

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

<b>Applicant:</b>	Te Awa Land Development Company Ltd
<b>Site Address:</b>	35 Kenny Road, Napier
<b>Mailing Address:</b>	Te Awa Land Development Company Ltd C/- Stradegy Planning PO Box 239 <b>NAPIER 4140</b>
<b>Legal Description:</b>	Lot 18 Deposited Plan 6055, HBE2/436
<b>Zone:</b>	Main Residential (Te Awa Structure Plan 29 of the District Plan)
<b>Rule:</b>	<p>For a multi-unit commercial development within the Main Residential Zone (Te Awa Structure Plan Area) comprising of eight tenancies (including a café, supermarket, childcare facility, medical centre and four assorted retail units) with associated earthworks and transport infringements.</p> <p>For consent under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health as a Controlled Activity, with a Detailed Site Investigation having been provided.</p>

**1.0 Site and Locality**

The subject site is located at 35 Kenny Road, Napier. The land is legally described as Lot 18 Deposited Plan 6055, HBE2/436. The site comprises an area of 4.3858 hectares.



The site currently contain a residential dwelling which is situated within the north-eastern corner of the site. The site fronts Kenny Road to the North and Eriksen Road to the south.

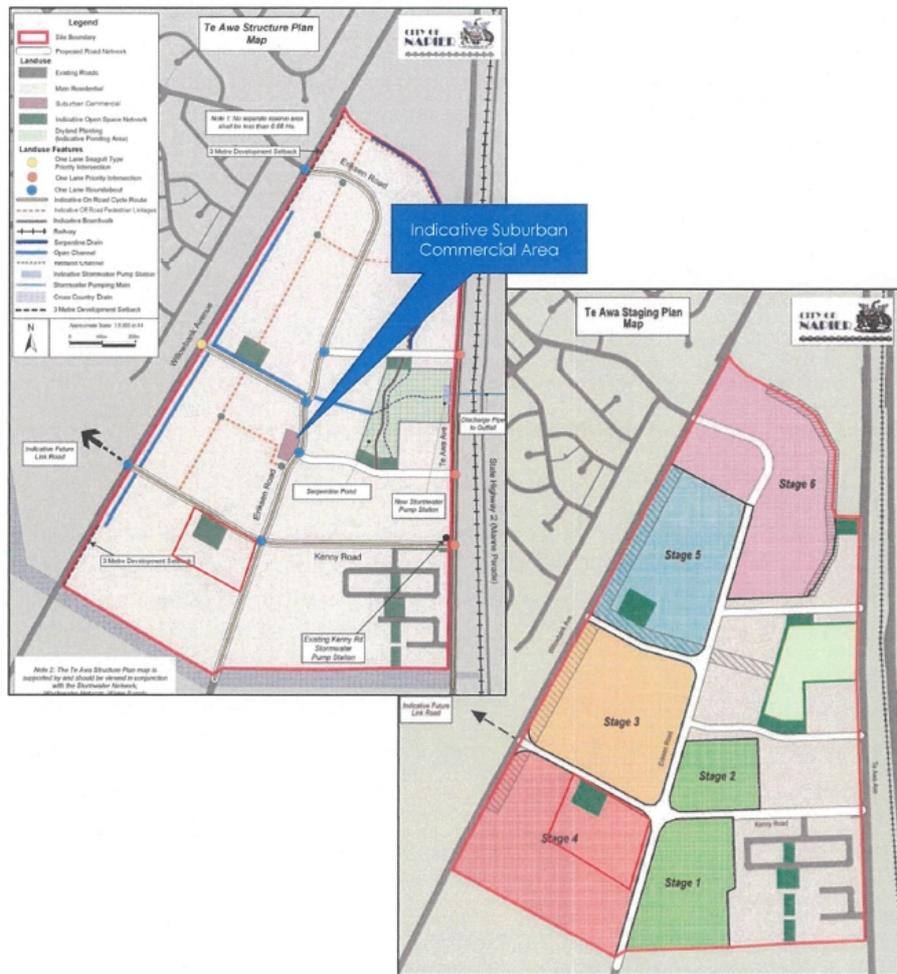
The site and immediately adjoining sites are zoned Main Residential and are subject to the Te Awa Structure Plan – Appendix 29 of the District Plan. The land further south and west of the site is zoned Main Rural.

The Te Awa Structure Plan in Appendix 29B of the District Plan shows a commercial area to the north of the site. Design Outcome 2 of the Te Awa Structure Plan relates to the Suburban Commercial area and states:

*“A node of Suburban Commercial has been indicatively located within the Te Awa Development area. Although Suburban Commercial activities will not be initially permitted within the Te Awa Development Area, it is anticipated that this land use activity should be provided for in the medium-term (i.e. beyond 2015) as an appropriate response to a market demand to service the Te Awa Development area. This Design Outcome could be realised via a supplementary plan change or resource consent application. Any Suburban Commercial activity should be of a small scale and appropriate to the locality’.*

The area indicated for Suburban Commercial Development is shown below;

Figure 3: Appendix 29F – Staging Map



## 2.0 Proposal

The proposal is to establish a Suburban Commercial development at 35 Kenny Road, Napier. The development will comprise of eight separate tenancies including a supermarket, childcare centre, medical centre, café and small retail activities.

The tenancies will comprise the following areas;

- Supermarket 600m<sup>2</sup>
- Retail Tenancies (x4) – 100m<sup>2</sup>
- Café -95.2m<sup>2</sup>
- Medical Centre – 357.6m<sup>2</sup>
- Child Care Centre – 267.9m<sup>2</sup> (catering for up to 75 children)

The site provides a total of 77 car parks and 3 accessible spaces which are accessed via a two way entry/exit vehicle crossing off both Kenny and Eriksen Roads. On site loading and manoeuvring for a Semi Trailer Design vehicle can be provided on site.

Landscaping will be undertaken within the car parking area and along the southern/western attenuation area, with a cluster opposite the loading area. A condition is proposed by the applicant for a landscaping plan (to give effect to the concept) to be prepared by a suitably qualified person and provided to the Council for certification prior to building consent.

In terms of earthworks, the proposal will require approximately 1,500m<sup>3</sup> of cut and 1,500m<sup>3</sup> of fill anticipated in association with forming levels and constructing the stormwater attenuation areas/rain gardens, service trenches and car parking/access areas.

**Accordingly, the applicant seeks land use consent for a commercial multi-unit development with the Main Residential Zone (Te Awa Structure Plan Area) and associated infringements.**

### **3.0 District Plan**

The site is zoned Main Residential under the Operative City of Napier District Plan. The site is also located within the Te Awa Structure Plan Area (Appendix 29 of the District Plan).

- The establishment of a non-residential activity within the Main Residential Zone is classified as a Discretionary Activity under Rule 5.13(c).
- Rule 5.10 Land Development – Multi unit development (Controlled Activity)
- Rule 5.12 Land Uses Not Complying with Conditions – Multi-Unit Development unable to comply with conditions.

The proposed development will be unable to comply with the following:

- **5.27 Earthworks**
- 52A.12 Earthworks
- 52A.16 Location of Fill
  
- **5.31 Transport**
- 61.14A Vehicle parking spaces

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

The NES addresses the assessment and management of the actual and potential adverse effects of the contaminants in soil on human health from particular activities. The proposal will involve soil disturbance and a change of use which are considered activities under the NES when undertaken on a piece of land described in Regulation 5(7) which reads:

*(7) The piece of land is a piece of land described by 1 of the following*

*(a) An Activity or industry described in the HAIL is being undertaken on it*

*(b) An Activity or industry described in the HAIL is being or has been undertaken on it*

*(c) It is more likely than not that an activity or industry described in the HAIL is being or has been undertaken on it.*

A Detailed Site Investigation has been undertaken by EAM Consultants which concludes that the soils at this site are highly unlikely to represent a risk to human health. No further investigation is required.

- Consent is sought under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health as a 'Controlled Activity', with a Detailed Site Investigation having been provided and no further work required.

#### **Overall Activity Status**

Overall, the most stringent status must apply and the proposal shall be assessed as a 'Discretionary Activity' under Rule 5.13.

#### **PUBLIC NOTIFICATION ASSESSMENT S95A RMA STEPS**

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

#### **Step 1: Mandatory public notification is required in certain circumstances**

*Step 1 requires public notification where this is requested by the applicant (s95(3)(a)), or the application involves the exchange of recreation reserved land under s15A of the Reserves Act 1977 (s85A(3)(c)).*

The above does not apply to the proposal.

**Step 2: If not required by Step 1, public notification precluded in certain circumstances**

*Step 2 describes that public notification of a resource consent application involving a residential activity (as defined by s95A(6))<sup>1</sup> or subdivision activity is precluded where the activity status for the application is a restricted discretionary activity or discretionary ACTIVITY (ss95A(4) and 95A (5)(b)(ii)).*

The application does not involve a residential activity nor is a subdivision consent proposed as part of the application. Therefore, public notification is not precluded.

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

*Step 3 describes that where public notification is not precluded by Step 2, it is required if a rule or NES require public notification, or if the activity is likely to have adverse effects on the environment that are more than minor (ss95A(7) and 95A (8)).*

Notification is not precluded under step 2, and notification is not required by a rule in a Plan.

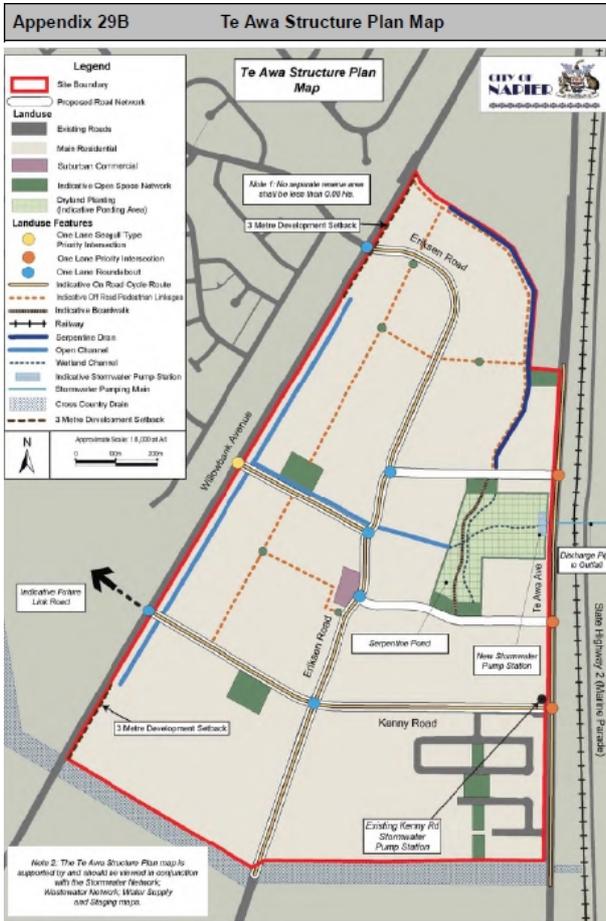
The adverse effects upon the wider environment are able to be mitigated and will be less than minor. Reasons are provided under the S95D assessment below.

**Step 4: Public Notification in special circumstances**

*If an application is not required to be publicly notified as a result of the previous steps, then the Council is required to determine whether special circumstances exist that warrant it being publicly notified (s95A(9)).*

There are no special circumstances in relation to this application. Although the site is located within the Main Residential Zone and the proposed activity is purely commercial in nature, special circumstances are not considered to apply as the Te Awa Structure Plan envisaged a 'Suburban Commercial Node' to service the Te Awa area. The Suburban Commercial Activity was meant to serve as a 'neighbourhood shop' rather than compete with the CBD and was to be of a scale appropriate to the locality. In this instance, it is considered that the proposed scale and activities are appropriate to the area. The subject site is within the vicinity of the indicative Suburban Commercial node and is located on a site suitable for the proposed development.

The Suburban Commercial node was indicatively located within the Te Awa Structure Plan at the area marked pink/purple shown below:



### Section 95D Statutory Matters

In determining whether to publicly notify an application, Section 95D requires consideration as to whether an activity will have, or is likely to have, adverse effects on the environment that are more than minor.

In determining whether adverse effects are more than minor Council must disregard:

- a) *Any effects on persons who own or occupy –*
  - (i) *The land in, on or over which the activity will occur; or*
  - (ii) *Any land adjacent to that land; and*

The effects upon the persons who own or occupy the land on which the activity will occur and the adjacent land have been disregarded.

- b) *May disregard an adverse effect of the activity if a rule or national environmental standard permits an activity to that effect; and*

The permitted baseline for commercial activities relates to small scale activities i.e. day care centre (up to 10 people), home occupation etc. This consent goes well beyond the permitted baseline for activities within the Main Residential Zone.

However, the permitted activity bulk and location requirements are relevant to consider when assessing the application. The proposal itself is able to comply with all relevant bulk and location requirements.

- c) *In the case of a restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard restricts discretion; and*

This is not applicable as the activity is for a Discretionary Activity, whereby the matters of discretion are unrestricted.

- d) *Must disregard trade competition and the effects of trade competition; and*

This is not considered to be a relevant matter in this case.

- e) *Must disregard any effects on a person who has given written approval to the relevant application*

No written approvals have been submitted with the application documents.

## **ASSESSMENT OF EFFECTS**

The effects of the proposal on the wider environment are able to be mitigated and will be no more than minor for the reasons provided below:

- **Amenity**
- **Scale and Intensity**

The nature of the development is anticipated within the Te Awa Structure Plan area and will provide essential services for the surrounding residential properties (current and future). Although the subject site is zoned Main Residential, a suburban commercial node was indicatively located within the area, straddling the properties identified as 95 Eriksen Road and 30 Kenny Road. The Design Outcome is listed below.

**Design outcome 2:**

*'A node of Suburban Commercial has been indicatively located within the Te Awa Development area. Although Suburban Commercial activities will not initially be permitted within the Te Awa Development area, it is anticipated that this land use activity should be provided for in the medium-term (i.e. beyond 2015) as an appropriate response to a market demand to service the Te Awa Development area. This Design Outcome could be realised via a supplementary plan change or resource consent application. Any Suburban Commercial activity should be of a small scale and appropriate to the locality.'*

Although, the proposed development site will not be located within the area identified for suburban development, it is still located within the immediate vicinity. Allowing for a new commercial node within the Te Awa Development area requires consent as a Discretionary Activity and consideration of the potential effects and appropriateness of the activity.

In terms of amenity and design, the building has been designed to present as a low scale structure with active frontages and modulation to prevent excessive bulk. The car parking has been spread around the development in order to prevent a large dominating car park area. The development itself has been well setback from Eriksen and Kenny Road to reduce any visual dominance effects. Councils Urban Design Lead has reviewed the site layout and built form in terms of architectural design and considers it appropriate for the setting. Councils Urban Design Lead is satisfied that active frontages are achieved and suitable pedestrian access provided ensuring connectivity within the development. Recommendations have been included requiring a landscape plan to be submitted to Council for approval to soften any adverse visual effects. Any effects are able to be mitigated through consent conditions to ensure connectivity is achieved between the commercial development and the indicated reserve space.

In terms of scale and intensity, the development is considered consistent with the type and scale of commercial activities envisaged by the Structure Plan. Although retail tenancies are proposed these will be restricted to activities that are of a 'convenient' nature, and either unlikely to be located within the CBD or could provide an outer city option for customers. Therefore, the overall scale and intensity of the proposal will not be incompatible with the receiving environment as anticipated by the Structure Plan, albeit at another location.

The site itself is appropriate for suburban commercial development, being a central location within the context of the Structure Plan and located on a corner of its main roading network. The site is considered suitable to provide essential and readily accessible services to the Te Awa community, whilst not compromising the CBD.

- **Transport**

Councils Infrastructure Department have reviewed the TIA submitted with the application and consider that the surrounding network will be able to support the proposed development.

Overall, it is unlikely that traffic associated with the proposal will create any operational issues within the immediate or wider traffic environment.

- **Noise**

The development itself is well setback from any other residential properties and is unlikely to result in significant noise effects.

Appropriate conditions will be imposed regarding noise, operating hours, light spill etc to ensure that the development does not compromise the residential amenity of surrounding residents.

- **Infrastructure**

Councils Infrastructure Team have reviewed the proposal and consider that the development will be able to be adequately serviced, subject to the imposition of consent conditions to ensure that any adverse effects are appropriately avoided remedied or mitigated.

A condition will be imposed requiring that the development will be subject to the Financial Contributions as provided for in the Te Awa Structure Plan. An advice note will be imposed regarding the potential payment of development contributions in accordance with the Te Awa Structure Plan.

- **Temporary effects**

Any adverse temporary nuisance effects associated with earthworks/construction are able to be suitably avoided, remedied or mitigated through the imposition of consent conditions.

The construction effects are most likely to be related to noise, dust and construction vehicles moving on or off the site. These effects can be effectively managed through the works being undertaken in accordance with the appropriate NZS standard for construction noise and dust, and through the implementation of an approved traffic management plan.

Overall, it is considered that the adverse effects of the proposal are no more than minor. Therefore, based on the conclusion reached above, it is recommended that this application be processed without public notification.

#### **LIMITED NOTIFICATION ASSESSMENT – SECTIONS 95B, 95E to 95G**

If the application is not publicly notified under s95A, the Council must follow the steps set out in s95B to determine whether to limited notify the application. These steps are addressed in the statutory order below;

##### **Step 1: Certain affected protected customary rights groups must be notified**

Step 1 requires limited notification where there are any affected protected customary rights groups or customary marine title groups, or affected persons under a statutory acknowledgement.

The above does not apply to this proposal.

##### **Step 2: If not required by step 1, limited notification precluded in certain circumstances**

Step 2 describes that limited notification is precluded where all applicable rules and NES preclude public notification; or the application is for a controlled activity (other than the subdivision of land) or a prescribed activity (ss95B(5) and 95B(6)).

The above does not apply to the proposal, and therefore limited notification is not precluded.

**Step 3: If not precluded by step 2, certain other affected persons must be notified.**

Step 3 requires that where limited notification is not precluded under step 2 above, a determination must be made as to whether any of the following persons are affected persons:

- In the case of a boundary activity, an owner of an allotment with an infringed boundary
- In the case of a prescribed activity under s360H(1)(b), a prescribed person; and
- In the case of any other activity, person affected in accordance with s95E

The application is not for a boundary or prescribed activity, and therefore an assessment in accordance with s95E is required. This is discussed in the report below.

**Step 4: Further Notification in special circumstances**

*In addition to the findings of the previous steps, the Council is also required to determine whether special circumstances exist in relation to the application that warrant notification of the application to any other persons not already determined as eligible for limited notification.*

In this instance, having regard to the assessment above, it is considered that special circumstances do not apply.

**SECTION 95E STATUTORY MATTERS**

If the application is not publicly notified, then consideration is required as to whether there are affected persons. A person is affected if the effects of the activity on that person are minor or more than minor (but not less than minor).

A person is affected if the effects of the activity on that person are minor or more than minor (but not less than minor). In deciding who is an affected person under Section 95E.

- *Adverse effects permitted by a rule in a plan or NES (the permitted baseline) may be disregarded*
- *Only those effects that relate to a matter of control or discretion can be considered (in the case of restricted discretionary or controlled activities).*
- *The adverse effects on those persons who have provided their approval must be disregarded.*

## ASSESSMENT OF EFFECTS ON ADJACENT PROPERTIES

As noted above, the concept of a Suburban Commercial activity is not foreign within the Te Awa Structure Plan area as a site further north was earmarked for future commercial development in the Structure Plan (subject to resource consent approval or plan change). The proposed site location is not one of the properties where this was indicated. Therefore, it is expected by immediate residents that the site would be residential in nature and in line with the structure plan, with part of the site being shown as an indicative open space area.

The proposal itself will present a commercial appearance on a site anticipated to be developed for residential purposes. Therefore, the proposal may result in character and amenity effects upon the immediate surrounding properties which visually overlook the site. The scale and intensity of the commercial activity is substantially greater than that anticipated within the residential zone. Thus, any effects in terms of traffic, amenity, noise etc as a result of the scale and intensity of the activity would be localised to the immediate surrounding properties.

These properties include:

- 136 Eriksen Road (Lot 1 DP 511890) Blue star
- 120 Eriksen Road (Lot 3 DP 475547) — Orange star
- 100 Eriksen Road (Lot 1 DP 532863)– Green star
- 30 Kenny Road (Lot13-16 DP 6055) – Pink star

**Figure 1 – Aerial Map**



No other properties are deemed affected in terms of scale and intensity, residential character and amenity, traffic and noise given the location of the development on site and the separation distances provided. It is noted that the site at 5 Kenny Road (adjoining western property) is over 100m from the development location. Their existing residential dwelling would be over 200m from the development site. The property adjoining the southern boundary at 151 Eriksen Road is also located over 100m from the development site.

### **Indicative Commercial Zoning**

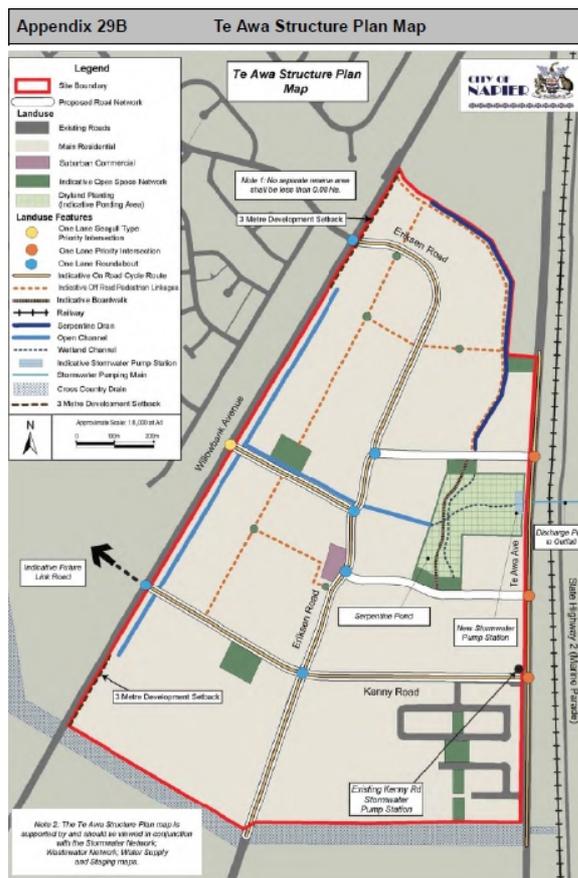
As noted above, the Te Awa Structure Plan indicated a suburban commercial node located over two sites identified as 95 Eriksen Road and 30 Kenny Road map at Figure 2 below. These sites are owned by;

- 30 Kenny Road - Lot 13-16 DP 6055 (Pink Star)
- 95 Eriksen Road - Lot 9-12 DP 6055 (Purple Star)

**Figure 2**



The indicative commercial zone is also indicated in purple on the map below.



These landowners at 30 Kenny Road and 95 Eriksen Road may have had an expectation of developing their site with a commercial activity as indicated by the Te Awa Structure Plan. It is unknown whether any plans or proposals for a commercial hub are being prepared at either of these sites.

Whether or not the owners of the land subject to the indicative commercial node are affected parties has been considered and legal advice obtained from Lawson Robinson, Matthew Lawson for the purposes of the s95 assessment.

The legal opinion prepared by Matthew Lawson considered that setting up a suburban commercial activity outside of the indicative node does not constitute an activity having adverse environmental effects on other landowners, unless they are affected that arise in an environmental sense. Thus, the landowners within the indicative commercial node would not be affected persons for the purposes of Section 95E simply by reason of owning land in the indicative node only.

However, a full assessment of those other environmental effects i.e. noise, traffic, visual and amenity for these sites is still required for determination of affected party status.

The legal opinion noted that the Structure Plan itself is clear in that this zoning is indicative only and that any commercial activity whether on these identified sites or not would be subject to resource consent approval, as a Discretionary Activity, which can still be granted or declined. Any application would need to be assessed in terms of the effects upon the surrounding environment and considered on its merits. Therefore, the indicative zoning does not mean that these landowners can develop a commercial node as of right. Nor does it give any special planning status to suburban commercial activities within the Te Awa Structure Plan area, whether they are within the indicative node or not. The approval of a consent for a commercial node on a site outside of the Te Awa Structure plan area does not preclude these landowners from applying for resource consent at their site.

It is also noted that trade competition effects cannot be considered as an environmental affect for the purposes of Section 95E.

Overall, the legal opinion concluded that the indicative commercial zoning over these sites does not constitute grounds for requiring limited notification of those land owners in respect of a resource consent being made for the development of a suburban commercial activity elsewhere within the Te Awa Structure Plan area.

In terms of an assessment of effects in an environmental sense, the landowners at 30 Kenny Road are deemed affected in terms of scale and intensity, amenity and character given that they will directly overlook the proposed commercial development.

Whilst the landowners at 95 Eriksen road are well separated from the site and any scale and intensity, transport, character or amenity effects upon them are able to be mitigated and will be less than minor.

### **Limited Notification Conclusion**

Having considered the effects of the proposal and the requirements of s95A and s95B of the RMA, it is recommended that the application be processed on a limited notified basis, with notice being served on the following parties:

- 136 Eriksen Road (Lot 1 DP 511890) - Blue star
- 120 Eriksen Road (Lot 3 DP 475547) - Orange star
- 100 Eriksen Road (Lot 1 DP 532863) - Green star
- 30 Kenny Road (Lot13-16 DP 6055) - Pink star



Report and recommendation prepared by:

Bridget Nicholson  
**Resource Consents Planner**

Report reviewed, approved and recommendation adopted under delegated authority on 26<sup>th</sup> June 2019, pursuant to Section 34A of the Resource Management Act 1991:

Paul O'Shaughnessy  
**Team Leader Resource Consents, Napier City Council**