

**S42A HEARINGS REPORT FOR A LIMITED NOTIFIED RESOURCE CONSENT
(RM190019) UNDER THE RESOURCE MANAGEMENT ACT 1991**

Hearing Date: **Wednesday 13 November 2019**

To: Hearings Commissioner Ms Janeen Kydd-Smith
Appointed by Napier City Council

Reporting Officer: Rebecca Sutton
Senior Resource Consents Planner, Napier City Council

Applicant: Te Awa Land Development Company Limited

Site Address: 35 Kenny Road, Te Awa

Legal Description: Lot 18 DP6055 Record of Title HBE2/436
4.3857ha

Zoning: Operative Napier City District Plan
Main Residential
Structure Plan 29 – Te Awa (Stage 4)

Activity Status: Discretionary Activity

Summary of Proposal: To establish a comprehensive suburban commercial development comprising a supermarket, four retail tenancies, café, medical centre and childcare centre on the site at 35 Kenny Road, which is located within Stage 4 of the Te Awa Structure Plan Area

Relevant Application Dates:

Application Received: 02 February 2019

Limited Notification: 27 June 2019

Submissions Closed: 25 July 2019

Submissions Received: 4 submissions (3 in opposition and 1 in support)

Appendices:

A	Land Use Resource Consent Application
B	Application Plans
C	S92 Request (dated 11 March)
D	S92 Response (29 April 2019)
E	Notification Assessment <i>Prepared by Ms Bridget Nicholson – Planner, Napier City Council</i>
F	Submissions Received
G	Correspondence from Interested Persons
H	Post Notification S92 Request (dated 14 August 2019)
I	S92 Response (dated 20 September 2019)
J	Peer Review of Traffic Impact Assessment (WSP Opus)
K	UC Peer Review Response and Final Memo Peer Reviewer
L	Recommended Draft Conditions

Qualifications and Experience of Reporting Planner

1. My name is Rebecca Tiffany Sutton. I am employed by Napier City Council (NCC) in the role of Senior Planner, Resource Consents.
2. I hold a Bachelor of Arts in Geography from Victoria University of Wellington (2007) and a Masters of Resource and Environmental Planning (hons) from Massey University (2010).
3. I have 12 years of experience as a resource consents planner in a range of both local government (5 years) and private consultancy roles (7 years) - detailed as follows:

May 2019 – Present	Senior Planner, Napier City Council
2014 – 2019	Planning Contractor, Various
2013 – 2014	Senior Planner, Positive Planning Ltd
2011 – 2012	Intermediate Planner, Auckland Council (Western Resource Consenting and Compliance)

2010 – 2011

Planner, Meridian Planning Consultants (MPC Planning)

2007 – 2010

Planner, Auckland City Council (Hauraki Gulf Islands)

4. I confirm I have read the Code of Conduct for Expert Witnesses in the Environment Court Consolidated Practice Note 2014 and I shall comply with this Code of Conduct.
5. I confirm this report is within my area of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express. The opinions expressed in this report are of my own impartial professional judgement based on the information.
6. It is my role as the reporting planner to assess this application against the Operative City of Napier District Plan, the Resource Management Act 1991 and any other associated legislation and plans that are relevant and to make recommendations to the Hearings Commissioner.

1.0 Summary of Proposal

The proposal is to establish a suburban commercial development as shown within the submitted plan set (refer **Appendix B**):



Figure 1 – ‘Proposed Development’

The development is to comprise a total of eight tenancies, defined within the application material as:

- Supermarket;
- Early childhood education centre;
- Four retail tenancies;
- Café; and
- Medical Centre.

The proposal will provide for a total of on-site car-parks (68 standard parks plus 3 accessible car-parks) and two, two-way vehicle crossings, one accessed from Kenny Road and the other from Eriksen Road. The development is to include landscaping for the purposes of stormwater mitigation and visual aesthetics of the site. This landscaping is to extend across a total area of 3942m².

2.0 Site and Locality Description

A description of the site and immediately surrounding locale is contained within the Assessment of Environmental Effects (Appendix A). In conjunction with reviewing this site description, I have also visited the site and surrounding locale on the following three occasions:

- Wednesday 22 May 2019 (briefly in conjunction with Ms Nicholson);
- Monday 16 September 2019 and
- Wednesday 16 October 2019.

I concur that the description of the site is accurate, with the single dwelling still present on the development site and the surrounding locale remains consistent with the description as presented.

I do note however that earthwork activity has commenced at 136 Eriksen Road, in conjunction with the approved land-use consent to establish a retirement village on this site.

3.0 Reasons for the Application

The reasons for the application are detailed as follows:

3.1 Napier Operative District Plan

- To establish a non-residential activity (multi-unit commercial development) within the Main Residential zone (Te Awa Structure Plan area) requires consent for a **Discretionary** activity pursuant to Rule 5.13(c) – *Main Residential*.
- To establish the proposal within Stage 4 of the Te Awa Structure Plan area results in ‘out of sequence’ development which results in a non-compliance the conditions in Rule 5.38 – Development of Land within Structure Plan Areas. This requires consent for a **Discretionary** activity pursuant to Rule 5.13(1)(g) and Rule 5.38(1).
- To undertake a multi-unit commercial development within the Main Residential zone (Te Awa Structure Plan area) requires consent for a **Controlled** activity pursuant to Rule 5.10 – *Main Residential*.
- To undertake a multi-unit commercial development that does not comply with all of the relevant conditions in the Main Residential zone activity and condition tables requires consent for a **Restricted Discretionary** activity pursuant to Rule 5.12 – *Main Residential*.

The development conditions that are not met in this instance are:

Reference	Condition	Infringement
5.22	Noise	The proposal will exceed the District Plan daytime noise limits up to a maximum of 3dB at the adjacent property being 30 Kenny Road and up to a maximum of 1dB being at 136 Eriksen Road
5.27 52A.12 52A.16	Earthworks Extent of Earthworks Location of Fill	The proposal requires up to 3000m ³ of earthworks to be undertaken across the development site
5.29	Signs	The proposed signage exceeds 0.3m ²
5.31 61.14A	Transport Vehicle Parking Spaces	The proposal provides for a total of 68 car-parks plus 3 accessible spaces, where the District Plan requires a total of 89 car-parks (shortfall of 21 spaces).

The proposed non-compliances with each of the above development conditions are also to be assessed as **Restricted Discretionary** activities pursuant to each of the development controls.

3.2 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS)

- The submitted Detailed Site Investigation (DSI) prepared by EAM Environmental Consultants (deemed as suitably qualified and experienced practitioners – SQEP) concludes that the soils at this site are highly unlikely to represent a risk to human health and no further work is required with regard to remediation. This requires consent for a **Controlled** activity pursuant to Clause 9(3) of the NESCS.

4.0 Activity Status of the Application

It is considered appropriate in this instance to apply a bundling approach to the above resource consent applications so that the most restrictive activity status is applied to the entire proposal.

Accordingly, the application is to be assessed as a **Discretionary** activity.

5.0 Notification and Submissions

5.1 Notification

The application has been subject to a notification assessment undertaken by Ms Bridget Nicholson and approved for release under delegated authority by Mr Paul O'Shaughnessy, Team Leader of Resource Consents on 26 June 2019. This report details the assessment of the effects of the activity both on the wider environment (in terms of Section 95A and 95D of the RMA) and the immediately adjacent environment (in terms of Sections 95B and 95E of the RMA).

In terms of effects on the wider environment, the adverse effects of the proposal were found to be **no more than minor** with regard to amenity, scale and intensity, transport, noise, infrastructure and temporary/construction effects. After review of this assessment, I concur with the conclusions reached by Ms Nicholson and consider that as the effects of the proposal on the wider environment will be no more than minor; public notification of the proposal was not warranted in this instance.

In terms of the assessment of the effects of the proposal on adjacent properties, the effects with regard to scale and intensity, amenity and character were deemed to be **minor** on the owners/occupiers adjacent to the subject site, given the proximity of these properties to the subject site.

Subsequently, notice of the application was served on the owners of adjacent properties on the 27 June 2019, being identified as follows:

Address	Owner
136 Eriksen Road, Napier	Summerset Villages (Te Awa) Limited
120 Eriksen Road, Napier	Mcauley, Marie Yoell (owner as of date of notification) Jones, Gareth Wyn (new owner) Clark, Joanne (new owner)
100 Eriksen Road, Napier (and 56 Kenny Road – refer Section 5.3)	Friedlander, Andrew Mark Campbell, Vicki Heather Napier Independent Trustees Limited
30 Kenny Road, Napier	The Wentworth York Limited (Directors Heather and Nigel Taylor)

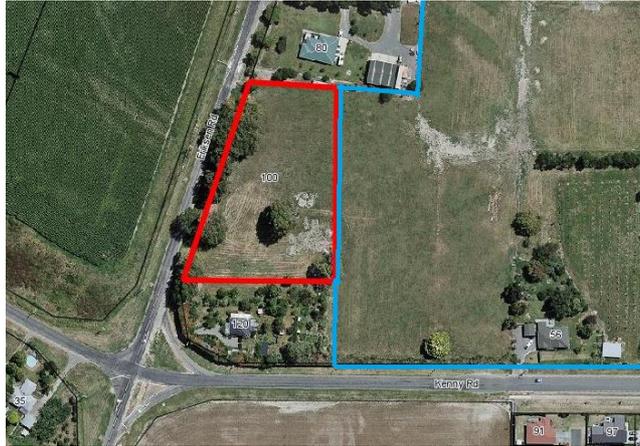
5.2 Clarification of Notification for 100 Eriksen Road (56 Kenny Road).

As part of the preparation of the current report, I have reviewed the notification assessment and noted a discrepancy with identification of the property identified as '100 Eriksen Road' as of the date of notification. The notification assessment which was released on 26 June 2019 identified this property with the following cadastral information:



100 Eriksen Road, as identified by the 'green star'

However, it is noted that a boundary adjustment subdivision between 56 Kenny and 100 Eriksen Road had the new Records of Title issued on 14 May 2019, which altered the legal boundaries as follows at the date of notification:



100 Eriksen Road (red outline) and the site formerly known as 100 Eriksen Road (in part) is now identified as 56 Kenny Road (blue outline)

The intent of the notification was to include the property immediately to the east of 120 Eriksen Road, due to the proximity of this land to the subject site. As such, separate notice should have been served on the owners/occupiers of the property now known as 56 Kenny Road, given the movement of the legal boundaries of this site.

It is noted that the registered ownership of both properties includes one common owner (being Mr Andrew Friedlander).

I acknowledge that Mr Friedlander and Ms Campbell have prepared separate submissions for both properties, being 100 Eriksen Road and 56 Kenny Road. Whilst the submission from 56 Kenny Road was initially assessed as ‘correspondence from an interested party’ upon realization of this matter, I have received confirmation that this correspondence is now to have the formal standing of a submission and I have considered it as such.

5.3 Submissions

At the close of the notification period (being Thursday 25 July 2019), submissions had been received from the following persons:

Address	Owner	In Support/Opposition
136 Eriksen Road, Napier	Summerset Villages (Te Awa) Limited	Support
120 Eriksen Road, Napier	Jones, Gareth Wyn (new owner) Clark, Joanne (new owner)	Opposition
100 Eriksen Road, Napier	Friedlander, Andrew Mark Campbell, Vicki Heather Napier Independent Trustees Limited	Opposition
56 Kenny Road, Napier	Friedlander, Andrew Mark Campbell, Vicki Heather	Opposition

A copy of these submissions has been included within **Appendix F** to this report, and I have summarised the matters of contention raised as follows:

- *Incompatibility with the District Plan Objectives and Policies*
- *District Plan Integrity matters*
- *Scale and Location of the Proposed Development*
- *Market Demand*
- *Traffic and Pedestrian Safety*
- *Signage*
- *Lighting*
- *Noise*

These matters are addressed in detail in Section 9.0 of this report below.

6.0 Correspondence Received

In addition to the above submissions, Council has also received correspondence from the following property owners, who consider themselves to be affected persons (but are to be considered as interested parties):

- 80 Eriksen Road, Napier, Shona and Matt Grace, received by email 25 July
- Address unknown, Mr Paul Harris, received by email 25 July

Copies of this correspondence has been included within **Appendix G** and generally relate to the assertion that the application should have been processed as publicly notified, rather than as a limited notified application. In light of this correspondence, it is necessary to consider the effect of Section 104(3)(d) which states:

A consent authority must not grant a resource consent if the application should have been notified and was not.

In *Fullers Group Ltd v Auckland Regional Council* [1999] NZRMA 439 (Court of Appeal), the Court of Appeal held that when a council is deciding whether to grant consent, it is not under any duty to consider whether the application should have been notified, if that notification decision was considered at any earlier stage.

Nevertheless, a submitter on a limited notified application may be entitled to argue at the council hearing and/or on appeal that the application should have been publicly notified. If the council or Court agrees, it appears they would have no choice but to decline consent in terms of s104(3)(d).

As detailed previously, the notification assessment and subsequent recommendation has been recorded and is included as **Appendix E**. After review of this notification assessment, I consider

that all appropriate matters have been canvassed and concur with the conclusions made by Ms Nicholson. Specifically, I concur that given the effects of the activity, it was only immediately adjacent properties that would experience adverse effects to a minor degree.

I acknowledge the use of an outdated cadastral map with regard to the assessment of the property boundary of 100 Eriksen Road, which at the date of notification also encompassed part of 56 Kenny Road. The intention of the notification was to include 56 Kenny Road (formerly included within 100 Eriksen Road) and noting that:

- the two properties remain in ownership by one of the same persons; and
- All application material and correspondence has been made available to these persons as owners of 100 Eriksen Road; and
- These parties proceeded to provide written correspondence as the land owners of this property (which is now deemed to hold the standing of a submission);

I consider that these parties have not been manifestly disadvantaged as a result of this unfortunate and unintentional error. Further, I do not consider it would proper to apply Section 104(3)(d) to this situation, given that the information was provided and a submission received from the persons affected by this error.

I note that all parties beyond those deemed affected that provided correspondence to Council were advised of their rights to pursue a judicial review of the notification assessment (by return email). At the date of writing this report, I am not aware of any further proceedings underway in this regard.

Therefore, it is my opinion that the independent commissioner assessing this application is not limited by the provision of S104(3)(d) and can proceed to assess the application in a substantive capacity.

7.0 Pre-Hearing Meeting

In accordance with the provisions of Section 99 of the Act, a pre-hearing meeting was arranged for Thursday 10 October between the applicant and their representatives, Council representatives and submitters Heather and Nigel Taylor (Wentworth York Ltd – 30 Kenny Road) and Gareth and Joanne Jones of 120 Eriksen Road. Apologies were provided on behalf of Andrew and Vicki Friedlander due to unforeseen family circumstances.

The matters discussed were on a 'without prejudiced' basis and as such do not form part of the consideration under this report.

However, it is noted that discussion was initiated from Mr Robin Malley (Team Leader, Transportation, Napier City Council), Mr Dave Curson (Transportation Development Engineer,

Napier City Council) and Mr Jason Tickner (Team Leader, Development and Standards) regarding the proposed development of the roundabout at the intersection of Kenny Road and Eriksen Road (i.e. the intersection that the development site fronts to). This roundabout is in the detailed design stage and is likely to commence construction within the next 12 months.

Notwithstanding this, the applicants Traffic Impact Assessment has recommended interim mitigation measures to be implemented within the roading network surrounding the development site, to ensure that the on-going safety with regard to traffic and pedestrian movements in the event that the time horizon between the two projects does not marry up. This recommendation has been considered in the assessment contained within Section 9.0 of this report below.

8.0 Section 104 Assessment

Matters to be considered by the consent authority when assessing an application for resource consent pursuant to section 104 of the Act include (subject to Part 2):

- Any actual and potential effects on the environment of allowing the activity; and
- Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment;
- Any relevant provisions of a National Environmental Standard, other regulations, National Policy Statement, New Zealand Coastal Policy Statement, a regional policy statement or proposed policy statement;
- Any relevant objectives, policies, rules or other provisions of a Plan or Proposed Plan; and
- Any other matter the consent authority considers relevant and reasonably necessary to determine the application.

The assessment of the above matters follows:

Section 104(1)(a) and (ab) Assessment

9.0 Actual and Potential effects

The assessment of actual and potential effects on the environment requires consideration of both the adverse effects of the proposal, as well as any positive effects of the application. With reference to both the assessment of the adverse effects of the proposal undertaken in notification assessment (refer **Appendix E**) and the effects of the proposal raised in the submissions, I provide the following assessment of the adverse and positive effects:

9.1 Proposed Location of the Development

The Te Awa Structure Plan Map detailed in Appendix 29A of the District Plan demonstrated a suburban commercial node located to the immediate west of the intersection of Eriksen road and Waimakariri Road. The location of the node on the map is detailed in '*Design Outcome Two*' as an 'indicatively located'. Therefore, it is feasible for a node of comparable size and scale to establish

elsewhere within the Structure Plan area when sought by way of resource consent application. Further, Section 6.3 of the Te Awa Structure Plan Report document¹ states the accessibility objectives of the plan, including *'provision of walking opportunities within the Structure Plan by developing key facilities within 400m of most dwellings'*. It is considered that the suburban commercial node would fall within the definition of a 'key facility' noting that only one is provided for within the structure plan area.

I consider the location as proposed for suburban commercial node is appropriate, for the following reasons:

- The proposed location is located 270-metres to the south of the indicative positioning of the suburban commercial node. I consider this to be a more central location within the structure plan area, which provides for walking opportunities to the development site of less than 5 minutes (400-metres)² for more than 50% of residents within the overall Structure Plan area.
- The proposed location for this suburban commercial node is located immediately across from the approved Summerset Retirement Village. This proximity of development near to persons who are likely to be less mobile/more reliant on alternative forms of transport to a private motor vehicle, is considered to be appropriate when considering the needs of the local community.
- The proposed location seeks to locate near the intersection of Kenny and Eriksen Roads, which allows for two independent vehicle crossings that 'share' the distribution of vehicle ingress and egress from the site.

For these reasons, I consider that the proposed location for the suburban commercial node is consistent with the intent of the structure plan documentation.

9.2 Scale of the Proposed Development

The proposed development seeks to establish a suburban commercial development comprising building floor area of 1721.4m² across the eight tenancies as follows:

- Supermarket of 600m²
- Two retail tenancies of 100m²
- Two retail tenancies of 103m²
- Early childhood center of 267.9m²
- Medical Centre of 352.3m²
- Café of 95.2m²

plus an additional 115m² of exterior store / loading associated with the supermarket, rubbish storage area of 10m² and canopy/eave coverage (which contributes to the 'site coverage' calculation).

¹ Refer Section 6.3 pg 26 Beca Report 'Te Awa Structure Plan' dated 27 October 2010

² Refer pg 14 Beca Report 'Te Awa Structure Plan – Urban Design Report' Rev C, dated 13 September 2010

I note that Design Outcome 2 of the Te Awa Structure Plan details a ‘small scale’ node of suburban commercial as appropriate to service the Te Awa development area. The three submissions in opposition have raised concerns with regard to the scale of the proposed development.

The proposed scale of the development is considered to be consistent with that which was indicatively proposed within the structure plan, for the following reasons:

- The scale of the development site is entirely comparable with the area indicated on the map – and indeed is smaller than previously indicated noting that the area identified in the more northern location comprised approximately 6000-7000m².
- The proposed number of tenancies, and the scale of these individual tenancies are considered to be entirely commensurate with other, similar scaled suburban commercial developments within Napier City, such as:

Suburban Centre	Floor Area of Buildings (approx. as measured from aerial photo)	Number of Tenancies (approx.)
Greenmeadows	2300m ²	8
Onekawa	3300m ²	11
Marewa	6500m ²	24

- The definition of the tenancies, combined with the detail provided in terms of built form provides a high degree of certainty with regard to the suburban commercial character of the proposed development.

Overall, I consider the proposed scale of the development to be entirely commensurate with the scale anticipated for suburban commercial development and actual or potential effect in this regard are considered to be less than minor.

9.3 Market Demand

The three submissions in opposition to the application have questioned whether the market demand for such a development has been established. The application is to establish the only suburban commercial node within the Te Awa locale, noting that ancillary retail and service activities are to be located within the approved Summerset Retirement Village.

This matter has arisen from the wording of Design Outcome 2, in particular:

.....it is anticipated that this landuse 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.....

It is noted that development of Stage 1 of the Te Awa Structure Plan area is currently underway and Stage 2 is in the planning phases. Further, the land associated with the Te Awa Estates development has already occurred therefore, there are a multitude of established and occupied dwellings already established within the locale.

With regard to interpretation of '*an appropriate response to a market demand to service*' I do not consider that means that such a development could only seek to establish after such time as Stages 1, 2 and 3 are completed; nor do I consider that waiting to establish such a development until after all dwellings are completed within these respective stages provides for a functionally efficient structure plan area. I consider that the provision for housing at the density provided for under the structure plan gives rise to appropriate *anticipated* market demand for such tenancies that serve individuals general convenience requirements; which have been nominated within the application material.

For these reasons, I consider that the provision of a development at the scale proposed is appropriate to the market demand that will be generated from completion of the various stages of the Structure Plan.

9.4 Traffic Effects (Vehicle Movements, Parking and Access)

The applicant has commissioned a Traffic Impact Assessment, prepared by Urban Connection and dated April 2019. Further to receipt of submissions querying the crash data and the reduction applied for shared-trip considerations; a peer review of this report was commissioned by Napier City Council from WSP Opus. This peer review was completed on 9 September 2019. As a result of the submissions, Urban Connection provided an addendum dated 8 October (refer **Appendix K**). This addendum canvassed the distance to the nearest public transport (12 minute walk); road safety; and further detailed the reduction in parking demand associated with likely linked trips. This further addendum has been accepted by WSP Opus as the peer reviewer, with a memo confirming acceptance dated 15 October 2019 (refer **Appendix K**).

Council's Transportation Engineer has reviewed the correspondence as detailed above, and has confirmed that he is satisfied with the conclusion drawn within the submitted TIA being:

It is concluded that the proposed development can be accommodated within the local traffic and transportation environment with no more than minor effects.

I recommend that, should consent be granted, the two recommendations contained within the TIA and provision for a temporary pedestrian crossing point as detailed within the addendum information are included as conditions of consent. These recommendations are detailed as follows:

- 1) *The Kenny Road footpath shall be extended along the southern side of Kenny Road, to the boundary of the site, to provide an all-weather footpath connection from the site to the existing footpath network. This shall require a suitably designed crossing provision at Eriksen Road.*
- 2) *The Kenny Road and site access intersection be designed to include a right turn bay to support the safe and efficient operation of the intersection.*

And the inclusion of the following recommendation as an Advice Note to the Consent holder to:

- 3) *The consent holder is advised to contact Napier City Council to consider review of the safe and appropriate speed limits within the vicinity of the site, with particular regard given to the 100km/h posted speed limit on Eriksen road immediately fronting the site and the adjacent Summerset Retirement Village.*

9.5 Lightspill

The applicant has commissioned a report prepared by Mr Paul Wilson of XYST Limited, dated 29 August 2019 (refer **Appendix I**) which details the conceptual lighting design for the proposal. In particular, it is noted that the proposed lighting design will comply with the permitted activity standards provided by *Condition 5.23 – Light Spill*. In particular, Mr Wilson concludes:

The attached computer model of the lighting design indicates that the maximum level of added illuminance at any window located at the minimum setback distance of 6m from the boundary would be 0.8 lux. In addition I have calculated the added illuminance at the boundary which would be a maximum of 0.8 lux horizontal and 3.6lux vertical, well within the 10 lux limit.

Therefore, I consider that should consent be granted, the actual and potential adverse effects of lighting are able to be mitigated by way of consent condition which requires implementation of the lighting design plan as proposed. This will ensure that effect associated from light spill will be less than minor.

9.6 Noise

All submissions have raised potential noise issues as an actual or potential adverse effect. The applicant has commissioned an Acoustic Report prepared by Earcon Consultants (refer **Appendix I**). This report confirms that with the proposed operating hours of:

- *Supermarket 7.30am – 9pm*
- *Retail 7.30am – 7pm*
- *Medical Clinic doctors: 7.30am – 6pm*
- *Childcare: 7.30am – 6pm*

That the operation of the development will comply with the District Noise Acoustic Standards at all adjacent properties, with the exceptions of 30 Kenny Road and 136 Eriksen Road. The infringement of the standards to each of these properties is up to 3dB and 1dB respectively. This degree of infringement is described by Earcon Consultants as 'inaudible' and as such, it is considered that this degree of infringement results in less than minor adverse effects with regard to noise.

I note that provision within this report is made with respect to limiting refuse and recycling, limiting the hours of pick up to between 7am and 7pm, however there is no mention relating to days of pick up. Further, I note no restriction has been placed on loading hours and/or days for the supermarket or other retail tenancies.

These types of ancillary service activities are they types of activities that have the potential to generate nuisance and/or adverse character effects within a residential environment, particularly if they occur early in the morning, late into the evening or during weekends. These are the times when the majority of persons anticipate a higher degree of amenity, and to have peaceful enjoyment of their properties. To this end, I recommend to limit these activities (refuse and recycling pick up and loading activities) to the hours of 7am – 7pm Monday to Friday by way of consent condition, should consent be granted.

Reliant on the above condition, I consider that the actual and potential effect associated with noise to be less than minor.

9.7 Signage

The indicative signage information relating to location; size and type of sign has been provided as part of the Section 92 material and now shown on submitted Sheets 102 and 301 (refer **Appendix B**). Whilst the signage exceeds the permitted standard for signage size in the Main Residential zone, the actual and potential effects are considered to be less than minor for the following reasons:

- The character of the site will be suburban commercial, as provided for within the Structure Plan by Design Outcome 2.
- The proposed signage is considered secondary to the overall built form and will not result in adverse effects with regard to dominance or visual amenity.
- The signs are not to be digital or back-lit, therefore will not generate light spill or disturbance to adjacent persons.
- The scale and type of signage is considered to be for information purposes only, rather than for gratuitous, or attention-seeking marketing purposes and will be limited to the on-site activities.

For these reasons, I consider the actual and potential effect from signage with regard to the residential character and amenity of the surrounding locale to be less than minor.

9.8 Earthworks/Land Modification

The purpose of the earthworks control is to limit the volume and extent of the earthworks, to minimise the potential for erosion and instability, to protect the natural environment and landscape and to prevent the reduction of water quality through surface runoff and sedimentation. The proposed development requires earthworks across the development site of approximately 3000m². The applicant will install appropriate silt control measures during construction to ensure that no silt laden runoff will leave the construction area.

Overall, the actual and potential effects associate with the proposed earthworks are considered to be temporary, and able to be mitigated by the implementation of consent conditions.

9.9 Landscaping

The proposal includes extensive landscaping both around the periphery of the site, and throughout the property to provide for on-site stormwater attenuation and to soften the appearance of buildings from external viewpoints. The location of the proposed landscaping is shown on Sheet 102, however no detailed landscape plan has been provided.

I recommend, that should consent be granted; a condition of consent is imposed requiring the submission of a detailed landscaping plan be provided, which details species types, sizes and locations. Provided that this information is forthcoming, it is considered that the indicative landscaping will result in a positive contribution to the visual amenity of the surrounding locale.

9.10 Conclusion with regard to Actual and Potential Effects

For the reasons detailed above, I consider that the adverse effects of the proposal are able to be effectively mitigated by way of consent conditions and overall, the proposal will have positive effects of providing for commercial conveniences for the residents of the surrounding residential locale, providing for efficient functioning of the wider structure plan area and will improve the overall visual character and amenity of the locale through the provision of high quality building design and extensive landscaping on this corner site.

Section 104(1)(b) Assessment

10.0 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

These regulations provide a national environmental standard for activities on pieces of land whose soil may be contaminated in such a way as to be a risk to human health.

The applicant has commissioned a Detailed Site Investigation Report prepared by EAM Environmental Consultants. This report confirms that the soils at the site are highly unlikely to represent a risk to human health and no further investigation is required.

On this basis, I am satisfied that the proposed earthworks on the site will not result in adverse effects with regard to human health and effects will be less than minor.

10.1 Heretaunga Plains Urban Development Strategy (HPUDS)

The HPUDs document is non-statutory, however it is a strategic document that has been adopted by all three partner Councils, being Napier City Council, Hastings District Council and Hawkes Bay Regional Council. This document is predominately concerned with protecting versatile soils and transition to a more compact city form.

HPUDS focuses on how the Heretaunga Plains should develop and encourage growth in the future.

HPUDS is tied in to the RPS and the Napier District Plan (as well as the Hastings District Plan). With regard to this document and the current application, it is noted that the Te Awa Structure Plan area has been identified as a key residential greenfield growth area. Therefore, it is considered that the proposal is consistent with the strategic direction afforded by the HPUDS document and relates to suburban commercial development to service an identified greenfields residential growth area.

10.2 Hawkes Bay Regional Policy Statement

The Hawkes Bay Regional Policy Statement and the specific section on Managing the Built Environment has been developed to implement the principles and purposes of HPUD's. The specific objectives of the RPS have been adopted by Hawke's Bay Regional Council to set the overarching resource management framework for the Region's resources. I note that the Napier City Council District Plan and subsequent Te Awa Structure Plan have been prepared to be consistent with this overarching document. In particular, I note that the provision of a suburban commercial development within a residential growth area is consistent with Objective UD1 which seeks to '*establish compact and strongly connected urban form throughout the region*' and I consider that the particular location, scale and appearance of this particular proposal '*achieves quality built environments that are environmentally sustainable, functionally efficient and demonstrates consideration of the principles of urban design*'. In particular, the proposed location seeks efficiency with regard to the existing roading network; is to be located immediately across the road from an approved retirement village (where accessibility to neighbourhood services is considered of high importance with regard retention of quality of life) and the form and finish of buildings is considered to establish a quality built environment within the Te Awa locale.

10.3 Objectives and Policies of the City of Napier Operative District Plan 2011

The relevant objectives and policies for the current application are included in the following plan Chapters:

<i>Chapter 4</i>	<i>Residential</i>
<i>Chapter 52A</i>	<i>Earthworks</i>
<i>Chapter 57</i>	<i>Noise</i>
<i>Chapter 58</i>	<i>Signs</i>
<i>Chapter 61</i>	<i>Transportation</i>
<i>Chapter 65</i>	<i>Financial Contributions</i>

I consider that the proposal is consistent with the relevant objectives and policies contained in these chapters for the following reasons:

- The proposal provides for provision of goods and services ancillary to the residential growth occurring within the Te Awa Structure Plan area. This results in a reduced reliance on private vehicle use, given that it is to be located within a 5 minute walk of 50% of the dwellings provided for within the Te Awa Structure Plan area;

- The proposal is considered to contribute to the overall residential character and amenity of the locale through the use of quality building design and finishes, as well as provision of extensive on-site landscaping;
- The restrictions on the hours of operation of the tenancies on the site, and the associated loading and refuse/recycling pickups, by way of recommended consent conditions is considered to protect the residential amenity within the surrounding locale during the early morning, evening and weekend times;
- The earthworks on the site are to be of a temporary duration and will not result in a discernible change to the appearance of the topography of the site within the wider landscape;
- The inclusion of dust control measures and sediment controls on the site will ensure that no adverse effects with regard to water quality or nuisance occurs during the construction phase of the project;
- The proposal provides for safe and efficient access to the site and the provision of on-site car-parks is considered satisfactory to service the activity.

10.4 Te Awa Structure Plan Outcomes

The Te Awa Structure Plan has 18 Design Outcomes which seek to achieve the intent of the Structure Plan. The applicant has undertaken a thorough assessment of the proposal against the Design Outcomes within the submitted assessment of environmental effects (*Pages 14-17*). After review of this assessment, I concur and adopt this assessment subject the following further comments:

Design Outcomes 4 and 5

- The proposed does represent 'out of sequence' development, insofar as it seeks to establish the suburban commercial node within Stage 4 of the Structure Plan area, prior to Stages 1-3 achieving 70% of the total number of residential lots receiving S224 Certification. Notwithstanding this, the application has been assessed as a Discretionary activity and is found to be located on an appropriate site when viewed in the context of the overall Structure Plan.
- The applicant has demonstrated that the proposal is able to be appropriately serviced in terms of water, wastewater and stormwater. In particular, it has been demonstrated that the proposed development is to be serviced by on-site stormwater attenuation. Whilst the application material seeks to remove this on-site attenuation once the Stage 4 infrastructure is provided, in the interests of retaining the low-impact development; combined with the amenity effects generated from the on-site landscaping and rain garden; I recommend that this infrastructure be maintained in perpetuity by of covenant to be registered on the Record of Title.

10.5 Assessment Criteria

The assessment criteria relevant to the current application is considered to be limited to the matters detailed in *Chapter 12 – Residential Environments Assessment Criteria*, specifically those

matters detailed in Section 12.2 – General, 12.3.1 – Non-Residential Activities, 12.3.2 – Daycare Centres and 12.3.3 – Multi-Unit Developments. Where the assessment criteria overlap, I have assessed the application ‘in the round’ so as to avoid repetition:

12.2 General Assessment Criteria

- The development site is not considered to have any unusual circumstances pertinent with regard to ground levels, size, shape or topography that would make the development for the purpose of a suburban commercial development inappropriate;
- The proposed earthworks are to be limited to the construction phase of the project and are able to be suitably mitigated by way of consent conditions, should consent be granted;
- The proposal has been demonstrated to meet the Structure Plan design outcomes in the submitted AEE and the further assessment undertaken in Section 10.3 of this report above.

12.3 Assessment Criteria for Particular Land Uses

12.3.1 Non-Residential Activities, 12.3.2 – Daycare Centres and 12.3.3 – Multi Unit Development

- The proposed suburban commercial development is considered to contribute to the efficient operation of the Te Awa Structure Plan area, by allowing residents of this area to provide for their daily requirements without having to travel to adjacent neighbourhoods;
- The proposed design of the development site, is considered to be of a high quality, with a modulated building elevations and roof pitches to ensure visual interest. This, combined with the proposed on-site landscaping will ensure that the appearance of the development contributes to the overall amenity of the locale;
- The scale and intensity of the development is considered to be entirely appropriate when viewed in the context of the development area that it will service. For the reasons identified in Section 9.2 of this report above, the proposed development is entirely consistent with the scale of other, established suburban commercial nodes within Napier (Green Meadows, Onekawa and Marewa);
- The proposal will alter the residential character of the immediate development site; however this is anticipated within the Structure Plan design. With regard to the surrounding residential character, I consider that the character will remain unchanged by the development; given the setback of all adjacent sites from the development site (as a result of the location of Eriksen and Kenny Roads);
- I do not consider that the proposal will have a discernible impact on the amenity of the surrounding environment, given the scale of the proposed suburban commercial development;
- The proposed outdoor play areas of the ECE have been sited to the rear of the development, thus minimising any adverse effects on the visual and aural privacy of adjacent land uses, public places and roads.
- The proposed hours of operation of the individual tenancies on the site ensures that acoustic effects will be less than minor; and the residential character and amenity of the locale will be maintained by restriction of activities, including loading and rubbish/recycling pick-ups to the hours as detailed within the submitted acoustic report.

- The anticipated traffic volumes associated with the development have been demonstrated to be accommodated within the existing roading network with indiscernible effect with regard to safe and efficient road operation.
- The design and external appearance of the proposed buildings is considered to be of a high architectural standard and will retain the visual amenity of the locale;
- The loading and storage areas have been designed at the rear (south-west) corner of the site so as to maintain the visual amenity of the site as viewed from public viewpoints;
- The location of the car-parking is to be partially buffered by on-site landscaping which serves to minimise any adverse visual effects associated with this on-site infrastructure.
- The design of the vehicle ingress/egress has been designed so as to avoid congestion and the two-way nature of both access points serves to minimise any conflict between vehicles.
- The proposed development will not generate dust after the construction phase, therefore no effects are anticipated in this regard.
- The applicant has demonstrated that the development is able to be serviced through a range of public and private infrastructure. With regard to the on-site stormwater mitigation measures, this serves a dual purpose of 1) providing on-site amenity and 2) providing a low impact design for stormwater. This is considered to be a mitigating factor with regard to the overall effect of the development, and as such I recommend that this on-site infrastructure remain in perpetuity.
- The proposed car-parking is considered safe and convenient for access whilst still maintaining an acceptable aesthetic from Kenny and Eriksen Roads.

For the above reasons, the proposal is considered to be consistent with the relevant assessment criteria.

Section 104(1)(c) Assessment – Other Matters

11.0 Financial Contributions and Development Contributions

As a commercial development located within the Te Awa Structure Plan area, the proposal necessitates calculation of both development contributions (commercial activity) as well as financial contributions (Te Awa Structure Plan area). It is important that these two charges do not ‘overlap’ with regard to the effects of which they are taken to mitigate. To this end, the total amount of contribution has been calculated as **\$1,198,529.10**, comprised of the following:

Development Contributions: \$81,942.10 (to mitigate downstream effects)

*Financial Contributions: \$515,027.00 - hectare charge based on 1 ha – part of the full site area
\$601,560.00 - road frontage charge*

These are the fees and charges as calculated and I note that indexing will be applicable to these figures. It is recommended that, should consent be granted, the figure for the financial contribution forms the basis of a condition of consent, and the development contribution figure be included as an advice note.

12.0 Precedent Effects and Plan Integrity

The submissions in opposition to the proposal have all raised precedent and/or plan integrity effects as matters for consideration.

For the reasons detailed above, I consider that the proposal is entirely consistent with the objectives and policies of the District Plan, and the Design Outcomes of the Te Awa Structure Plan area. In particular, whilst the site is zoned 'Main Residential', the entire structure plan is covered by this zone, with the identified node of suburban commercial being acknowledged within the Design Outcomes as 'indicative' and able to be established by way of resource consent application.

The development has been located with the 5 minute/400 metre walkability urban design principal for a minimum of 50% of the structure plan area. Further, the structure plan area was designed to specifically provide for this type of activity at a scale which is appropriate for the neighbourhood. Any development of this type would inevitably would need to locate in the main residential zone, as this is the underlying zoning for the entire structure plan area.

For these reasons, I do not consider that any precedent effects or plan integrity effects are raised with regard to establishment of suburban commercial activities within the main residential zone.

13.0 Consideration of Part 2 (Purpose and Principles) of the RMA

Section 5 establishes the purpose of the Resource Management Act as the sustainable management of natural and physical resources. This means managing the use of natural and physical resources in a way that enables people and communities to provide for their social, cultural and economic well-being, while sustaining those resources for future generations, protecting the life supporting capacity of ecosystems and avoiding, remedying or mitigating adverse effects on the environment.

I consider that the proposed development is consistent with Section 5 as it is a development that seeks to provide for basic suburban needs, without the need to travel outside of the locale. I considered that the adverse effects of the activity are able to be effectively mitigated through way of consent condition, should consent be granted.

Section 6 of the Act sets out a number of "matters of national importance" which need to be recognised and provided for. I do not consider that the current application raises any matters of national importance that requires consideration.

Section 7 identifies a number of "other matters" to be given particular regard by the Council in the consideration of any assessment for resource consent, and includes the efficient use of natural and physical resources and the maintenance and enhancement of amenity values.

The proposal is considered to be an efficient use of the existing land resource, in a way that is consistent with the intent of the Te Awa Structure Plan. Whilst the proposal is for a suburban commercial area within the main residential zone, the scale and form of the proposed development is considered to appropriately maintain the anticipated level of residential amenity within the locale.

Section 8 requires Council to take into account the principles of the Treaty of Waitangi. In this case there are no known Treaty of Waitangi issues with the proposed development of the site at 35 Kenny Road.

14.0 Recommendation

Having had regard to the matters set out in Section 104 and 104B of the RMA, I consider that, on balance, the positive effect of the proposal outweigh the adverse effects, which are able to effectively mitigated through imposition of consent conditions pursuant to Section 108, should consent be granted.

It is my opinion that the proposal is consistent with the relevant Objectives and Policies of the District Plan, and the intent of the Te Awa Structure Plan.

Accordingly I recommend that consent be granted subject to the draft conditions (refer **Appendix L**)

Report and recommendation prepared by:



Rebecca Sutton
Senior Resource Consents Planner
Napier City Council

Reviewed for release by:



Paul O'Shaughnessy
Team Leader Resource Consents
Napier City Council

17 October 2019