

# Report for an application for resource consent under the Resource Management Act 1991



Discretionary Activity - Commercial Development, Non-Residential Activity associated Earthworks and Soil Disturbance under the NESCS

## 1. Application description

Application number(s):	RM190053
Applicant:	Bayswater Vehicles
Site address:	87, 93, 107, & 115 Carlyle Street and 29 & 31 Faraday Street, Napier
Legal description:	Lot 1 DP 4787, Lot 1 DP 14187, Lot 2 DP 7455, Lot 1 DP 12934, Lot 1 DP 1346, Lot 1 DP 15034, TS 759 Napier, and Lots 1 – 3 DP 4377.
Site area:	6,158m <sup>2</sup>
<b>Napier Operative District Plan</b>	
Zonings:	Fringe Commercial Napier Hill Character
Overlays, controls, special features, designations, etc:	Medium liquefaction vulnerability High relative earthquake amplification

## 2. Locality Plan



The following summary of the proposal is extracted from the document prepared on behalf of Bayswater Vehicles (“the Applicant”) by Strategy, titled “RM190053 – 107 Carlyle Street, Napier – Overview of Proposal Following Amendments Arising” and dated 1 April 2022 (“the April 2022 Summary Document”).

In summary, the proposal seeks to expand and redevelop the existing car dealership in stages across its existing sites involving:

- (1) Undertaking earthworks to avail a sufficiently sized building platform to construct a large enough workshop on 29 and 30 Faraday Street to service the various car brands with first level car parking on top,
- (2) Construction of a new showroom on 115 Carlyle Street and 27 Faraday Street, also comprising a valet area and first level administration area,
- (3) Further development of the one-way customer service layout with a porte-cochère feature and a customer service reception and client drop off/pick up to each side,
- (4) Establishment of customer car parking on 93 Carlyle Street and an internal pedestrian walkway,
- (5) Construction of a new showroom to contain the Mini and BMW brands on 87 Carlyle Street,
- (6) Establishment of new signage across the development site.

Stage 1 is anticipated to involve the proposed earthworks, Stage 2 construction of the workshop, Stage 3 demolition of the existing showroom (on the corner site) and construction of the new showroom, and Stage 4, the demolition of the showroom on 93 Carlyle Street and construction of the new showrooms.

Approximately 24,000m<sup>3</sup> of earthworks will be undertaken to create a building platform to accommodate the new workshop to the rear.

The maximum height of the proposed cut profile is expected to be 30m (approx.),

- Cut volume is expected to be in order of 22,500m<sup>3</sup>,
- The cut profile has been designed to a batter of 0.25H:1.0V,
- The profile will include 2 separate benches to enable plantings to be established. The first will be at approximately 18m high and the second approximately 26m high.
- The width of each bench will be approximately 1.125m wide.

## **Site and surrounding environment description**

Cameron Drury of Strategy Planning Limited has provided a description of the subject site and background to the proposal on pages 1-5 of the Assessment of Environmental Effects (AEE) titled: ‘Resource Consent Application for Land Use – 87, 93, 107 and 115 Carlyle Street and 29 & 31

*Faraday Street, Napier – Bayswater Vehicles Limited*', Strategy Planning Ltd, 29 March 2019 ("the AEE").

Having undertaken site visits on 19 April 2022 and 10 May 2022 I concur with that description of the site and summarise the key features from my observation in the following bullet points:

- The flat portion of the subject site is fully developed with car sales and servicing buildings and yards occupied by vehicles on its flat portion. The combined subject sites on the corner of Carlyle Street and Faraday Street include the Bayswater European and the Bayswater Hyundai dealerships and mechanical workshops.
- The hill to the north rises up very steeply from the 31 Faraday Street portion of the site to a currently closed Council pedestrian walkway between Faraday Street and May Avenue. Villa period residential dwellings are located on the opposite side of Faraday Street to this boundary, while a substantial double storey residence occupies the elevated site adjacent to the walkway to May Avenue at 33 Faraday Street.
- The hill to the eastern boundary with 32 May Avenue rises more gradually and is largely covered in mixed vegetation with conifer trees prominent near the top of the hill within the site.
- Faraday Street opposite the site comprises of a mixture of single residential dwellings to the north and a 12-unit two storey residential apartment building at 10 Faraday Street immediately opposite the site, while the Bayswater Subaru, Suzuki and Isuzu dealerships are located on the corner of Faraday and Carlyle Streets opposite the subject site.
- In general, the site has a fully developed commercial appearance occupied by buildings and sealed car yards with a backdrop of a vegetated hillside.
- Opposite the site on Carlyle Street the Fringe Commercial Zone is occupied by a variety of businesses and services including: Carlyle Street Store, Thirsty Liquor, Salvation Army Family Store and the Salvation Army Church Hall, Ebbett Hawke's Bay vehicle repairs, and the St Vincent De Paul opportunity shop. Several of these buildings front the street but most are setback and interspersed with car parking areas.

## 4. Background

### Specialist Input

The proposal has been reviewed and assessed by the following specialists:

- Engagement with Te Taiwhenua o Te Whanganui ā Orotū and Ngāti Pārau was requested as further information on 2 May 2019. By agreement with those groups a Cultural Impact Assessment ("CIA") was prepared by Te Taiwhenua o Te Whanganui ā Orotū and supplied to the Council in September 2020. That report includes recommendations "provided as points of discussion between the applicant Townsend & Townsend Ltd and Te Taiwhenua o Te Whanganui ā Orotū." Including those summarised as follows:
  - Every practical effort should be made to avoid damage to any archaeological site discovered during redevelopment.
  - That the discovery protocol be followed (such a protocol is set out on pages 40 – 41 of the CIA).

- That a cultural protocol is established to ensure cultural sites further identified by Mana Whenua are protected and dealt with in accordance with cultural values and discovery protocols.
- Protocols to be followed during earthworks, including: contractors being made aware of accidental discovery protocols; Mana Whenua representatives having the option to be present during ground disturbance works; cease works immediately if archaeological features are encountered; cease works immediately if koiwi are exposed and contact relevant parties.
- Maintaining a cut to fill balance is the preferred practice.
- Expectation for revegetation to be locally sourced, fruiting and flowering natives, appropriate for the ecological environment, to provide suitable habitat for native birds.
- Use of sustainable, energy efficient materials and construction methods.
- Opportunities to reflect the Taiwhenua cultural through the use of story boards, Pōu Whenua, and / or cultural design and artwork would be welcomed.<sup>1</sup>
- RDCL was commissioned by Council to undertake a peer review of the geotechnical report prepared by Cheal. This commenced with a site visit being undertaken by the Peer Reviewer (Cam Wylie) and the Applicant's geotechnical engineer (Ian Jennings, Cheal) on 25 September 2019. Cheal responded to the matters raised in an addendum dated 21 June 2021. RDCL provided its peer review in a letter dated 25 July 2021. A further assessment to respond to the matters raised was prepared by Cheal and provided to RDCL on 21 September 2021. RDCL confirmed that the proposed work would provide sufficient protection for the work to proceed (from a geotechnical perspective) but requested an integrated plan of the final proposed ground support to be provided. This was subsequently provided on 1 October 2021 after which RDCL confirmed in a letter dated 8 November 2021 that the information provided meets the requirements to confirm the suitability of the proposal from a geotechnical perspective.<sup>2</sup>
- A document titled: '*Assessment of Landscape and Visual Effects – Bayswater Vehicles Limited, Sales Court Expansion, Corner Carlyle Street and Faraday Street*', prepared by Hudson Associates Landscape Architects is attached as Appendix 4 of the AEE. That assessment attached a proposed earthworks profile consisting of 3 x 0.75m wide benches and planting of those benches. That design has since been superseded. Based on that 3 bench earthworks design, the report concluded that the proposal would have "a less than minor effect."<sup>3</sup>
- In responding to further information, the Applicant engaged Design Group Stapleton Elliot ('DGSE') to refine the design of the workshop and undertake a visual impact assessment. This resulted in a report titled: '*Bayswater Vehicles Limited – Visual and Landscape Effects Assessment*', April 2021 ('The DGSE Assessment'). A summary of the conclusions of that report are set out as follows:
  - Existing buildings and site character mitigate potential effects and the visual impact is considered very low to low as vegetation establishes.
  - From a limited number of neighbouring residential properties adjacent to the site, long term adverse effects will be low through the mitigation measures suggested.

<sup>1</sup> CIA, Te Taiwhenua o Te Whanganui ā Orotū, September 2020, pages 37 – 40.

<sup>2</sup> April 2022 Summary Document, Strategy, pages 1 – 2.

<sup>3</sup> Assessment of Landscape and Visual Effects – Bayswater Vehicles Ltd , Hudson Associates Landscape Architects, page 16.

- The building design presents a more familiar residential built form (gables and pitched roofs) along with appropriate screening, fencing and planting. Effects on the landscape character are therefore considered to be low.
  - Whilst the earthworks may have a slightly elevated visual effect, it is considered to be temporary and not uncommon around the perimeter of the Mataruahou area. Over time, with the recommended information measures implemented, the proposal will become less visible as use of the site establishes and can be expected to retain the overall characteristics and values of the area.
  - With the integration of the proposed landscaping alongside the Geotech solutions, the overall design of the proposal will have low adverse visual and landscape effects on the natural character of the proposed site and surrounding environment, and effects in relation to visual amenity and visual outlook can be considered neutral.<sup>4</sup>
- Development Nous Limited (DNL) were engaged by Council to undertake a peer review of the new building design and visual impact assessment. ‘The DNL Peer Review’ is dated June 2021 and titled: ‘*Landscape Peer Review, Bayswater Vehicles Ltd*’. This report sought a number of clarifications and matters to be addressed, with the conclusions summarised as follows:
  - There is not enough evidence that the suggested mitigation measures to lessen the immediate high visual impact of the proposed earthworks to be successful, and that the initial earthworks cut relies on these mitigation measures to not provide adverse effects on the amenity and character of the receiving environment.
  - General agreement to the findings of the visual assessment in relation to the redevelopment of the architectural built form located in the Fringe Commercial Zoning, being consistent with the character of that environment.
  - That in the Napier Hill Character Zone, reliance on dressed up built form attempts to shift emphasis away from the commercial use of the residential zone. If a residential scale building were proposed on these lots, it would not require such a large footprint and concurrent earthworks proposal.
  - Documents within the application acknowledge the proposed earthworks are significant and agree that the visual impact without mitigation would cause high adverse visual impact. The proposal relies heavily on the mitigation proposed.
  - The temporary visual effects will be very-high, and if mitigation measures and maintenance procedures are implemented and undertaken successfully the visual effect will be low-moderate. Therefore, the effectiveness of the mitigation measures will be the key factor in determining the significance of effects on amenity value and managing adverse effects on the receiving landscape.<sup>5</sup>
- There has been a significant amount of correspondence between the applicant and the Council since that time. A landscape plan submitted by DGSE in March 2022 included some refinements to the proposed cut face including proposed boundary planting at the top of the cut face and two benches with a depth of 1.125m to contain a soil medium and basecourse depth of 500mm and a planting schedule of native climbers, ground covers and shrubs. The plan shows cut faces to be hydroseeded.
- The March 2022 landscape plan and specific information on the hydroseeding (from Evergreen Landcare, dated 15 March 2022) has been reviewed by DNL who have advised that the proposed site disturbance and vegetation clearance beyond the commercial

<sup>4</sup> The DGSE Assessment, April 2021, pages 17 & 18.

<sup>5</sup> The DNL Peer Review, June 2021, page 18.

zoning results in a significant adverse visual effect and that visual mitigation measures are likely to be unacceptably long to mitigate those effects and will need a comprehensive maintenance and ongoing management to have any chance of being successful.<sup>6</sup> In regard to the hydroseeding information the concern from DNL is whether the lime stone cut can provide sufficient growing media that will not stay in place on a slope with a grade greater than 1:2.<sup>7</sup>

It is noted that for noise and light spill effects, the Application refers to the expert reports provided by Malcolm Hunt Associates and Stephenson & Turner Architects respectively, for the previous resource consent on the site, RM150135, with the conditions applied to that consent in regard to noise and light spill adopted as part of this current application.

### Previous Resource Consent

Resource Consent RM150135 was granted on 16 June 2016 to redevelop the Applicant's vehicle dealership and to expand it onto 29 and 31 Faraday Street. In summary, the redevelopment which forms part of the existing environment, involved:

- Forming a new car parking area and trade refuse storage on 29 and 31 Faraday Street zoned Napier Hill Character,
- Extending the existing workshop onto 27 Faraday Street zoned Napier Hill Character,
- Reconfiguring the vehicle crossings to suit the new internal access and on-site manoeuvring on both Faraday Street and Carlyle Street,
- Installing a 2.2m high acoustic wall and landscaping along Faraday Street,
- Altering the existing building on 107 Carlyle Street to create a new showroom and to install new signage.

The AEE states that some aspects of RM150135 have been implemented, however others have not and are incorporated into this current application, which seeks a lesser reliance on access from Faraday Street.

## 5. Reasons for the application

### The operative plan provisions

In assessing an application for resource consent, the relevant provisions requiring consideration are those provisions of the NCCDP ('OP' or 'the District Plan') that are not subject to appeal and are operative (including treated as operative under s86F of the RMA);

- the relevant provisions of any relevant plan that remain operative as a consequence of the appeals against certain provisions of the NCCDP (OP); and
- the relevant provisions of a plan change to the NCCDP (OP) (including a private plan change adopted by the Council) or a variation to a plan change to the NCCDP (OP) where the relevant provisions have legal effect.

<sup>6</sup> E-mail from G Guilford, DNL to Napier City Council dated 8 March 2022.

<sup>7</sup> E-mail from G Guilford, DNL to planning consultant for Napier City Council (P. McKay) dated 12 May 2022.

The task of identifying the relevant provisions as described above requires individual analysis of the provisions of the NCCDP(OP) and the relevant appeals, within the context of the specific resource consent application.

In this instance:

- The proposal involves Commercial Activity over multiple sites in the Fringe Commercial Zone and is therefore a Comprehensive Commercial Development. Rule 17.11(a) of the NCCDP(OP), requires resource consent as a Discretionary Activity having regard to the objectives and policies and the assessment criteria in Chapter 20.
- Further to this the proposed development would infringe a number of conditions in the Fringe Commercial Zone Condition Table, which would necessitate resource consent under Rule 17.10 as a Restricted Discretionary Activity if Discretionary Activity resource consent was not already required under Rule 17.11. Conditions breached relate to:
  - (1) 17.12 – Yards (relating to the internal boundary with the Napier Hill Character Zone)
  - (2) 17.14 – Height in Relation to Boundary (relating to the internal boundary with the Napier Hill Character Zone)
  - (3) 17.24 – Signage (58.27 Sign Area)
  - (4) 17.26 – Transport (61.16(1) – Loading Spaces; and 61.18(1)(f) – Car Parking Layout).
- The proposal involves non-residential activity not specifically provided for by the Napier Hill Character Zone. Rule 6.17(c) of the NCCDP(OP), requires resource consent as a Discretionary Activity having regard to the objectives and policies and the assessment criteria in Chapter 12 of the District Plan.
- Further to this the proposed development would infringe a number of conditions in the Napier Hill Character Zone Condition Table, which would necessitate resource consent under Rule 6.15 as a Restricted Discretionary Activity if Discretionary Activity resource consent was not already required under Rule 6.17. Conditions infringed relate to:
  - (1) 6.22 – Height
  - (2) 6.23 – Height in Relation to Boundary
  - (3) 6.24 – Site Coverage
  - (4) 6.25 – Landscaped Area
  - (5) 6.34 – Earthworks (see below)
  - (6) 6.36 – Transport (61.16(1) – Loading Spaces; and 61.18(1)(f) – Car Parking Layout).
- The proposal involves earthworks subject to Chapter 52a of the NCCDP(OP).
  - (1) Rule 52A.10(2) requires resource consent for the removal of more than 100m<sup>3</sup> of earth per 12 month period, as a Discretionary Activity. The proposal involves the removal of some 22,500m<sup>3</sup> of cut earth and must therefore be assessed under this rule having regard to the objectives and policies and the assessment criteria in Chapter 52A.22 of the District Plan.
  - (2) Rule 52A specifies that earthworks is a permitted activity provided it complies with the relevant conditions in the District Wide Earthworks Activity and Condition Table. The proposal results in the following infringements which require Resource Consent under Rule 52A.9 as a Restricted Discretionary Activity:
    - The extent of earthworks permitted in the Napier Hill Character Zone is 25m<sup>3</sup> (Rule 52A.12), a total of 22,500m<sup>3</sup> is however proposed.
    - Earthworks involve removing a portion of the existing hill face and are therefore involving a slope of greater than 22° above horizontal (Rule 52A.14).

- The earthworks will result in a cut/fill face of approximately 30m total vertical extent (including two benches) being in excess of the permitted 2.5m (Rule 52A.15).

Accordingly, resource consent is required for the following reasons:

- Rule 17.11(a) Comprehensive Commercial Development within the Fringe Commercial Zone (Discretionary Activity)
- Rule 17.10 Land Uses Not Complying with Conditions within the Fringe Commercial Zone (Restricted Discretionary Activity)
- Rule 6.17(c) Non-residential Activity within the Napier Hill Character Zone (Discretionary Activity)
- Rule 6.15 Land Uses Not Complying with Conditions with the Napier Hill Character Zone (Restricted Discretionary Activity)
- Rule 52A.10(2)-Removal off-site of more than 100m<sup>3</sup> of earth (Discretionary Activity)
- Rule 52A.9 Land Uses Not Complying with Conditions in the Earthworks condition table (Restricted Discretionary Activity)

## **Land use consent (s9) RM190053**

### **Napier Operative District Plan**

#### *Fringe Commercial Zone – 17.11 Discretionary Activities*

1. The following land uses are discretionary activities. A resource consent application must be made and consent may be declined or granted with or without conditions. The Council will have regard to the objectives and policies of this Plan and the assessment criteria in Chapter 20. The Council's discretion is unrestricted.
  - a. Comprehensive commercial development.
  - b. Commercial activities with a gross floor area less than 200m<sup>2</sup>.
  - c. Camping Grounds.
  - d. Any business of prostitution
  - e. Any tyre storage activity that does not comply in all respects with the relevant conditions.
  - f. Activities requiring a resource consent from the Regional Council for a discharge to land and/or water.

#### *Fringe Commercial Zone – 17.10 Restricted Discretionary Activities*

1. Any subdivision, use or development of land referred to in rules 17.2.to 17.8. that does not comply with all the relevant conditions in the Fringe Commercial Zone activity table and condition table is a restricted discretionary activity, unless stated by a rule elsewhere in this Chapter.

The Council will have regard to the relevant objectives and policies of the Plan and will restrict its discretion to:

- The matters identified in the second column of the Fringe Commercial Zone activity table and/or condition table.
- The cumulative effect of non-compliance with more than one condition.

- In respect of a controlled activity failing to comply with all of the relevant conditions, those matters the Council had reserved its control over.
- The matters set out in Chapter 1.6.5.
- The assessment criteria in Chapter 20 of this Plan where applicable.

*Fringe Commercial Zone – 17.12 Yards*

1. The following yard conditions shall apply to all land uses:
  - ii. Any building or part of a building (including eaves and guttering) must not be erected closer than 6 metres from the site boundary of any land zoned other than Commercial or Industrial.

*Fringe Commercial Zone – 17.14 Height in Relation to Boundary*

1. The following height in relation to boundary conditions shall apply to all land uses:
  - a. Buildings and structures on sites adjoining residentially zoned land must not project beyond a building envelope constructed by drawing planes along all parts of all site boundaries. The planes must commence 3.0 metres above ground level at the site boundary and must be inclined to the horizontal at an angle of 45 degrees.

*Fringe Commercial Zone – 17.24 Signage – 58.27 Sign Area*

1. The following area conditions shall apply to all signs, unless stated by a rule elsewhere in this Plan:

*Fringe Commercial Zone – Maximum Sign Area 5m<sup>2</sup>.*

*Napier Hill Character Zone – 6.17 Discretionary Activities*

1. The following land uses are discretionary activities. A resource consent application must be made and consent may be declined or granted with or without conditions. The Council will have regard to the objectives and policies of this Plan and the assessment criteria in Chapter 12. The Council's discretion is unrestricted.
  - a. A supplementary unit that does not comply with all the relevant conditions.
  - b. Retirement complexes.
  - c. Any non-residential activity not specifically provided for by a rule elsewhere in this Chapter.
  - d. Use of explosives, other than for temporary military training purposes.
  - e. Any business of prostitution (including those that do not comply with all of the relevant conditions as a Home Occupation).
  - f. Multi Unit Development except as provided for in Rule 6.16 above.

*Napier Hill Character Zone – 6.15 Restricted Discretionary Activities*

1. Any subdivision, use or development of land referred to in rules 6.2.to 6.13 that does not comply with all the relevant conditions in the Napier Hill Character Zone activity table and condition table is a restricted discretionary activity, unless stated by a rule elsewhere in this Chapter.

The Council will have regard to the relevant objectives and policies of the Plan and will restrict its discretion to:

- The matters identified in the second column of the Napier Hill Character Zone activity table and/or condition table.
- The cumulative effect of non-compliance with more than one condition.
- In respect of a controlled activity failing to comply with all of the relevant conditions, those matters the Council had reserved its control over.
- The matters set out in Chapter 1.6.5.
- The assessment criteria in Chapter 12 of this Plan where applicable.

*Napier Hill Character Zone – 6.22 Height*

1. The following maximum height conditions shall apply to all land uses,...:
- a. Any part of a building or structure must not exceed 8 metres in height.

*Napier Hill Character Zone – 6.23 Height in Relation to Boundary*

1. The following height in relation to boundary conditions shall apply to all land uses,...:
- a. No part of any building or structure must project beyond a building envelope constructed by drawing planes along all parts of all site boundaries. The planes must commence 3 metres above ground level at the site boundary and must be inclined to the horizontal at an angle of 45 degrees.

*Napier Hill Character Zone – 6.24 Site Coverage*

1. The following site coverage conditions shall apply to all land uses:
- a. The maximum site coverage (measured from gross building area) is 50% of the net site area.

*Napier Hill Character Zone – 6.25 Landscaped Area*

1. The following landscaped area conditions shall apply to all land uses:
- a. All sites must have a landscaped area not less than 30% of the net site area.

*Earthworks District Wide Activity – 52A.9 Land Uses Not Complying with Conditions*

1. Any use referred to in Rules 52A.6 to 52A.8 that does not comply with all of the relevant conditions in the Earthworks activity table and condition table, is a restricted discretionary activity, unless stated by a rule elsewhere in this Chapter.

*Earthworks District Wide Activity – 52A.10 Discretionary Activities*

The following Earthworks operations are discretionary activities. A resource consent application must be made and consent may be declined or granted with, or without, conditions. The Council will have regard to the objectives and policies of this Plan and the assessment criteria in Chapter 52A.22. The Council's discretion is unrestricted.

1. The removal off site of more than 25m<sup>3</sup> of topsoil, sand, gravel, metal or earth per 12 month period, in the Main Rural Zone.
2. The removal off site of more than 100m<sup>3</sup> of earth (including topsoil) per 12 month period in any zone (excluding Main Rural Zone).

*Earthworks District Wide Activity – 52A.12 Extent of Earthworks*

Zone	Volume	Criteria (for any 12 month period)

All Residential Zones	50m <sup>3</sup>	Per site
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*Earthworks District Wide Activity – 52A.14 Slope*

1. Earthworks shall not be undertaken on land with a slope of greater than 22° above horizontal.

*Earthworks District Wide Activity – 52A.15 Excavation*

1. No earthworks shall have a cut/fill face of overall vertical extent of (see diagram) greater than:
  - a. 2.5 metres in all zones

*Transport – 61.16(1) Loading Spaces*

1. The following loading space conditions shall apply to all land uses involving on-site manufacturing, servicing, storage, hire or sale of goods or materials including retail activities, office accommodation, travellers accommodation, freight and transport depots, warehouses:
  - a. A minimum of 1 loading space must be provided on the site of the use it is intended to serve, except;...

*Transport – 61.18(1)(f) Non-Residential Activities*

1. All non-residential activities that provide onsite vehicle access and car parking, (including Temporary Activities requiring access from a State Highway), shall comply with the following parking access provisions, unless stated by a rule elsewhere in this Chapter:
  - f. A vehicle occupying any parking space must have ready access to a road at all times without the need to move any vehicle occupying any other parking or loading space.

**National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS)**

The AEE states that written confirmation was provided by EAM as part of the previous consenting process (RM150135) that the proposal and ‘piece of land’ did not require further investigation under the NES. The AEE however acknowledges that there is a broader extent of earthworks involved in the current application and that it would be appropriate for assessment to take place under the NES-CS. The AEE however seeks that such assessment be required by conditions on consent due to the difficulty in undertaking the necessary assessments with existing hardstand and buildings in place. The suggested conditions include a requirement for a suitably qualified person to prepare a PSI and if deemed necessary a DSI. If contaminants are present then testing, reporting and validation conditions are also suggested.<sup>8</sup>

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<sup>8</sup> AEE, Strategy, March 2019, pages 10 – 11.

Council concur that such an approach is practicable and an appropriate way to ensure that the proposed development will not pose a risk to human health.

As no PSI currently exists the proposed soil disturbance is a Discretionary Activity pursuant to clause 11 of the NES-CS.

The reasons for consent are considered together as a discretionary activity overall.

## 6. Status of the resource consents

Where a proposal:

- consists of more than one activity specified in the plan(s); and
- involves more than one type of resource consent or requires more than one resource consent; and
- the effects of the activities overlap;

the activities may be considered together.

Where different activities within a proposal have effects which do not overlap, the activities will be considered separately.

In the instance, the effects of the proposed resource consents will overlap and thus they are considered together as a discretionary activity overall.

## 7. Public notification assessment (sections 95A, 95C-95D)

Section 95A specifies the steps the council is to follow to determine whether an application is to be publicly notified. These steps are addressed in the statutory order below.

### Step 1: mandatory public notification in certain circumstances

No mandatory notification is required as:

- the applicant has not requested that the application is publicly notified (s95A(3)(a));
- there are no outstanding or refused requests for further information (s95C and s95A(3)(b)); and
- the application does not involve any exchange of recreation reserve land under s15AA of the Reserves Act 1977 (s95A(3)(c)).

### Step 2: if not required by step 1, public notification precluded in certain circumstances

The application is not precluded from public notification as:

- the activities are not subject to a rule or national environmental standard (NES) which precludes public notification (s95A(5)(a)); and
- the application does not exclusively involve one or more of the activities described in s95A(5)(b).

### **Step 3: if not precluded by step 2, public notification required in certain circumstances**

The application is not required to be publicly notified as the activities are not subject to any rule or a NES that requires public notification (s95A(8)(a)).

The following assessment addresses the adverse effects of the activities on the environment, as public notification is required if the activities will have or are likely to have adverse effects on the environment that are more than minor (s95A(8)(b)).

Only those effects that relate to matters that are within the council's discretion under the rules of the District Plan and regulations of the NES-CS are considered in this assessment. The application is a discretionary activity and therefore Council's discretion is unlimited in terms of the matters it may consider.

No other effects have been taken into account in this assessment.

### **Adverse effects assessment (sections 95A(8)(b) and 95D)**

The Applicant's consultant has provided, in accordance with schedule 4 of the RMA, an assessment of adverse environmental effects in the AEE as lodged. This can be found on pages 17 - 29 of the AEE. An additional assessment of adverse environmental effects is provided in the April 2022 Summary Document on pages 12 – 15. While I concur with aspects of those assessments, there has been considerable correspondence and provision of additional information and peer reviews, particularly on the potential landscape and visual effects of the proposed earthworks. For that reason, a separate notification assessment is provided in this report as follows.

### **Effects that must be disregarded**

Effects on persons who are owners and occupiers of the land in, on or over which the application relates, or of land adjacent to that land

The council is to disregard any effects on the persons who own or occupy the land in, on, or over which the activity will occur, and on persons who own or occupy any adjacent land (s95D(a)). The land adjacent to the subject site is listed in the following table and map:

**Table 1 – Properties Considered ‘Adjacent Land’**

33 & 35 Faraday Street and 45 May Avenue, being the properties bounding the May Avenue steps, which in turn adjoin the northern boundary of the site (31 Faraday Street).

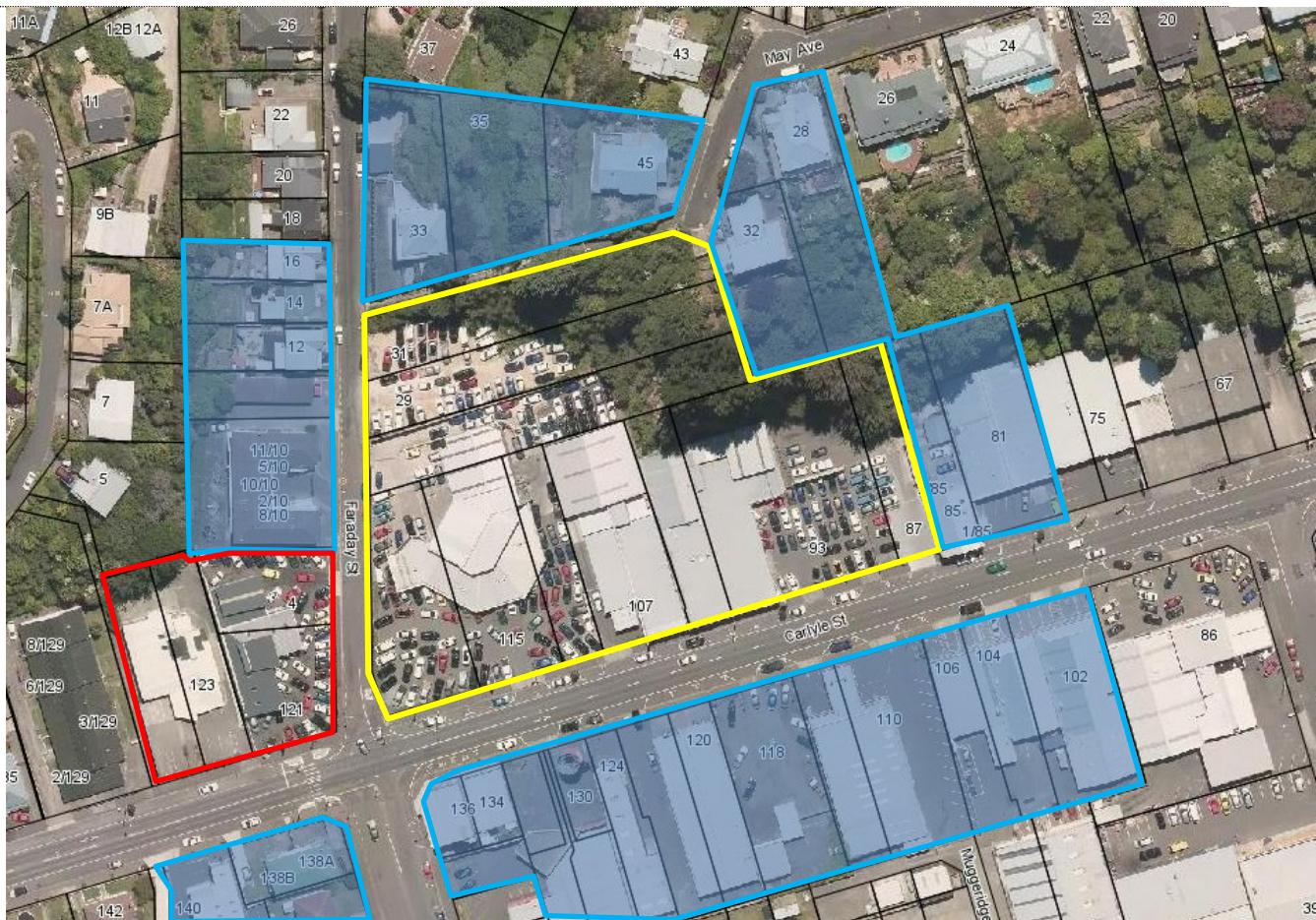
28 & 32 May Avenue and 81 & 85 Carlyle Street, being the properties bounding the site to the east and north-east. 81 Carlyle Street is not immediately adjoining but is only some 10m from the eastern boundary of the site (87 Carlyle Street), which is considered adjacent.

102 – 136 Carlyle Street, being the properties immediately opposite the Carlyle Street Road frontage of the site, and diagonally opposite in the case of 102 Carlyle Street.

138A, 138B & 140 Carlyle Street and 2A Faraday Street, being properties diagonally opposite the Faraday Street / Carlyle Street corner of the site that would have a clear view into the site from their street frontages.

10 – 16 Faraday Street, being properties directly opposite the Faraday Street frontage of the site and in the case of 16 Faraday Street, diagonally opposite and within 20m of the north-western corner of the site.

4 Faraday Street and 121 – 123 Carlyle Street being opposite the site on Faraday Street and the next site being 123 Carlyle Street, which are all occupied by Bayswater Vehicles dealerships.



*Figure 2 - 'Adjacent Land' identified in blue shading, the subject site in yellow outline and adjacent land owned by the applicant in red outline. Source: Napier City Council IntraMaps*

Any effect on a person who has given written approval to the application

No written approvals have been provided with the application.

### Effects that may be disregarded

#### Permitted baseline

The permitted baseline refers to the effects of permitted activities on the subject site. The permitted baseline may be taken into account and the council has the discretion to disregard those effects where an activity is not fanciful.

The AEE does not identify any permitted baselines, however in correspondence providing further information, the Applicant's consultant has identified that vegetation removal is not regulated under the District Plan and that the existing vegetation on the hill slope could be removed without

resource consent. I concur with this noting that except for identified Notable Trees, vegetation can be removed as a permitted activity under the District Plan.

I do not however consider this permitted baseline to be particularly relevant to this application as Condition 52A.13 of the Earthworks Chapter requires that where vegetation occurs as a result of earthworks, that disturbed areas are re-pastured or re-vegetated as soon as practicable within 18 months of the activity ceasing. In this case as the vegetation removal will be for the purpose of undertaking earthworks, I do not therefore consider it appropriate to discount the effects of vegetation removal as a permitted baseline. This matter is discussed in more detail under the 'Landscape and Visual Effects of Earthworks' heading below.

## Assessment

### Receiving environment

The receiving environment beyond the subject site includes permitted activities under the relevant plans, lawfully established activities (via existing use rights or resource consent), and any unimplemented resource consents that are likely to be implemented. The effects of any unimplemented consents on the subject site that are likely to be implemented (and which are not being replaced by the current proposal) also form part of this reasonably foreseeable receiving environment. This is the environment within which the adverse effects of this application must be assessed.

It is noted that although a portion of the site fronting Faraday Street is zoned Napier Hill Character Zone but is commercial in appearance with the frontage of that area being occupied by a sealed car yard and a portion of the car dealership buildings.

### Adverse effects

Prior to commencing the assessment of effects under section 95D of the RMA, it is necessary to consider the relevant objectives and policies of the District Plan to help inform that assessment. What I consider to be the relevant objectives and policies to this application are set out in Table 2 below.

#### Table 2 – Relevant Objectives and Policies – Operative Napier District Plan

##### Chapter 14 – Commercial Environments

Objective 14.2 - To enable the continued use and development of commercial activities and resources while ensuring the adverse effects on nearby land uses are avoided, remedied, or mitigated.

Policies –

14.2.1 Ensure that the effects of noise generated within the zone do not extend beyond the zone boundary.

14.2.3 Avoid, remedy or mitigate the effects of light spill beyond the zone boundary.

14.2.4 Avoid, remedy or mitigate the effects of signs on the amenity of adjoining residential zones.

14.2.6 Ensure that future development is of a scale and height that will not have adverse effects on access to sunlight or the amenity values of the surrounding environment.

Objective 14.3 – To maintain and enhance the amenity values of commercial areas.

Policies –

14.3.1 Avoid, remedy or mitigate the shading effects of new development on adjacent buildings, pavements, pedestrian areas, reserves and roads, and maintain a scale of built environment that is appropriate to the surrounding area.

14.3.2 Avoid, remedy, or mitigate the adverse effects of signs on the character and visual amenity of commercial areas.

14.3.3 Ensure the visual effects of development are avoided, remedied or mitigated by requiring landscaping where practicable and appropriate.

14.3.4 Encourage and maintain attractive pedestrian linkages that contribute to peoples enjoyment of commercial areas.

Objective 14.4 - To maintain compact and efficient commercial areas.

Policies –

14.4.2 - Encourage infill and consolidation of the commercial areas.

14.4.3 - Manage the effects of vehicle parking in the commercial areas.

14.4.4 - Recognise the commercial centres as an important physical resource.

14.4.5 - Manage commercial activities adjacent to arterial roads.

14.4.6 - Manage the scale of commercial activity in the Fringe Commercial Zone.

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## Chapter 4 – Residential Environments

Objective 4.2 - To enable the diverse housing needs and preferences of the City's residents to be met while ensuring that the adverse effects on the environment of residential land use, development and subdivision are avoided, remedied or mitigated.

Policies –

4.2.4 - Require specific consideration of the landscape and visual effects of development proposals where they are located on landscapes identified as outstanding or significant in the Napier City Landscape Assessment Study.

Objective 4.4 – To ensure that all developments and structures within the City's residential character areas maintain, enhance and are sympathetic to the dominant natural and physical features which contribute to the amenity and character of those areas.

Policies –

4.4.2 - Within Napier Hill:

a. Develop land use controls over residential development that recognise the area's diverse building development, the close proximity of many buildings to the road and adjacent sites, and the natural topography and amenity values of the area.

b. Encourage the retention of vegetation within the valleys and on steep hill faces for visual amenity, stability and ecological purposes.

Objective 4.5 – To maintain and enhance those qualities and characteristics that contribute to the wellbeing of the City's residents and the amenity of the residential zones.

Policies –

4.5.1 - Control land uses that generate noise, odour, dust or vibration to ensure it is undertaken in a way that does not cause a nuisance, or otherwise have an adverse effect on the health, safety or comfort of residents of surrounding areas.

4.5.2 - Ensure land uses and any associated artificial lighting of roads, driveways, signs, sites and the exterior of buildings do not significantly detract from the ability of residents of surrounding areas to achieve uninterrupted and adequate levels of sleep.

4.5.3 - Control the location of buildings on front and corner sites to maintain a degree of consistency of setback from the road.

4.5.4 - Control building height and bulk to ensure it is compatible with the height and bulk of the surrounding residential area.

4.5.5 - Control buildings so they are designed and located in a manner to ensure that adequate levels of sunlight and daylight reach adjacent residential properties throughout the year.

4.5.6 - Ensure storage and parking areas are designed, located and/or screened in a way that maintains the on-site amenity and privacy of adjacent residential properties and visual amenity when viewed from the road.

Objective 4.6 - To ensure new non-residential activities locating in residential environments do not have adverse effects on the residential character and amenity of those environments.

Policies –

4.6.1 - Ensure that non-residential activities locating in residential areas are of a scale and visual character that does not have an adverse effect on the amenity and character of the residential environment.

4.6.2 - Ensure that non-residential activities locating in residential areas do not give rise to a level of traffic movements that are out of character with the residential environment.

4.6.3 - Avoid the cumulative adverse effects, including those effects on infrastructure of non-residential activities in residential environments.

Objective 4.7 - To maintain and enhance residential amenity through the retention and planting of trees within the residential environment.

Policies –

4.7.1 - Encourage land use and development to minimise the need to remove significant stands of trees or native vegetation (particularly on Napier Hill), or significant individual tree specimens.

4.7.2 - Ensure buildings are designed and located and land uses carried out in a manner that minimises coverage of or damage to the root systems of significant stands of trees or native vegetation, or significant individual tree specimens.

4.7.3 - Encourage the planting of trees, especially mature trees, within residential areas to mitigate the effects of urban intensification, urban-fringe development and any loss of existing significant vegetation.

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## **Chapter 52A – Earthworks**

Objective 52A.3 – To enable earthworks within Napier City while ensuring that the life-supporting capacity of soils and eco-systems are safeguarded and adverse effects on outstanding natural features and significant landscapes, historic heritage values and human health and safety are avoided, remedied or mitigated.

Policies –

52A.3.1 - Require the repasture or revegetation of land where vegetation is cleared in association with earthworks.

52A.3.4 - Control earthworks to ensure that they will not adversely affect the natural and physical environment, and the amenity of the community, adjoining land uses, historic heritage values and culturally sensitive sites.

52A.3.5 - Allow earthworks where the adverse effects on the environment will be minor.

52A.3.6 - Historic and cultural heritage (including archaeology) will be protected from the effects of earthworks wherever practicable.

Objective 52A.4 – Minimise the hazard and environmental effects of earthworks.

Policies –

52A.4.1 – Control the adverse effects of earthworks on the natural and physical environment, including the potential for an increased risk of hazard and the potential effects on adjoining property owners.

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## **Chapter 61 – Transportation**

Objective 61.3 - To maintain a safe and efficient transport network that meets the needs of the community and the future growth of Napier without creating significant adverse effects.

Policies –

61.3.3 – Control the design and location of subdivision, use and development of land so as to minimise traffic patterns that will interfere with the safe and efficient operation of the transport network.

61.3.6 – Avoid, remedy or mitigate the effects of the location and design of vehicle parking, access and manoeuvring on the transport network.

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### Traffic

The AEE states that a driver of the proposal is to reduce the level of reliance on the road network by internalising vehicle movements. The proposal is for customers to enter and exit the site from Carlyle Street, although there will be a workshop vehicle exit onto Faraday Street, which will remain for operational purposes. The increased workshop and parking areas on site will enable greater access for vehicles sales and servicing customers on-site rather than relying on the public road network.

Loading and unloading is proposed to continue to occur on the section of Faraday Street between Carlyle and Thackeray Streets under a Traffic Management Plan (adopted from the conditions of RM150135).

The application has been designed to exceed the onsite parking requirements of the District Plan at the time of lodgement (102 proposed and 82 required). Since that time the onsite carparking requirements have been removed from the District Plan as was required by the National Policy Statement on Urban Development 2020.

Based on the likely level of traffic effects, Council's traffic engineers agreed that it was not necessary for an engineer to be engaged to prepare a Traffic Impact Assessment.

Given the above, the proposed development is likely to result in an improvement in terms of potential effects on traffic safety and efficiency. Therefore, I consider that any adverse effects resulting from traffic movements to and from the site, and car parking and loading will be no more than minor.

### Noise

The AEE advises that expert noise evidence was provided for the previous application RM150135 in response to concerns that the residents in the flats at 10 Faraday Street maybe adversely affected. That expert evidence concluded that the noise levels would not be unreasonable with the imposition of various mitigation measures. This resulted in conditions on the consent limiting hours of operation and requiring compliance with the District Plan noise limits, and for an Acoustic Design Certificate (ADC) to be provided by a suitably qualified acoustic engineer to confirm such compliance. The Applicant therefore seeks to manage noise in the same manner as was approved under RM150135 and offers the following conditions in that regard:

*Hours of operation are proposed to remain as per RM150135, being*

- Monday to Friday 7.00am to 7.00pm
- Saturday 7.00am to 5.30pm
- Sunday 8.00am to 5.00pm

*Any activities undertaken on the site outside of these hours will be undertaken inside the buildings and with all roller doors facing Faraday Street closed.*

*An Acoustic Design Certificate (ADC) shall be prepared by a suitably qualified and experienced acoustic engineer and provide to the Council at the time of Building Consent to confirm compliance with the standards of 17.17 and 6.27 of the City of Napier District Plan as provided in Schedule xx [to be attached to the consent document]. The ADC shall outline all mitigation involved in achieving this.*

Such conditions would ensure that there is certainty around the hours of operation and that the relevant District Plan noise limits, including those applying to the Napier Hill Character Residential Zone would be met. Those noise limits would also need to be complied with on an on-going basis. I am therefore satisfied that any adverse noise effects will be no more than minor.

### **Light Spill**

Similarly, the proposal to manage light spill is also based on the conditions approved under RM150135, with the following condition being offered:

*A lighting Plan shall be prepared, and confirmation of it complying with the standards in 17.18 and 6.28 of the City of Napier District Plan as provided in Schedule xx [to be attached to the consent document] shall be provided to the Council by a suitably qualified person at the time of building consent.*

I also note that effects relating to both noise and light spill would be unlikely to adversely affect the wider environment beyond the land identified in Figure 2 above. I am therefore satisfied that any adverse light spill effects will be no more than minor.

### **Māori Cultural Values**

As set out in section 4 above under the ‘Specialist Inputs’ heading, a Cultural Impact Assessment has been provided by Te Taiwhenua o Te Whanganui ā Orotū. That assessment included a number of recommendations to the Applicant as are summarised in section 4 above. While most of those recommendations can be readily adopted and enforced as conditions on any consent, such as an accidental discovery protocol and the opportunity for a hapū member to be present for earthworks. I am not however aware of any agreement or subsequent correspondence regarding other recommendations such as the following:

- Maintaining a cut to fill balance is the preferred practice.
- Use of sustainable, energy efficient materials and construction methods.

I note that there is no proposal for there to be a cut to fill balance, and nor would that be practicable given the purpose of the project. The following recommendation regarding the use of natives in revegetation, would correlate with the proposed DGSE landscape plan for the planting on the terraces, but not necessarily the hydroseeding:

- Expectation for revegetation to be locally sourced, fruiting and flowering natives, appropriate for the ecological environment, to provide suitable habitat for native birds.

The following recommendation regarding cultural art or pōu in the design is referenced on page 28 of the CIA which states: *The Taiwhenua in partnership with Townsend & Townsend Ltd have*

*agreed to facilitate the design, construction and installation of an art piece or Pōu whenua to reflect the ancestry and relationship of Taiwhenua to the Project area.*

- Opportunities to reflect the Taiwhenua cultural through the use of story boards, Pōu Whenua, and / or cultural design and artwork would be welcomed.

Although there is no reference to this aspect of the proposal in the landscape plans or in the April 2022 Summary Document which have been prepared post the CIA, it is assumed that the Applicant is agreeable to such works and that certainty of addressing these cultural values could be required by a condition on the consent.

In regard to the landscape effects of the earthworks the CIA states that: *The Taiwhanua and Mana Whenua fully support the inclusion of native plantings, cultural sculptures and / or Pou Whenua being erected. Townsend & Townsend Ltd have advised that any visual impact of significant consideration shall be mitigated. Landscape Architects and Planners have been engaged to provide strategies to reinstate native plantings that reflect native vegetation. Through the planting process Bayswater will consult with the Taiwhenua and their cultural advisor.*<sup>9</sup>

The April 2022 Summary Document provided by the Applicant's consultant in summarising effects on cultural values states: *"A Cultural Impact Assessment, confirming support for the proposal, has been undertaken by Te Taiwhenua o Te Whanganui Orotu."*<sup>10</sup> I am not aware of any specific statement in the CIA confirming support for the proposal, however nor am I aware of any statement in that document opposing the proposal. Rather the CIA appears to adopt a neutral stance and provides recommendations to avoid, remedy or mitigate any potential adverse effects on cultural values and references agreements made with the Applicant.

For the purposes of this assessment, while there is some uncertainty around whether there would be adverse cultural effects if not all the recommendations in the report are implemented, those recommendations that can be practicably implemented and to which the CIA references agreement with the Applicant, can be enforced by way of conditions. With such an approach I consider that any adverse effects on cultural values can be considered as no more than minor.

## **Construction Effects**

The April 2022 Summary Document notes the following regarding construction effects:

- Construction activities are a function of reality when developing urban environments and associated facilities. Nuisance effects still need to be managed however, and in this regard:
  1. Hours of operation will be limited to daytime / working hours, between 7.30am – 6.00pm Monday – Saturday.
  2. Construction activity will be undertaken in accordance with the New Zealand Standard NZS 6803:1999 "Acoustics – Construction Noise".
  3. A Vegetation Removal Plan, Traffic Management Plan and Construction Management Plan will be provided in accordance with conditions of consent.
- Works will be undertaken subject to either an Accidental Discovery Protocol or an Authority.

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<sup>9</sup> CIA, page 30.

<sup>10</sup> April 2022 Summary Document, page 13.

- As outlined in the S92 response, Mr Curson confirmed that the proposed condition around construction management is an acceptable approach for ensuring that overall, effects with regard to construction can be managed to be less than minor.
- In conjunction with the temporary duration of such effects, these initiatives will ensure that overall, effects with regard to construction will be less than minor.
- Approaches around soil contamination are proposed to ensure the outcomes of the NESCS.<sup>11</sup>

Based on the above mitigation measures being imposed as conditions of consent I am satisfied that any adverse construction related effects on the wider environment will be no more than minor. In saying this I note that a separate assessment below is provided of the landscape and visual effects of the proposed earthworks, given that this is a significant component of the proposed activity and has a discretionary activity status under the District Plan.

### **Character Effects of Built Development**

Within the Fringe Commercial Zone portion of the site there are District Plan condition infringements relating to yards and height in relation to boundary, largely due to the internal interface with the Napier Hill Character Zone within the site and buildings extending over that zone boundary. As noted in the April 2022 Summary Document, development over the Fringe Commercial Zone is consistent with that anticipated for the Zone with the DNL landscape peer reviewer stating: *"The built form is in keeping with the existing bulk, scale, character and language of the existing land use within the lots zoned commercial and the expectations for development within that zone."*<sup>12</sup>

The April 2022 Summary document notes that RM150135 has already authorised the expansion of the operation on Faraday Street within the Napier Hill Character Zone and that the intensity of the proposed use compared to the consented use on the Faraday Street residential environment is expected to be less.<sup>13</sup> I agree that this is the case in terms of traffic effects.

In terms of the proposed built development, within the Napier Hill Character Zone the Faraday Street façade of the workshop has been refined with gables and pitched roofs, screening, street frontage setback, fencing and planting to be more sympathetic with the character of residential development on Faraday Street.

The April 2022 Summary document also notes that: *"There will be no shading effects on adjoining sites, while the height in relation to boundary infringement on Faraday Street will be no more than minor and not of a scale to dominate or shade the road reserve. There will be no issues in relation to the privacy of adjacent sites."*<sup>14</sup> I am in general agreement with these conclusions.

The DGSE Visual Assessment Report makes the following conclusion on the built form proposed within the Napier Hill Residential Character Zone: *"The built form has also been designed in response to this residential character, with the design response presenting a more familiar*

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<sup>11</sup> The April 2022 Summary Document, pages 13 & 14.

<sup>12</sup> Landscape Peer Review, DNL, page 9.

<sup>13</sup> Ibid

<sup>14</sup> April 2022 Summary Document, page 12.

residential built form (gables and pitched roofs) along with appropriate screening, fencing, and planting. Effects on the landscape character are therefore considered to be low.”<sup>15</sup>

In contrast the DNL Landscape Peer Review concludes: “The portion of proposed built form within the Napier Hill Character Zone, while presenting a façade that tries to conform to the character of the residential environment, is the scale of a commercial building and would impose commercial scale built form adjacent residential scale properties. The workshop building proposed at number 29 and 31 Faraday Street does not comply with height, height in relation to boundaries, site coverage and landscaped area: the City of Napier District Plan conditions applicable to the Napier Hill Character Zone. Furthermore, to allow a building of this scale to work in this space a significant earthwork’s intervention is required where it otherwise may not for a traditional residential scale building. It is considered that the reliance on dressed up built form attempts to shift emphasis away from the commercial use of the residential zone.”<sup>16</sup>

For the purposes of this assessment under section 95D of the RMA, effects on adjacent land must be excluded and only effects on the wider environment may be considered. The potential adverse effects of the commercial scale-built form in the Napier Hill Character Zone identified by the DNL Peer Review, are in my opinion more significant to the adjacent land, and specifically the residential properties located on the opposite side of Faraday Street. In regard to the wider environment, the commercial scale buildings will be visible from some properties on Guys Hill Road as illustrated in Figures 21 – 23 of the DNL Peer Review but will not be readily discernible as part of the residential zone with the buildings straddling the zone boundary into the Fringe Commercial Zone and occupying the land at the base of the hill. The earthworks will however be more significant from this viewpoint as is discussed further below. The commercial scale buildings on Faraday Street will also be visible from passing traffic and pedestrians on Carlyle and Faraday Streets but due to crossing the boundary of the Fringe Commercial Zone will appear as a natural extension of that zone.

For the above reasons, I consider that any adverse effects resulting from the commercial scale built character in the Napier Hill Character Residential Zone and any other aspect of the proposed buildings, will be no more than minor on the wider environment.

### Geotechnical Stability

Given the scale of the proposed earthworks with a volume of approximately 24,000m<sup>3</sup> and a vertical cut of approximately 30m, it is essential that any adverse effects from geotechnical stability are able to be mitigated to protect the health and safety of residents of May Avenue above the proposed earthworks, and workers and passers-by on Faraday and Carlyle Streets below.

The April 2022 Summary Document sets out the process of the original geotechnical design report for the earthworks prepared by Cheal and the peer review undertaken by RDCL on behalf of the Council. This resulted in verbal feedback from RDCL on the original design in 2019, an addendum to their original report from Cheal in June 2021, a written peer review from RDCL in July 2021 requesting further details, a further assessment from Cheal in September 2021 and an amended plan in October 2021. RDCL confirmed in a letter dated 8 November 2021 that based on the amended information the proposal was suitable from a geotechnical perspective.<sup>17</sup>

<sup>15</sup> Visual & Landscape Effects Assessment, DGSE, page 17 & 18.

<sup>16</sup> Landscape Peer Review, DNL, page 18.

<sup>17</sup> April 2022 Summary Document, page 2.

On the basis of the expert technical geotechnical advice of RDCL, I consider that any potential adverse effects arising from geotechnical stability on the wider environment are able to be mitigated, with conditions on the consent able to ensure that the mitigation measures are implemented, such that they are no more than minor.

### Landscape and Visual Effects of Earthworks

Again, given the scale of the proposed earthworks with a volume of approximately 24,000m<sup>3</sup> and a vertical cut of approximately 30m, potential visual and landscape effects must be carefully considered. Particularly so as the extent of the works and cut will be visible beyond the adjacent land as identified in Figure 2 above. The matter to be resolved in this assessment is whether the landscape and visual effects of the proposed earthworks will be more than minor on the wider environment. The various reports prepared on behalf of the applicant all conclude that such effects will be less than minor.

The April 2022 Summary Document notes:

- The site is not identified as an Outstanding or Significant Natural Landscape.
- Vegetation removal is not regulated under the District Plan i.e. the existing vegetation can be removed without the need for a resource consent.
- Publicly accessible views of the proposal and proposed earthworks have been identified by DGSE. These viewpoints have been assessed and based on the distance, existing buildings, and site character, visual impact effects are considered to be low as vegetation establishes.
- This conclusion refers to the establishment of vegetation. In reviewing this assessment, and while there has been a quantum of correspondence on the matter, the Peer Reviewer has essentially raised questions around:
  - Will the planting be successful?
  - How long this will take, and what is the scale of effects in the interim?<sup>18</sup>

I agree that the first two bullet points are correct. In regard to the objectives and policies referenced in Table 2 above informing this assessment, however, there are other relevant matters to consider in regard to the significance of the landscape of Mataruahou and the associated vegetation. I note the following as relevant to these aspects of the proposal: Policies 14.3.3, 4.2.4, Objective 4.4, Policy 4.4.2, Objectives 4.5 and 4.6, Policy 4.6.1, Objective 4.7, Policies 4.7.1 – 4.7.3, Objective 52A.3, Policies 52A.3.1 and 52A.3.4.

While Mataruahou is not identified as a Significant Natural Landscape by the District Plan it was identified as a 'Significant Amenity Landscape' by the Napier Landscape Assessment undertaken by Isthmus in 2009. That report states that Mataruahou has:

- Significant amenity value because of the interplay between the urban landform and history.
- The hill as a whole has a coherent character that contrasts with the surrounding flat parts of the city.

In referencing the Isthmus Napier Landscape Assessment, the DNL Peer Review report states: *"The potential cumulative effect of allowing the proposed cut face to be undertaken in the subject*

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<sup>18</sup> Ibid, page 14

*site may be detrimental to the future preservation of Mataruahou as a cohesive Landmark, particularly if proposed mitigation measures do not prove successful or are not established within a typical growing period (6-12 months).<sup>19</sup>*

Vegetation removal in itself is indeed a permitted activity under the District Plan; however such removal is regulated when it is associated with earthworks requiring resource consent (with condition 52A.13 requiring revegetation). Further to this where resource consent is required, vegetation retention is encouraged on the steep faces of Napier Hill by policy 4.4.2 for visual amenity, stability and ecological purposes.

In the context of the steep faces of Mataruahou, it would be fanciful in my opinion to suggest that landowners would deliberately clear significant areas of vegetation on the hill side (even though they would be permitted to do so) as that would subject their property to greater risk from erosion and landslide. Managed clearance of exotic or pest vegetation and replacement with suitable indigenous species would be more likely. For these reasons I do not consider the ability to remove vegetation as a permitted activity, to be a relevant permitted baseline for the assessment of the proposed earthworks and associated vegetation clearance under section 95D of the RMA.

Regarding the 3<sup>rd</sup> bullet point from the April 2022 Summary Document quoted above, the DNL Peer Review has also assessed the proposal from publicly accessible viewpoints and establishes that the extent of earthworks will start to become visible some 390m west of the site on Carlyle Street when travelling towards the CBD.<sup>20</sup> They will also be clearly visible from vantages on Wellesley Road, southern Faraday Street, Jull Street and Guys Hill Road.<sup>21</sup> The DNL report also establishes there will be clear visibility of the proposed earthworks from private residences beyond the adjacent land on Guys Hill Road with residences at 5, 7A, 7B, 9A, 14, 12, 10 and 16 Guys Hill Road referenced.<sup>22</sup> The matter to be resolved in this assessment however is not just, whether the proposed earthworks will be visible, but whether it will constitute an effect that is more than minor on the wider environment.

In terms of the magnitude of effects the conclusion in the DNL peer review is as follows:

*DNL suggests that the temporary visual effect will be **very-high**, and if mitigation measures and maintenance procedures are implemented and undertaken successfully the visual effect will reduce to **low-moderate**. Therefore, the effectiveness of the mitigation measures will be the key factor in determining the significance of effects on amenity value and managing the adverse effects on the receiving landscape.*

I understand these ratings to be based on the seven-point scale in the New Zealand Institute of Landscape Architects, Best Practice Note - Landscape Assessment & Sustainable Management Practice Note 10.1. Regarding this seven-point scale my understanding is that 'low' generally equates to 'minor' in terms of effects classification under the RMA. This would mean that both very-high and low-moderate, equate to more than minor effects under section 104D of the RMA. The DNL peer review therefore suggests that the visual effects relating to the application will be more than minor regardless of the effectiveness of the mitigation, but that adverse effects will be more significant if the mitigation measures are unable to be implemented as proposed.

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<sup>19</sup> Landscape Peer Review, DNL, page 8.

<sup>20</sup> Ibid, Figures 9, 10, 11.

<sup>21</sup> Ibid, Figures 2,3, 4, 10, 20, 22, 23.

<sup>22</sup> Ibid, page 13.

Accordingly, as stated in the last of the above bullet points quoted from the April 2022 Summary Document there has been a significant amount of correspondence regarding the revegetation of the cut face once the proposed earthworks once completed. The proposal as it stands is based on the March 2022 landscape plan from DGSE featuring two 1.125m wide benches for native plantings and hydroseeding of the bare faces.

In providing additional peer review advice to the Council following the receipt of the March 2022 landscape plan, Gemma Guilford the author of the DNL Peer Review in an e-mail dated 29 April 2022 stated:

*"After having reviewed the documents provided and having re-read my peer review document, I still hold to the concluding statement from my original report that the development of the site within the Napier Hill environment relies heavily on mitigation measures which if implemented, are heavily reliant on ongoing management and maintenance to stand a reasonable chance of being successful and secondly, may still result in adverse visual effects being highly visible for an unacceptably long period of time..."*

*"Accordingly, I remain of the opinion that while the utilisation of the Commercial Zoning for the activity is appropriate from an amenity and visual perspective, the proposed site disturbance and vegetation clearance beyond that zone represent an activity which result in a significant adverse visual effect and that visual mitigation measures are likely to be unacceptably long to mitigate those effects and will need a comprehensive maintenance and ongoing management to have any chance of being successful."*

Additional further information was subsequently provided by the Applicant's consultant on the proposed hydroseeding, with an e-mail from Evergreen Landcare stating that hydro seeding of the face is a feasible solution and that it is reasonable to expect seed to strike after 2 weeks.

Ms Guildford commented on that information in an e-mail dated 12 May 2022 raising concerns about the depth of topsoil available and the steepness of the face for the hydroseeding to be successful as follows:

*As discussed over the phone my concern is that the only seed noted as being provided in this correspondence is predominantly Rye and Clover. The design team offered up Native revegetation, is this being included in the seed spray mix?*

*My understanding of this type of treatment through undertaking landscape design of motorway infrastructure in Australia, is that the clover and rye is used as a cover crop and is mixed in with native seed. The cover crop is almost sacrificial and used to firstly "green" the cut and secondly to mitigate erosion (sometimes used with tensile matting etc). Cover crop species are Rhizomatous used to help keep the integrity of the earth cut in the interim until the native revegetation establishes. The Rhizomes are the tendrils that grow laterally/ prostrate across the surface (image below) almost creating a living matting.*

*In an ideal scenario the slower growing native seed then establishes, growing up through the cover crop species providing native cover. However this would require some level of top soil to grow into. Would the lime stone cut provide this growing media? Topsoil will likely not stay in place on a slope that is a grade of less than 1:2.*

Given all the above, in my opinion the key matters for making a determination on whether the potential adverse landscape and visual effects of the proposal will be more than minor on the wider environment are as follows:

- The scale and extent of the earthworks and resulting cut face will be readily visible from public viewpoints, including in close proximity to those travelling east on Carlyle Street and from other nearby streets.
- The scale and extent of the earthworks and resulting cut face will also be readily visible from private properties beyond adjacent land, and most notably from 5, 7A, 7B, 9A, 14, 12, 10 and 16 Guys Hill Road, as established in the DNL Peer Review.
- Given, the above two points the proposed earthworks and resulting cut face will result in landscape and visual effects on the wider environment.
- In determining the significance of those effects, it is notable that the majority of the earthworks and resulting cut face will be within the Napier Hill Character Zone in which objective 4.4 and policy 4.4.2 seek to maintain and enhance the dominant natural features (which would include Mataruahou) and to encourage the retention of vegetation on steep faces.
- The DNL peer review advice is that the initial visual effect of the earthworks and cut face will be very high, being the second highest rating in the NZILA 7-point rating scale which equates to a significant and more than minor effect in RMA terms. If mitigation is successful, the peer review conclusion is that the visual effect will reduce to low-moderate.
- In balancing low-moderate effects with the benefits of the proposal such effects may be considered acceptable<sup>23</sup>, however the DNL advice is that there is considerable doubt regarding the ability of the landscape and visual effect of the cut face to be mitigated in a reasonable time frame. It follows that adverse visual effects will likely be more significant than low-moderate for an unacceptably long period of time.
- Regardless of whether the mitigation planting establishes in a reasonable time frame a low-moderate effect is still more than minor in terms of section 95D of the RMA.

In my opinion, based on the DNL Peer Review and subsequent advice, the landscape and visual effects of the proposed earthworks and resulting cut face of Mataruahoa within the Napier Hill Character Zone are likely to be more than minor.

### **Adverse effects conclusions**

The above assessment has considered whether the proposed activity will have, or is likely to have, adverse effects on the wider environment. The assessment establishes that most effects on the wider environment, including those relating to traffic, noise, light spill and built form, will be able to be mitigated to the extent that they will be no more than minor.

Regarding cultural effects, a relationship has been established between the Applicant and Te Taiwhenua o Te Whanganui ā Orotū. The resulting CIA includes a number of recommendations which imply agreement with the Applicant. Several of those recommendation however may be impracticable to fully implement, such as a cut to fill balance of earthworks and the reestablishment of indigenous plant species (as the hydroseeding will require exotic species). Given the implied agreement in the CIA and the ability to secure a number of the

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<sup>23</sup> Noting that such balancing is only relevant to the final decision on the resource consent application and not to this assessment under section 95D of the RMA which is simply to establish whether there is a more than minor adverse effect.

recommendations with conditions of consent, I consider it reasonable to conclude that any adverse cultural effects will be no more than minor.

Significantly, a comprehensive peer review process has resulted in agreement between the geotechnical engineers involved that potential geotechnical instability effects from the resulting cut face can be appropriately avoided, remedied or mitigated to the extent that such effects are no more than minor.

As set out above however, the landscape and visual effects of the proposed earthworks and resulting cut face of Mataruahoa within the Napier Hill Character Zone are likely to be more than minor.

### **Public notification conclusion**

Having undertaken the s95A public notification tests, the following conclusions are reached:

- Under step 1, public notification is not mandatory.
- Under step 2, there is no rule or NES that specifically precludes public notification of the activities, and the application is for activities other than those specified in s95A(5)(b).
- Under step 3, public notification is required as it is considered that the activities will have adverse effects on the environment that are more than minor, specifically in relation to the earthworks and resulting cut face within the Napier Hill Character Zone.

It is therefore recommended that this application be publicly notified.

## **8. Notification recommendation**

For the above reasons under section 95A this application must be processed with public notification.

Accordingly, I recommend that this application be publicly-notified.



Philip McKay

Date: 23 May 2022

Planning Consultant for Napier City Council

**Delegated decision maker:**

Name: Luke Johnson  
Title: Team Leader Planning and Compliance  
City Strategy

Signed:

A handwritten signature in blue ink, appearing to read "LUKE JOHNSON". It is written in a cursive style with a large loop on the left and a smaller loop on the right.

Date: 23 May 2022