivity effects and effects on the capacity of existing infrastructure and, as I discussed in section 6.1 of this decision, it mitigates adverse effects to the extent practicable.
- [110] The CNDP also contains Chapter 39 which establishes assessment criteria for Rural Environments. Importantly, section 39.3 specifically addresses Retirement Complexes and so by implication I conclude that such activities are clearly contemplated as being appropriate in the Main Rural Zone.
- [111] Section 39.3 contains 25 criteria under headings of "intensity of land use, design and external appearance, site layout, vehicle parking and access, noise mitigation measures, odour and dust mitigation, infrastructure, air traffic safety, and cumulative effect[s]" which decision-makers are to "consider" in addition to having regard to the relevant objectives and policies of the CNDP.
- [112] I considered all the relevant imperatives contained in the Section 39.3 assessment criteria in one form or another in section 6.1 of this decision. The criteria not previously

¹⁰² The site is not an ONFL and is not located on a skyline, ridge, hill or prominent place and so some provisions are not relevant.

¹⁰³ Objective 33.2.

¹⁰⁴ Policy 33.2.1.

¹⁰⁵ Policy 33.2.2.

¹⁰⁶ Policies 33.2.6 and 33.4.6.

¹⁰⁷ Policy 33.2.11.

¹⁰⁸ Objective 33.3 and Policy 33.3.1.

¹⁰⁹ Policy 33.4.1.

¹¹⁰ Policies 33.4.1, 33.4.2, 33.5.4, 33.6.1, 33.6.2 and 33.6.3.

¹¹¹ Policy 33.4.10.

considered are air traffic safety (which is not relevant here) and cumulative effects. Regarding that latter matter, as the Bupa proposal will occupy a greenfields site I do not consider cumulative effects to be relevant. In that regard, the Section 42A Report advised that the proposal “*is unlikely to have an adverse cumulative impact, and appears to be suited to this area. It will be located next to the existing residential zone on a road and pathways that can accommodate the traffic likely to be generated by the activity. The effects will be relatively in keeping with the surrounding residential use.*” I concur with the author’s opinion on that matter.

- [113] As discussed in section 6.5 of this decision, under s104(1)(c) I must also have regard to any other matter I consider relevant and reasonably necessary to determine the application. In this case I consider HPUDS2017 to be such a matter. The South Pirimai area where the Bupa application is located is classified¹¹² as a ‘Reserve Area’. Relevantly, HPUDS2017 states that ‘Reserve Areas’ have been included in response to current and emerging issues with some of the identified greenfield growth areas, and will act as replacements for those, and may be advanced if there is a rapid and significant change in growth demand, or retirement village needs cannot reasonably be met within the preferred greenfields areas.¹¹³
- [114] HPUDS2017 refers explicitly to retirement villages or complexes. It notes an increasing number of old people and demand for retirement sector housing. It notes that projecting forward, about a third of all future new-build housing in the Heretaunga Plains sub-region between now and 2045 will be retirement units. About 1,770 (i.e. half) of the 3,340 future forecast retirement units will be in ‘middle-to-upper end’ villages (the classic ‘retirement village’).¹¹⁴ Given the average 6.25ha area of existing retirement villages, future or new retirement village sites are only likely to be accommodated on greenfield land.¹¹⁵
- [115] It is the applicant’s case that their proposed retirement complex cannot be accommodated in other HPUDS greenfields areas and the subject site is not within a listed area deemed inappropriate for greenfield growth. They state that the subject site was selected because it is flat and is in close proximity to residential areas and local shops.¹¹⁶ I also note that Bupa were directed to this general area by the CEO of NCC in 2016.¹¹⁷
- [116] It is clear to me that, as with the RPS, the CNDP is ‘out of sync’ with HPUDS 2017, particularly in terms of the South Pirimai ‘reserve area’, the demonstrated demand for retirement complexes,¹¹⁸ and the acknowledgement that any new retirement complexes can only realistically occur on greenfields sites. I find that this diminishes the weight that I should afford to the CNDP Main Rural Zone provisions referred to at the start of this section that the application is inconsistent with.
- [117] The overt trade-off to be considered in this case is the adverse effect arising from the loss of 5ha of rural land currently used for growing turf versus the provision of a new

¹¹² Heretaunga Plains Urban Development Strategy; Hastings District Council, Hawke’s Bay Regional Council and Napier City Council; 2017 [HUPUDS], page 51.

¹¹³ Ibid, Footnote 3 page 2 and main text pages 5 and 37.

¹¹⁴ Ibid, section 2.1.4, clause (h), page 17 and Section 4.3.3, page 36.

¹¹⁵ Ibid, page 4.

¹¹⁶ EIC Richard Stephenson, paragraph 13. Insufficient land at Parklands and high land price and development contributions at Te Awa.

¹¹⁷ As advised in written answers to my questions by Boyd Wilson.

¹¹⁸ Ibid, paragraphs 21 and 22. Within the Hawke’s Bay District Health Board area, the proportion of the population aged 75 and over will increase from a 2016 percentage of 7.7% of the total population to 13.6% by 2031, or from 12,430 to 22,810 persons over this period

retirement complex to cater for Napier's increasingly aged population. I acknowledge that to be a subjective matter but find the following factors to be relevant:

- Through a site selection process¹¹⁹ Bupa have considered alternative development locations at Parklands and at Te Awa, both of which are identified as growth areas for Napier in HPUDS. Neither of those alternative sites were suitable;¹²⁰
- Within the Main Rural Zone 'retirement complexes' are categorised as discretionary activities whereas other 'non-rural' activities are non-complying;¹²¹
- While the Bupa proposal is inconsistent with some of the objectives and policies for the Main rural Zone, it also appropriately gives effects to some of them;
- The Bupa proposal is appropriate when considered against the CNDP section 39.3 assessment criteria that are specifically directed to retirement complexes located in 'rural environments' or in this case the Main Rural Zone;
- HPUDS2017 indicates that the South Pirimai 'reserve area' within which the Bupa proposal is located is suitable for a retirement complex;
- Given the likely future demand for retirement complex style accommodation, the Bupa proposal ought not to be considered an 'inappropriate development';
- The land in question is not currently used to grow produce for human consumption, but is used to produce turf for landscaping purposes, a practice which has depleted the antecedent soil resource;
- The LUC Class 3 soil comprising the land is not considered by expert opinion to be versatile and it is subject to limitations relating to poor drainage, pugging and compaction; meaning that it could at best be used for summer cropping if retained in a primary productive use other than turf production;
- The site is in part directly adjacent to and contiguous with existing residential areas;
- The balance of the sub-divided site will remain available for primary productive use;
- The proposal satisfies the criteria set out in Section 3.2.1 of HPUDS2017 relating to the introduction of additional greenfield growth areas, including by way of resource consent;¹²²
- The potential adverse effects of the proposal on aspects other than the loss of production land (and the corresponding change in the visual appearance of the site) are either minor or are able to be avoided, remedied or mitigated by the imposition of routine conditions of consent.

- [118] In my view the above factors weigh towards a grant of consent.
- [119] On balance, having had regard to the provisions of the CNDP, HPUDS2017 and the factors outlined in [117] above, I find that it would better meet the purpose of the Act to grant the application than to decline it.

6.8 Iwi management plans

- [120] No relevant iwi management plans were brought to my attention.

¹¹⁹ EIC Boyd Wilson, paragraphs 12 to 14. Site selection criteria included 5 ha of flat land, proximity to a residential area, and an ability to connect to NCC reticulated services.

¹²⁰ Ibid, paragraph 14.

¹²¹ Including supplementary units, residential care facilities, day care centres, education facilities, travellers' accommodation and seasonal workers accommodation.

¹²² I concur with the assessment of the proposal against the criteria undertaken by the applicant's counsel as set out in the letter from Holland Beckett Law to Bupa Care Services dated 23 March 2018 and attached as Appendix D to the Section 42A Report and titled 'S92 response Holland Beckett assessment RPS and HPUDS 23.3.18 (1)'.

6.9 Other matters

- [121] The section 42A Report discusses “precedent and district plan integrity”¹²³ as did a submission.¹²⁴ I do not consider that to be a matter to which I should assign much weight because; firstly the application is for a discretionary activity and any future discretionary activity applications relating to retirement complexes in the Main Rural Zone will need to be assessed on their individual merits according to the site specific context applying to each application (including HPUDS2017, and versatility of a site’s soils, and the ability for a site to be serviced by NCC infrastructure); and secondly, there is no evidence before me of there being a ‘gold rush’ of pending retirement complex applications in the pipeline for Main Rural Zone land and so it seems unlikely that Council will be faced with many, if any, proposals of a similar nature and scale.
- [122] I note that the Section 42A author also considered that the application would not set an adverse precedent, nor would it affect the integrity of the CNDP.¹²⁵
- [123] No other relevant matters were brought to my attention and I am not aware of any.

6.10 Permitted baseline

- [124] When forming an opinion for the purposes of subsection 104(1)(a) of the RMA I may disregard an adverse effect of the activity on the environment if a national environmental standard or a plan permits an activity with that effect.¹²⁶ I have not disregarded any effects associated with the applications.
- [125] While the CNDP would enable some primary production related buildings to be erected on the site, I consider that the non-primary production nature of the retirement complex proposal and the relatively extensive nature of the new buildings proposed negate the practical utility of any comparison with what might otherwise be allowed to occur on the site in association with a permitted primary production activity (such as horticulture or agriculture).

7 Part 2 matters

7.1 Positive effects

- [126] Granting the application will yield positive effects, insofar as the Bupa development will provide additional safe, secure, purpose-built accommodation options for Napier’s aging population. As noted in the applicant’s opening legal submissions, there is a clear need for additional retirement and aged care capacity to meet the expected growth in Hawke’s Bay’s, and New Zealand’s, ageing population. Submitters noted the waiting lists for retirement homes and the need for new retirement facilities.¹²⁷ Additionally, as also noted by submitters, the occupation of the retirement complex by existing aged Napier residents will more than likely release some existing housing onto the local Napier market, thus assisting with housing shortages.¹²⁸
- [127] The development will also provide an upgraded road frontage and connections with the existing pedestrian footpath network and /way path network.¹²⁹

¹²³ Paragraphs 223 to 225.

¹²⁴ NZ Fruitgrowers Association Inc.

¹²⁵ Paragraph 225.

¹²⁶ Section 104(2) of the RMA.

¹²⁷ Legal Submissions on behalf of Bupa Care Services Ltd, 21 August 2018, paragraph 3.

¹²⁸ Ibid, paragraph 25.

¹²⁹ Section 42A Report, paragraph 187.

7.2 Part 2

- [128] Following the recent Court of Appeal decision¹³⁰ in *Davidson*, I have considered Part 2 matters where it is appropriate and necessary to do. In particular, I note that the RPS and CNPD have yet to be changed under Schedule 1 of the RMA to incorporate the provisions of HUPDS2017 and so they could be considered to have ‘incomplete coverage’ or to not currently be ‘properly prepared’.¹³¹
- [129] In that regard, I record that Part 2 matters were addressed in the application documents,¹³² the Section 42A Report,¹³³ and the applicant’s opening legal submissions.¹³⁴ I generally agree with those assessments and so I adopt them and find that in overall terms the application is consistent with Part 2 of the Act.
- [130] In particular, I find that the Bupa proposal will assist with enabling the social wellbeing of Napier’s aged population while mitigating adverse effects on the environment that might otherwise arise from the construction and use of a retirement complex. No section 6 matters are relevant here, but the Bupa proposal will result in a level of amenity and quality of environment that is appropriate for a retirement complex located in close proximity to an established residential area (ss7(c) and (f)). Section 8 is not relevant here.

8 Overall Consideration

- [131] In the preceding sections of this decision I have discussed the potential effects of the proposal and the requirements of the various statutory instruments. In overall terms, I find that the purpose of the RMA would be better served by granting the applications than declining them, notwithstanding the alteration that will occur to the rural landscape and visual amenity of the existing site, and the loss of rural production land that will arise.

9 Consent conditions

- [132] The reporting officer included draft conditions for my consideration. I asked a number of questions relating to those conditions prior to the hearing. Conditions were recommended to me in the evidence of the applicant’s planning witnesses Mr Knell. Prior to the hearing the reporting officer provided a revised suite of conditions that responded to my written questions and which had reportedly been agreed with the applicant. I have adopted those recommended conditions, except where outlined below:

- making a number of grammatical corrections;
- clarifying in condition 4(f) that any alternative floor levels certified by NCC are to provide protection from flooding in a 50 year return period event;
- recasting (and rewording in some cases) some or all of recommended conditions 4(g), 4(n), 8, 25 and 26 as advisory notes because they either did not qualify as enforceable conditions of consent or were not related to the effects of the activity;
- expanding condition 10 to refer to the foundation design of all buildings;
- avoiding unnecessary duplication of wording between conditions 13 and 23;
- the omission of general advice notes N and O, referring instead to maintenance of the CCD landscape planting in the body of the conditions.

¹³⁰ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

¹³¹ Ibid at [15] and [82].

¹³² Section 3.0, pages 4 and 5.

¹³³ Paragraphs 226 to 233.

¹³⁴ Paragraph 35.

9.1 Consent duration and lapsing

- [133] Pursuant to s123(b) of the RMA the land use consent sought will be of unlimited duration. Under s125(1)(a) of the RMA the consent will lapse after 5 years.

10 Determination

- [134] Pursuant to the powers delegated to me by the Napier City Council under section 34A of the Resource Management Act 1991, I record that having read the applicants' application documents, reports, further and supplementary information, evidence and legal submissions; the submissions and submitter evidence; the officer's report; and having considered the various requirements of the RMA, I find that:

- a) Based on the qualified expert evidence before me, the actual and potential adverse effects of the application are either demonstrably minor or can be suitably avoided, remedied or mitigated by the imposition of consent conditions;
- b) The application if granted will have positive effects, particularly in terms of providing for the accommodation and care needs of aged people within Napier City;
- c) While the application is not consistent with the objectives and policies of the CNDP Main Rural Zone (which I am required to have regard to under s104(1)(b)(vi) of the RMA), it is located in an area foreshadowed by HPUDS2017 for future residential development (and retirement complexes in particular) and so I conclude that the purpose of the RMA would be best achieved by granting the application.

- [135] I therefore grant the application lodged by Bupa New Zealand to develop a retirement village and care home complex at 25 Ulyatt Road on the southwest fringe of Napier.

- [136] The conditions of consent are set out in Appendix One.

- [137] As I have amended the wording of several the conditions that were finally recommended to me, should either the applicant or NCC identify any minor mistakes or defects in the attached conditions, then I am prepared to issue an amended consent under s133A of the RMA correcting any such matters. Consequently, any minor mistakes or defects in the conditions should be brought to my attention prior to the 20 working days specified in section 133A.

Signed by the commissioner:



Rob van Voorthuysen

Dated: 27 August 2018

Appendix One – Consent conditions