



Hearing Date:	Tuesday 21 and Wednesday 22 August 2018
To:	Hearings Commissioner Rob van Voorthuysen, appointed by Napier City Council
S42A Officer:	Shane Lambert, Senior Resource Consents Planner, Napier City Council
Applicant:	Bupa New Zealand
Regarding:	Commissioners questions issued 30 July 2018
Date:	15 August 2018

COMMISSIONERS QUESTIONS

1. I was issued a set of questions on the 30 July 2018. This included instruction to liaise with the applicant on the draft conditions. The questions were forwarded to the applicant on 30 July and have been discussed a number of times with them. Draft conditions were first provided to the applicant on 6 August 2018. This final draft has been agreed with Mr Knell on 15 August 2018. I am aware that Mr Knell has discussed the conditions with HBRC also.
2. I therefore provide the following answers to the questions (with the questions set out in italics) as set out by the Commissioner in turn:

Landscaping

Did NCC obtain or commission a peer review of the applicant's landscape and visual assessment?

3. No NCC did not.
4. The applicant in their evidence has provided mention that there was pre-application discussions and that as part of this there was some feedback provided by NCC Urban Design Lead, Georgina King.

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5. Ms King is a qualified and experienced landscape architect. She raised no issues with the application before it was lodged, except for the internal garage configuration (which was first shown as a long continuous garage block), which the applicant subsequently sought to break up and provide landscaping around.
6. I have discussed the Bupa application with and previously sent a copy of the lodged consent to Ms King. She did not provide written feedback or raise any issues or concerns with the approach taken with the landscape and visual assessment. I have confirmed with her verbally that she has no concerns with the proposal given the landscape design approach taken.
7. I also considered whether a peer review should be required specifically following the close of submissions on 1 February 2018, and the content of the submissions received in terms of landscape and visual effects. I considered it was not necessary in the circumstances – see paragraphs 119-124 of the s42A report.

Geotechnical

Are any specific consent conditions recommended that address the acknowledged liquefaction risks at the site? If not, should there be?

8. The RDCL geotechnical assessment provided with the application was considered in paragraphs 92-93 of the s42A Report. The site can be safely developed under expert geotechnical supervision, at the cost of the developer, and can be ensured through a condition of consent.
9. This was missed in the first set of draft conditions (other than the general condition 1 covering the whole application). It is considered that a condition requiring expert geotechnical oversight is recommended, see attachment 2 which includes a condition to this effect (see condition 10).

Stormwater

Who owns the Cross Country Drain?

Who owns the reserve between the Cross Country Drain and the applicant's site?

10. Napier City Council owns the land upon which the Cross Country Drain (also known as the Purimu Drain) follows. Which is the land adjoining the subject site, and all the land on which this drain follows leading to the pump station at 283 Te Awa Avenue. This includes the land between the site and the physical drain. Attachment 1 is the land title (Computer Freehold Register 140321) and SO plan (SO11087) confirming the ownership and drainage purposes.
11. See also the below aerial image/information taken from NCC GIS (figure 1):

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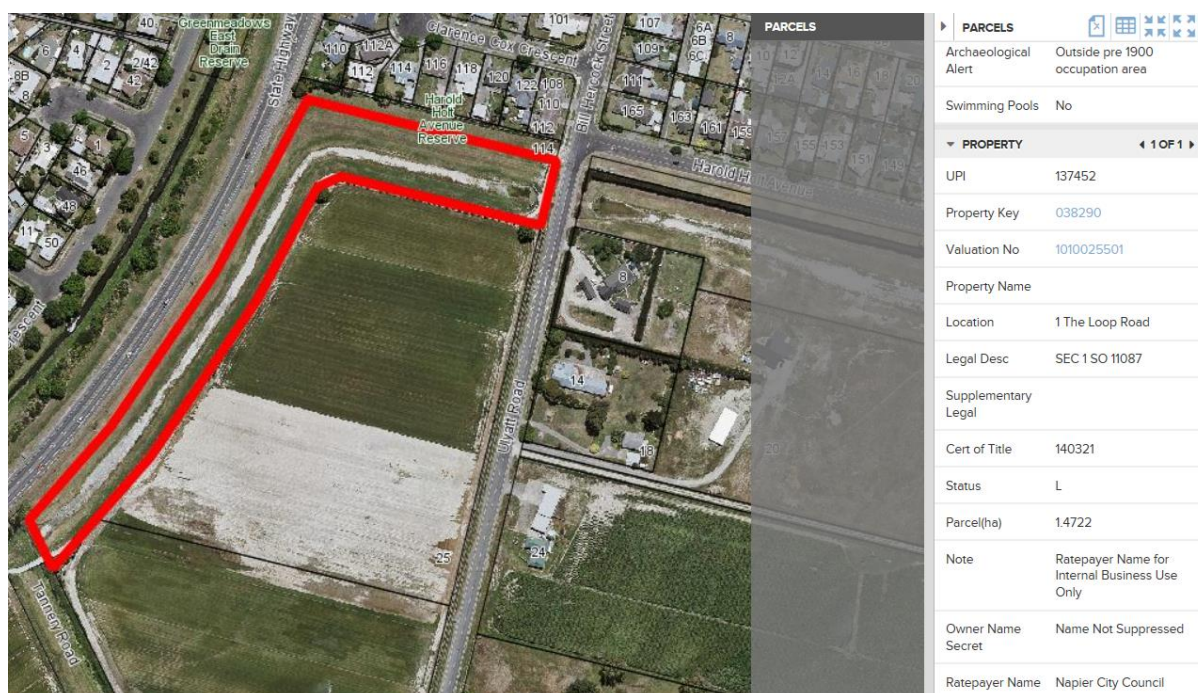


Figure 1. NCC GIS image.

Is the recommended \$30,000 of landscape / amenity planting adjacent to the Cross Country Drain directly related to the mitigation of adverse effects from the site's stormwater discharges on the water quality in the Cross Country Drain? If yes, where are those adverse water quality effects documented and how will the planting mitigate them?

12. The plantings may improve the stormwater quality within the drain itself, and may have a nominal improvement of the discharge from the site, as the discharge points will be into wetland plantings that may absorb nutrients.
13. The proposal will otherwise manage stormwater quality treatment by the use of stormwater 360 filters (or similar), which have a high removal rate of fine sediments, heavy metals and nutrients.
14. The plantings and low earthwork bund are primarily intended to help provide environmental benefits to the drain with shading and ecological plantings. This is likely to add aesthetic benefits also for users of the pathway and retirement village residents. This work is likely to occur at the same time as the site would be developed.
15. The applicant has offered these conditions and the submitter HBRC has accepted this offer as part of confirming that they have no further objection to the proposal. Whilst a side agreement with the applicant could achieve the same purpose, in this case the applicant, HBRC and NCC infrastructure are satisfied with the conditions and offer made under the Augier principle.

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Will the applicant still be required to install StormFilter cartridges or similar as proposed in the application documents?

16. This has been confirmed by Mr Wilson at paragraph 24 of his hearings evidence, that they are required. This can be specifically reflected in the conditions of consent to ensure, as shown in condition 4 a) in attachment 2.

What document does S42A report Appendix D titled "HBRC Concept page 8" come from and where can that full document found?

17. It is a draft HBRC concept plan only and has not been through a public consultation process. This was shared by HBRC with the applicant, and directly with NCC infrastructure. I requested a copy of this from HBRC. See Attachment 3.

Contaminated Soil

Is Rule 48 of the RRMP triggered by the proposal?

18. No, not as far as I can assess from the information provided. This is specifically assessed in the evidence of Boyd Wilson at paragraphs 32-34.
19. RRMP Rule 48 f) enables that HBRC can request a management plan, setting out how the conditions of Rule 48 will be met if it requires. If this permitted activity rule was otherwise triggered the applicant could go through a separate resource consent.

Recommended conditions:

I anticipate the reporting officer will liaise with the applicant's planner to discuss the questions below and thereafter table (either before or at the hearing) revised recommended conditions that address the following matters.

20. The amended and agreed conditions are as shown in Attachment 2 Updated Draft Conditions that have been agreed with applicant, and with HBRC.

Condition 1. To provide certainty, should Condition 1 list the specific (title and date) plans and documents that need to be complied with?

21. Yes this can be done to provide certainty. This has been updated in the draft conditions shown in attachment 2.

Condition 2. Where will the secondary flow path discharge to and should that be specified? Will the discharge site require any specific design or consent?

22. As confirmed by Mr Wilson (Paragraph 25) The secondary flow path discharge will be to the internal roading network, and then to the Cross Country Drain (Purimu). It will need specific design and this is covered by conditions 3 and 4.

Condition 4. Have any 'specific dispensations' from the Code of Practice been 'granted' by any of the other recommended consent conditions?

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23. This sentence has been modified in the condition as it should apply at the time of certifying the engineering plans, and whether the final design complies with the code or a specific dispensation to the code is required.

Condition 4(b). What does “connection size” refer to? Is it the diameter of stormwater discharge pipes?

24. Yes. This has been clarified in the 4(b).

Conditions 4(e) and (f). I understand that the applicant proposes to raise the site’s ground level and produce a ground floor level of 13.5mRL. Should that be specified in these conditions?

25. The site levels are proposed to be raised to various levels across the development. The figure in the s42A report was one example of the levels proposed (being RL13.5 in the centre of the site). Refer to the revised application plans in the statement of evidence by Marc Barron. The Jerram, Tocker and Barron plans P08-P11 show varying ground levels, with RL13.5 in the middle gradually reducing to RL11.25 on some of the edges. The site plan includes levels, and these show the lowest floor levels (RL12.2) at the retirement villa positions on the edges of the site. The applicant has had a further discussion with NCC infrastructure and agreed that RL12.2 should be specifically referenced as a minimum finished floor height and that if a design is otherwise proven viable that this could be less if certified by NCC Infrastructure engineers through conditions. Condition 4 (f) has been modified as a result.

Condition 4(g). Is this an enforceable condition or an Advice Note?

26. Have amended to an advice note.

Condition 4(h). What are the off-peak hours that the discharge will need to comply with? What size of pump station is required?

27. These can be confirmed at the time of final design and the condition/advice note have been amended to reflect this.

28. Santha Agas Team Leader 3 Waters has confirmed that off-peak hours are expected to be 8.30pm – 6.30am and 10.30am – 4.30pm. The design will need to confirm how much on site storage will be required.

4(i). First sentence – are the ‘water mains’ referred to the NCC watermains? If so which one in which street? Second sentence – is this an enforceable condition or an Advice Note?

29. The water mains are in Bill Hercock Street and this has been specifically referenced. The second sentence has been moved to the advice notes.

Condition 4(n). Which sections policies/standards/rules of the District Plan are being referred to?

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30. I have removed this reference as it is not necessary, and the Code applies.

Condition 5. Second sentence. Is this an enforceable condition or an Advice Note?

31. The second sentence has been moved to the advice notes.

Conditions 6, 8, 9, 21, 22. Legally, can consent conditions purport to bind a third party, or can they only bind the consent holder? Would it be more appropriate to impose obligations on the consent holder or alternatively require the consent holder to obtain documentation from specified third parties?

32. These conditions have been modified to more clearly obligate the consent holder.

Conditions 10, 27, 33. I understand that case law has established that management plan conditions should specify the purpose or objective of the plan, which conditions it is designed to assist with implementing, the minimum contents of the plan, how the plan is to be prepared, and who should be involved in that process. 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. If there is conflict between the management plan and consent conditions, then the conditions must prevail. Do these conditions meet these basic requirements?

33. The conditions have been amended as a result. I have discussed condition 33 (now condition 35) with Mr Knell, it has been agreed between the applicant and HBRC and it is difficult to put further parameters around it.

Conditions 4, 10, 12, 13, 26, 27. Is it legally correct to have Council officers 'approve' subsequent documents (called withholding a discretion) or should those officers instead 'certify' those documents as meeting the conditions of consent?

34. The conditions have been amended so that subsequent documents can be certified by Council Officers as meeting the conditions of consent (or not).

Condition 13. What 'current engineering best practice' is being referred to? Does HBRC have published sediment and erosion control guidelines that can be referred to instead?

35. HBRC does have published sediment and erosion control guidelines which have been referred to instead.

Condition 17. Should condition 17 specify a timeframe, such as 2 months? What is the 'planting season'?

36. The planting season is generally in spring and autumn. The condition has been modified to a 6 month time frame enabling the consent holder to plant within one of these seasons.

Condition 18. Does condition 18 fall within NCC's RMA section 31 functions?

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37. This has been moved to the advice notes.

Condition 20. What 'approved plan' is being referred to?

38. This has been amended to refer directly to the plan required by condition 14.

Condition 25. What 'adjoining land' is being referred to?

39. This has been amended to specify the NCC owned Cross Country Drain.

Condition 26. Does Chapter 65 of the City of Napier District Plan enable a financial contribution of this nature? If so which provisions of the Chapter 65 apply? Or is this a Development Contribution? If the latter, what provisions enable it?

40. It is offered as an Augier condition that has been agreed by the applicant, NCC infrastructure and HBRC to provide a maximum contribution to enhancement plantings by the applicant on NCC land. The conditions control the discharge design and the landscaping around it. It is not otherwise required or enabled by District Plan Chapter 65 or by NCC Development Contributions Policy. The development will be subject to development contributions at building consent stage.

Condition 26 Note C. What 'primary treatment' is being referred to and what other condition specifies the nature of that treatment?

41. This has been removed and re-worded in condition 4 as part of the engineering design requirements.

Condition 26 Note D. Will 'maintenance' be the responsibility of the NCC or the consent holder?

42. Ongoing maintenance of the drain and wetland plantings will be the responsibility of NCC this has been added as part of the advisory notes at the end of the conditions.

Condition 30. It is not clear to me where the boundary and setback are in the Figure as it has several lines on it, no labels and indecipherable writing. Please provide a clear figure.

43. A revised site plan has been provided by the applicant which shows the additional 3m separation to be achieved by covenant. See the full set of revised plans in the evidence of Marc Barron. The condition has been amended as a result also in agreement with the applicant and offered under the Augier principle.

Condition 31. Should there be an advice note stating that this condition was offered by the applicant under the Augier principle?

44. Yes this can be done and has been agreed so that it is clear.

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32. *Should there be a condition requiring that at the time of application for building consent an acoustic design certificate must be provided to NCC to demonstrate that the requirements of condition 32 (including the acoustic fence) will be met?*

45. Yes this has been added and agreed.

Condition 34. Who is the confirmation to be provided by and to whom is it to be provided? What is to be the format of the 'confirmation'?

46. Confirmation is to be provided by the consent holder to NCC in writing confirming that only inert materials are being used. This has been updated.

Advice Notes:

B. Is this vires for a discretionary activity or should those noise standards be included in a condition of consent?

47. As a discretionary activity the noise standards can be applied as a condition of consent, this has been agreed with the applicant and added as a new condition.

C. Is this vires for a discretionary activity or should those signage standards be included in a condition of consent?

48. This advice note has been modified. No signage has been confirmed or is specifically included in the resource consent. The District Plan has a number of controls on signage (size, content etc) that should be noted to apply for information purposes only, and to signify to any reader that signage has not been included in the application.

Should any conditions be imposed with regard to lapsing (s125(1)(a) of the RMA?

49. For certainty if it is not otherwise covered by the decision the 5 year timeframe can be referenced in the conditions, and this could be applied in condition 1 as amended. The applicant has not sought an extended time frame duration to apply.

Prepared by:



Shane Lambert
Senior Resource Consents Planner
Napier City Council

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Attachment 1. Computer Freehold Register 140321 and SO plan
SO11087

Attachment 2. Updated Draft Conditions - agreed with Mr
Knell/applicant

Updated recommended draft conditions (amendments highlighted)

GENERAL

1. That the development proceeds within 5 years of approval (s125 RMA), and substantially in accordance with the approved plans and information submitted in the application Resource Consent RM170155, application received 26 October 2017, and the further information provided dated 29 June 2018 and 11 July 2018, being:
 - Resource Consent Application, AEE and appendices received 26 October 2017, including:
 - a) Resource Consent Application, Wasley Knell Consultants Limited October 2017
 - b) Appendix 1a – Plans – by Jerram Tocker and Barron architects Ltd Issued 19 October 2017, sheets P01-P17 Rev RC1
 - c) Appendix 1b – Architectural Statement – by Jerram Tocker and Barron architects Ltd dated 16 October 2017, Ref: 1763
 - d) Appendix 2a – Landscape and Visual Assessment – by Shafer Design Ltd 20 October 2017
 - e) Appendix 2b – Visual Assessment – by Shafer Design Ltd 20-24 October 2017, Landscape Context sheets 1 to 5, Visual catchment sheet 6, viewpoints 1-5 sheets 7-11, planting intention sheet 1, landscape concept sheet 1, landscape examples sheet 1, north boundary section sheet 1, west boundary section sheet 2, south boundary section sheet 3, Ulyatt Road boundary section sheet 4, apartment elevation sheet 5, internal street section sheets 6-7, walkway seating sheet 8, landscape montage VP1 – VP2 sheets 1-2.
 - f) Appendix 3 – Traffic Impact Assessment, by Traffic Solutions Ltd, 20 October 2017
 - g) Appendix 4 – Civil and Services Assessment, by Bonisch Consultants Ltd, dated 24 October 2017
 - h) Appendix 5 – Geotechnical Report – by RDCL, dated 19 October 2017
 - i) Appendix 6 – Acoustic Report, by Hegley Acoustic Consultants, Report No. 17198
 - j) Appendix 7 – NESCS report, by HAIL Environmental Ltd, dated 17 October 2017
 - Stormwater Ditch Concept plan, by Bonisch Consultants, issued 4 July 2018, Revision B
 - S92 response by Wasley Knell Consultants Ltd, Ref: 1939, dated 29 June 2018
 - Further NESCS information by HAIL Environmental Ltd, dated and provided 11 July 2018

**ENGINEERING
SERVICES/TRANSPORT/EARTHWORKS/CONSTRUCTION)**

(ALL

SERVICES/TRANSPORT

2. That each unit shall be connected to Council's reticulated water and wastewater network to the satisfaction of the Director, NCC Infrastructure.

Note: If the development is staged, proposed servicing infrastructure shall be constructed such that design, capacity and performance is not compromised within the development or downstream of the development, as would be the case at full development.

3. That a secondary storm water flow path designed to cater for at least 50 year (ARI) storm events shall be provided through the development in perpetuity, in accordance with the NCC Code of Practice. This shall allow for any water entering the site and for all over-land flow from primary storm water infrastructure within the development.
4. That the applicant shall submit to Council a final detailed engineering design, including construction drawings, detailing the water, storm water, sewer and roading services required to service the development for engineering approval (certification by NCC infrastructure), prior to construction. This shall be undertaken by a Chartered Professional Engineer experienced in water, sewer, storm water and roading services design and construction. The design shall be generally in accordance with the application and the Code of Practice for Subdivision and Land Development, except where a specific dispensation has been granted as part of this Resource Consent or through the Engineering Approval (certification by NCC Infrastructure) process. The design shall show and confirm:
 - a) That storm water from the development shall be generally conveyed, treated and discharged in accordance with the approved concept plan (Bonisch Consultants: Stormwater Ditch Concept Plan, issued 4, July 2018, Revision B). Stormwater shall be treated prior to discharge from the site, including prior to discharge to the Purimu (Cross Country Drain) Connection. This shall include the use of Stormwater 360 filter cartridges or similar.
 - b) Calculations will be required to determine connection sizes for stormwater (diameter of stormwater discharge pipes).
 - c) All stormwater is to be controlled in terms of the Code of Practice for Subdivision and Land Development and E1 of the Building Code.
 - d) The approved point of connection for stormwater is the Purimu Drain (Cross Country Drain), and connections will be limited to the three points as approved with the concept plan (Bonisch Consultants: Stormwater Ditch Concept Plan, issued 4, July 2018, Revision B)
 - e) The design of the stormwater system needs to demonstrate secondary flow paths with levels and floor levels that will protect dwellings from flooding in a 50 year return period event.

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- f) ~~The minimum floor levels may apply for all buildings shall be RL12.20 (Napier City Datum) except where a lower level is as and if required by the design, which could include an appropriate floor level as proven and accepted by NCC Infrastructure.~~

~~Note that the current property levels are below the 50 year flood level and unless all the ground levels are lifted/re-designed the property may need a section 73 notice registered on the title. Note that the minimum floor levels using the existing situation would need to be set at RL 12.20 metres to the Napier City Council Datum.~~

- g) ~~That connections to Napier City Councils water and sewer network will require an application to be made to NCC Infrastructure. All connections to the live sewer, water and stormwater networks shall be undertaken by NCC.~~
- h) The sewer design requires a pumped solution with an off-peak discharge into the NCC waste water system. The size of the pump, and the off-peak hours of discharge shall be confirmed with NCC Infrastructure at the time of design certification.
- i) That the Bill Hercock Street water mains shall be extended to service the proposed development for fire fighting and domestic supply. ~~It is supported that Irrigation supply can be provided from sources other than the NCC potable water supply.~~
- j) Separate water connections will be required for each unit or complex.
- k) The water connection to the property is to be sized to meet the needs of the development (including fire fighting requirements) and it is to be fitted with a water meter and backflow preventer.
- l) Fire hydrants are to be installed in accordance with the Code and the Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008.
- m) The proposed modifications to Ulyatt road shall be formed as shown in Appendix A of the TIA (Traffic Solutions Ltd 20 October 2017) and to, NCCs Code of Practice including: Kerb and channel as shown; Sealed shoulder in accordance with the Code; Pedestrian footpath extending the whole length shown; Placement of a 'slow' speed sign and road treatments as shown to signal the change from rural to an urban type interface;
- n) The two 6m wide vehicular access points shall be formed, permanently surfaced and drained in accordance with the TIA (Traffic Solutions Ltd 20 October 2017), and the requirements of the ~~District Plan and~~ the Code of Practice.
- o) Easements are to be created in accordance with the Code of Practice for Subdivision and Land Development. Any water, sewer, or storm water assets located on private land within the development that have been accepted by the Director, NCC Infrastructure, for vesting in council, shall be secured by suitable easements in gross in favour of the Napier City Council.

5. That any water, sewer, and storm water assets located on private land within the development that have NOT been accepted by the Director, NCC Infrastructure (or nominee), for vesting in council, shall be clearly marked as

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PRIVATE on the engineering design. ~~That all private services for water, storm water and sewer will require Building Consent.~~

6. ~~That the consent holder shall provide Napier City Council with the "Construction" producer statements issued by their contractor for the services constructed. and the applicant shall supply this statement to Council.~~
7. That all works within the boundaries of the public road shall be undertaken by a contractor who is approved to work within the road reserve.
8. That as-built plans and data, in accordance with the requirements of the Code, (and any approved amendments) shall be submitted to Council once construction is completed by the consent holder. The consent holder shall obtain certification of a complete and correct record by a registered and professionally qualified engineer. Data on public roading, water and sewer assets will be required to be presented to Council in accordance with the Code.
9. That the consent holder shall provide certification from a Chartered Professional Engineer, ~~shall certify~~ that the works have been constructed in accordance with the approved design.

NEW CONDITION - GEOTECHNICAL

10. The consent holder must engage a Chartered Professional Engineer (CPEng) with specialist geotechnical skills and experience to certify the engineered fill used and provide a copy of that certification to the Council at the time of application for building consent.

CONSTRUCTION/EARTHWORKS

11. That prior to the commencement of construction works the applicant shall submit a Construction Management Plan (CMP), for certification approval by Napier City Council, detailing the ways in which the proposed construction works will occur under specified requirements in accordance with the following objectives: ~~and that work shall not commence until engineering design plan approval has been given.~~

Construction management plan (CMP)

The objectives of the CMP are to:

- a) Avoid and/or minimise the magnitude of the adverse effects generated during the construction activities and / or works authorised by this resource consent; and
- b) Provide clarity as to how the proposal (as relevant to the activities authorised by this consent) is to be constructed by setting out the:
 - i) Construction methodology that is to be employed to construct the proposal; and
 - ii) Staging, timing, duration and monitoring of construction works; and
 - iii) Measures that are to be applied, and when they are to be applied, to

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minimise the effects of the construction activities and / or works authorised by this resource consent. These measures are to be consistent with the geotechnical report by RDCL dated 19 October 2017 and the certified sediment control plan.

- iv) The means by which stakeholders are to be kept informed of the construction works / activities being undertaken by the consent holder and/or its contractor(s).

The CMP shall contain, but shall not be limited to, the following sections:

- a) Purpose and Scope
- b) Personnel, Team Structure, Contact Details and Responsibilities. This will include the 24-hour contact details for the following personnel:
 - i) The administrator of the complaints register; and
 - ii) The Liaison Officer (if required by conditions of this consent);
- c) Environmental Policy and Environmental Management System;
- d) Resource Consent and Building Consent Requirements;
- e) Construction Methodology;
- f) Training and Induction of Contractors and their Staff;
- g) Subcontractor Management;
- h) Monitoring and Site Inspections;
- i) Conformance and Corrective / Preventative Actions;
- j) Meetings Frequency and Purpose; and
- k) Environmental Systems Reviews.

Works authorised by this consent shall not occur until the CMP has been certified by the Team Leader Resource Consents at the Napier City Council as meeting condition 11 of this consent.

12. That the applicant shall meet all the costs associated with the provision of infrastructure. This also includes the transport network, footpaths, kerb and channel, forming the hard shoulder, road signage, road marking, lighting or other necessary modifications required to the existing transportation network to support the development.
13. That the applicant shall submit to Council a final design, detailing the earthworks to be carried out, overland flow paths and proposed finished ground levels within the development, for certification approval by the Director NCC Infrastructure (or nominee), prior to construction. This earthworks plan shall not include any changes in the existing ground level of the external boundaries that affect overland flow paths.
14. That the applicant shall submit a sediment control plan by an appropriately qualified person to Council, for certification by the Director, NCC Infrastructure, prior to the commencement of any work on the site. The plan shall detail how sediment and erosion controls will be carried out at the site. The plan shall be in accordance with the Hawkes Bay Waterway Guidelines Erosion and Sediment Control April 2009. A statement shall be included with the plan stating the author's qualifications and experience in this area.

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15. That all construction and earthworks operations shall be so conducted as to comply with the provisions of New Zealand Standard NZS 6803: 1999 Acoustics – Construction Noise
16. Noise levels will be measured in accordance with the New Zealand Standards NZS 6803: 1999 Acoustics – Construction Noise.
17. That earthworks shall be limited to the hours of 7.00 am - 5.00 pm Monday – Friday, and 8.00 am – 5.00 pm Saturday.
18. That all areas of earthworks shall be re-grassed within **6 months** ~~an agreed timeframe (by the next planting season)~~ to the satisfaction of the Director, NCC Infrastructure (or nominee).
- ~~19. That there shall be no off-site deposit of sediment or detritus from the area of the works and no deposit of sediment or detritus into any watercourse or storm water drain (including but not limited to the Cross Country Drain).~~
20. That while earthworks are being undertaken and prior to re-vegetation, areas of exposed earth shall be regularly dampened with water to ensure that no wind born dust is deposited outside the property boundaries.
21. That the applicant shall install sediment and erosion controls in accordance with the **certified plan (as per condition 14)** prior to the commencement of the earthworks and that these controls shall be maintained throughout the period of the works, to the satisfaction of the Director, NCC Infrastructure (or nominee).
22. **That the consent holder shall provide certification from** a registered and professionally qualified engineer, ~~shall certify~~ that the sedimentation works have been designed and constructed in accordance with the **approved design certified plan (as per condition 14)** prior to commencement of works on site.
23. **That the applicant shall provide confirmation in writing that their** contractor ~~shall confirm in writing that has only imported~~ 'clean fill' ~~shall be imported~~ onsite (i.e. no rubbish, no stumps, no concrete, bricks any no other substance containing; combustible, putrescible, degradable or leachable components, hazardous substances, products or materials derived from hazardous waste treatment, hazardous waste stabilisation or hazardous waste disposal practices, medical and veterinary waste, asbestos or radioactive substances or liquid waste).
24. That the location and dimensions and depth of any area of fill shall be identified on an As-built plan of the development and provided to the Director, NCC Infrastructure (or nominee). The final earthworks plan shall confirm the new overland flow paths and shall confirm that there are no changes to ground levels at neighbouring boundaries that affect overland flow paths (except where **approved certified by Council** in relation to the Cross Country Drain/**Purimu drain**).
25. That any damage caused to Transportation assets as a result of the development work shall be rectified at the Developers sole expense as agreed with the Director, NCC Infrastructure (or nominee).

LANDSCAPING

PURIMU CONNECTION (CROSS COUNTRY DRAIN) PLANTINGS/STORMWATER

26. That concurrent with the earthworks for the development of the land, the construction and landscaping planting of the adjoining land (NCC owned Cross Country Drain) for stormwater management purposes shall be carried out in accordance with the Bonisch Consultants Plans 4505 dated 28 June 2018 and Regional Council Concept Landscape Plan Sheet 8 (Purimu Connection) prior to occupation of the proposed retirement complex.
27. A detailed design of engineering and landscaping planting referred to in condition 26 above shall be submitted for certification by the approval of the Napier City Council prior to work commencing.
- i) Preparation of the design shall include confirmation of consultation with the Hawkes Bay Regional Council with specific regard to the inclusion of ecological features.
 - ii) The consent holder's contribution of landscape planting shall be to a maximum of \$30,000.00 (incl. GST), unless the consent holder, or any other party of their own voluntary accord, wishes to contribute more.

NOTE:

- A. This condition has been offered by the applicant and is imposed on an Augier basis (derived from the case Augier v Secretary of State for the Environment (1978) 38 P & CR 219) which provides that, if an otherwise ultra vires condition is volunteered by a resource consent applicant and a consent is granted with that condition, then that condition is enforceable. For completeness, it is also recorded that the applicant for the resource consent agrees to the condition under s 108AA(1)(a) of the RMA);
- B. At this stage NCC does not have any budget for a contribution to the plantings and is unlikely to contribute to the planting, and;
- C. The planting plan will otherwise need to be designed in accordance with the amount specified in this condition, unless the consent holder determines they need to spend more (of their own accord). The Hawkes Bay Regional Council have signalled that they may contribute to the plantings for ecological benefit, which would need to be agreed with the consent holder.
- ~~D. It is noted that in regard to stormwater, all primary treatment is required to be within the development site and not within the drain corridor.~~
- E. Access for maintenance of the headwall and wetland shall be provided.

WHOLE OF SITE LANDSCAPE DESIGN

28. That prior to works commencing on site, the applicant shall submit a finalized landscape plan based on the concept landscaping plans provided with the application prepared by a suitably qualified and experienced person for certification by approval of the NCC Team Leader Resource Consents (or nominee). The landscaping plan shall include (but not be limited to):

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- a) Planting specifications detailing the specific planting species to achieve a mix of ground cover and specimen trees
 - b) The number of plants provided, locations, heights/PB sizes, and
 - c) Confirm that the location (distance from the boundary) of the species at planting is appropriate for the species type and leaves sufficient space for ongoing maintenance/trimming from within the site, at the height specified, and
 - d) Provision for irrigation of landscaping.
 - e) Details of proposed boundary fencing utilizing the permeable design proposed
29. Within the first planting season after completion of construction of each stage, the landscaping for that respective stage shall be planted and irrigation installed in accordance with the approved landscape plan required by Condition 27.
30. That in regard to Conditions 27 and 28 the required landscaping shall be maintained for the duration of this consent to the satisfaction of the NCC Team Leader Resource Consents (or nominee).

RURAL REVERSE SENSITIVITY

31. The proposed southern boundary of the site title with 35 Ulyatt Road (subject to a separate subdivision consent/boundary adjustment), shall provide a minimum 6 metre separation as measured from the eave (including spouting) of any retirement villa as shown on The Jerram Tocker and Barron Site Plan (Sheet No. P02, Rev RC2, dated 06/08/18). A covenant shall be registered over the 6 metre separation area that restricts the carrying out of any agricultural or fruit growing purposes other than for the purpose of growing turf grass for sale. ~~setback measured from the eaves of each retirement villa along this boundary (particular boundary shown below):~~ The Covenant shall read as follows:

The Grantor covenants with the Grantee that the Grantor will not use, lease or permit to be used or leased any portion of the Land or any buildings now or to be erected on the Land for the purpose of agricultural or fruit growing purposes, other than for the purpose of growing turf grass for sale.

Note:

This condition has been offered by the applicant and is imposed on an Augier basis (derived from the case *Augier v Secretary of State for the Environment* (1978) 38 P & CR 219) which provides that, if an otherwise ultra vires condition is volunteered by a resource consent applicant and a consent is granted with that condition, then that condition is enforceable. For completeness, it is also recorded that the applicant for the resource consent agrees to the condition under s 108AA(1)(a) of the RMA).

32. Prior to the retirement complex becoming operative, a covenant pursuant to Section 108(2)(d) of the Resource Management Act 1991 shall be entered into by the consent holder and registered and retained against the Certificate of

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Title(s) of the application site. The covenants shall be prepared by a lawyer (the Consent Holders, or Councils) at the cost of the consent holder. The covenant shall read as follows:

No Complaints Covenant

This property is located in the Main Rural Zone, near a number of rural uses including turf production, where agricultural management practices can occur that may include spraying, use of machinery, the operation of bird scarers and other effects associated with a range of permitted rural activities.

Where rural land use activities in this area are carried out in accordance with the relevant District Plan requirements or existing use rights, the property owner, or their successor in title shall not:

Bring any proceedings for damages, negligence, nuisance, trespass or interference arising from the use of that land; or

- I. Make nor lodge; nor*
- II. Be party to; nor*
- III. Finance nor contribute to the cost of;*
 - a. Any complaint regarding the carrying out of any land based primary production activity on the surrounding land.*
 - b. Any application to the Environment Court for a declaration or enforcement order regarding the carrying out of any land based primary production activity on the surrounding land.*
 - c. Any application to the High Court for an injunction, declaration or other order concerning the carrying out of any land based primary production activity on the surrounding land.”*

Note:

This condition has been offered by the applicant and is imposed on an Augier basis (derived from the case Augier v Secretary of State for the Environment (1978) 38 P & CR 219) which provides that, if an otherwise ultra vires condition is volunteered by a resource consent applicant and a consent is granted with that condition, then that condition is enforceable. For completeness, it is also recorded that the applicant for the resource consent agrees to the condition under s 108AA(1)(a) of the RMA).

NEW NOISE CONDITION

33. That the activity shall at all times comply with the Napier District Plan permitted activity noise standards.

STATE HIGHWAY NOISE

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34. The following acoustic insulation conditions shall apply to all new noise sensitive activities (i.e retirement villas/units) within the Expressway Noise Boundary:
- a) Where any building used for a noise sensitive activity is to be located within the Expressway Noise Boundary as shown on the planning maps:
 - i) The habitable room within the noise sensitive activity shall achieve a minimum External Sound Insulation Level of the building envelope of $D_{tr,2m,nTw} + C_{tr} > 30$ dB for outside walls of any habitable rooms.
 - ii) Where it is necessary to have windows closed to achieve the acoustic design requirements, an alternative ventilation system shall be provided. Any such ventilation system shall be designed to satisfy the requirements of the Building Code and achieve a level of no more than NC30 in any habitable room.
 - b) The standard in (a) above does not apply to noise sensitive activities which can comply with the following:
 - i) The habitable room within the noise sensitive activity is greater than 80 metres from the edge of the road carriageway; or
 - ii) Noise screening (such as a noise barrier fence) is constructed so that noise levels measured at the location of the building housing the noise sensitive activity in accordance with NZS6801:2008, do not exceed 55 dB LAeq (24hour) outdoors.
 - c) At the time of building consent the consent holder shall provide acoustic design certification, from a qualified and experienced acoustic expert, to NCC, to demonstrate that the requirements of (a) above will be met.

NATURAL HAZARD EVACUATION PLANNING

35. Prior to the occupation of the retirement complex, an evacuation plan for residents and employees shall be provided to Council and maintained as part of the operation of the retirement complex.

INERT ROOFING MATERIALS

36. Prior to the issue of any building consent as part of this proposal, written confirmation shall be provided from the consent holder to Napier City Council that roofing is constructed of inert materials (specific to potential water contamination).

Note:

This condition has been offered by the applicant and is imposed on an Augier basis (derived from the case Augier v Secretary of State for the Environment (1978) 38 P & CR 219) which provides that, if an otherwise ultra vires condition

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is volunteered by a resource consent applicant and a consent is granted with that condition, then that condition is enforceable. For completeness, it is also recorded that the applicant for the resource consent agrees to the condition under s 108AA(1)(a) of the RMA).

MONITORING

37. That a monitoring deposit of \$150 (including GST) shall be payable to cover the reasonable costs of monitoring compliance with the above conditions in accordance with Council's schedule of charges.

In the event of non-compliance being detected by monitoring or justified complaint and/or the costs of monitoring consent exceeding the deposit, the costs to Council of any additional monitoring shall be paid by the consent holder in accordance with the Council's schedule of fees.

NOTES FOR ADVICE PURPOSES:

- A. Development Contributions: This project will be subject to the payment of Development Contributions at Building Consent stage.
- ~~B. The proposal will be subject to ongoing compliance with the noise provisions of the District Plan.~~
- C. Any signage beyond the permitted thresholds of ~~will need to comply with~~ the District plan, will need to ~~or~~ go through a separate resource consent.
- D. As a commercial entity all refuse and mail will be the responsibility of the operator.
- E. The internal water supply infrastructure is subject to building consent and potable water quality standards.
- F. All enquiries regarding the costs of connections to the city services should be addressed to the NCC Infrastructure Department.
- G. The locations for the connections to the city services are to be confirmed with the Infrastructure Department prior to making application for connection.
- H. The costs of all services required for the development are to be met by the applicant.
- I. All references to "the Code" in this consent relate to the Napier City Council Code of Practice for Subdivision and Land Development.
- J. Except as otherwise allowed by this consent, the proposal must comply fully in all respects with the provisions of any relevant District Plan. That the proposal shall comply with, all relevant Council By-Laws, the Building Act 2004 and regulations and with the Code of Practice for Subdivision and Land Development. All necessary consents and permits shall be obtained.
- K. That connections to Napier City Councils water and sewer network will require an application to be made to NCC Infrastructure. All connections to the live sewer, water and stormwater networks shall be undertaken by NCC.
- L. In terms of condition 4(h) the exact off peak hours of discharge, and the size of the pump required, will need to be certified by NCC Infrastructure as part of the design. Off peak discharge hours will need to be confirmed by NCC, these are

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expected to be: 8.30pm – 6.30am and 10.30am – 4.30pm. The design will need to confirm how much on site storage will be required.

- M. In terms of condition 4(i) the Bill Hercock Street water mains shall be extended to service the proposed development for fire fighting and domestic supply. In relation to this it is supported that Irrigation supply can be provided from sources other than the NCC potable water supply.
- N. In terms of condition 5 all private services for water, storm water and sewer will require Building Consent.
- O. There should be no off-site deposit of sediment or detritus from the area of the works and no deposit of sediment or detritus into any watercourse or storm water drain (including but not limited to the Cross Country Drain)
- P. In terms of condition 27, note D, maintenance of the drain after installation is the responsibility of NCC.
- Q. The HBRC published sediment and control guidelines 2009 can be found here: <https://www.hbrc.govt.nz/assets/Document-Library/Waterway-Design-guidelines/Erosion-and-Sediment-Control-20090406.pdf>

Attachment 3. DRAFT HBRC Cross Country Drain enhancement concept.