

S42A REPORT FOR A PUBLICLY NOTIFIED RESOURCE CONSENT (RMS19006) UNDER THE RESOURCE MANAGEMENT ACT 1991

Reporting Officer:	Rebecca Sutton Senior Planner, Strategy Planning Ltd
Applicant:	Durham Property Investments Ltd
Site Address:	16 Willowbank Avenue, Te Awa, Napier; and 38 Willowbank Avenue, Te Awa, Napier
Legal Description:	16 Willowbank Avenue Record of Title HBG2/863 Lot 1 DP 14417 4.5526 ha 38 Willowbank Avenue Record of Title 420376 Lot 2 DP 14417 9.2648 ha Total 'Site' Area: 13.8174ha
Zoning:	Operative Napier City District Plan Structure Plan 29 – Te Awa (Stage 5) Main Residential
Activity Status:	Discretionary Activity
Additional Limitations:	<u>Designation/s</u> D171 – Proposed Road D172 – Proposed Stormwater Drainage <u>Noise Boundary Willowbank</u> <i>Applies to western boundary</i>

Summary of Proposal:

To undertake a joint, land-use and subdivision consent, including:

- Establish 19 vacant residential lots as Stages 1A, B and C, fronting to Eriksen Road;
- Establish a separate lot (Lot 500) to provide for a wastewater pumping station as part of Stage 1A;
- Establishment of 162 residential lots, 8 reserve lots, 1 car-parking lot, 7 access roads and 1 jointly-owned access lot as Stages 2-8;
- A staged multi-unit consent to construct 162 residential dwellings (Stages 2 – 8);
- Access related code of practice infringements (vehicle crossing in excess of 6 metres in width and retention of roads as private rather than vested/ number of dwellings accessed from private road);
- Subdivision of land, land disturbance and change in use of land known to have had HAIL activities undertaken on it.

Relevant Application Dates:

Public Notification: 16 August 2020
 Submissions Closed: 16 September 2020
 Submissions Received: 3 submissions (2 neutral and 1 in opposition)

Appendices:

1	Original Assessment of Environmental Effects
2	Addendum Assessment of Environmental Effects
3	S92 Response Letter 02 April 2019
4	Second S92 Response Letter 21 January 2021
5	Scheme Plans
6	Report on Assessment of Liquefaction Potential
7	Traffic Impact Assessment
8	Detailed Site Investigation Report
9	Land Development Report Rev D and Servicing Plans
10	Landscape Concept Design Rev M
11	Urban Design Report Rev F
12	Dwelling Concept Plans
13	Copy of Submissions (x3)
14	Technical Memo – Napier City Council Transportation

15	Technical Memo – Napier City Council Three Waters Infrastructure
16	Technical Memo – Napier City Council Parks and Reserves
17	Proposed Draft Condition Set

Qualifications and Experience of Reporting Planner

- My name is Rebecca Tiffany Sutton. I am employed by Strategy Planning Ltd in the role of Senior Planner and have been contracted to Napier City Council as the reporting planner for this application.
- I hold a Masters of Resource and Environmental Planning (hons) from Massey University (2010) and a Bachelor of Arts with a major in Geography from Victoria University of Wellington (2007). I am a full member of the New Zealand Planning Institute.
- I have 14 years of experience as a resource consents planner in a range of both local government (5 years) and private consultancy roles (9 years).
- 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.
- 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.
- 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 make recommendations to the Decision Maker.
- This report does not represent any decision on the application and only provides the professional assessment and opinions of the reporting officer. This report is to be considered by the Decision Maker in conjunction with all other technical evidence and submissions. This report and recommendation does not carry any greater weight than any other evidence or submissions that are to be considered by the Decision Maker.

1.0 Summary of Proposal

The proposed development is to establish a 199-lot subdivision across 8 stages annotated as Stages 1 – 8 (noting that Stage 1 comprises sub-stages A, B and C). Resource consent is also sought for a concurrent 162-dwelling multi-unit development across Stages 2 – 8, to allow the construction of dwellings for each stage to occur on the site prior to the issue of the Records of Title for individual lots.

In particular, the applicant has stated that the overall development is to be marketed as a gated, 'Lifestyle Village' which is to be targeted to '*retired occupiers, over the age of 55*' with each home to be located on a fee-simple, separate title (as identified on the submitted scheme plan). There is to be no managed, personal care element available for occupiers. The access roads to service Stages 2 – 8 of the development are to be retained in private entity ownership, as necessitated by the requirement of the applicant to gate the two vehicle entrances to control/restrict access between the hours of 6pm – 7am.

The applicant has stated through the Addendum Assessment of Environmental Effects that the access gates are to remain open during the daytime (7am to 6pm). After the gates close at 6pm, residents will be required to present a security pass/code to facilitate access through the gates. The entrance gates are to be fitted with a code override system to enable access for emergency vehicles during the hours that the gates are closed.

As detailed within the Addendum Assessment of Environmental Effects (refer **Appendix 2**, pg 1) the proposed Three Waters infrastructure to service Stages 2 – 8 has been designed to be accommodated within the internal road corridors, and the Scheme Plans have been prepared on the basis that this infrastructure is to be vested to Napier City Council, with relevant easements to facilitate access and maintenance to these networks provided within the Schedule of Easements.

1.1 Subdivision

Specifically, the 8 stages of the subdivision are described as follows:

Stages 1A, 1B and 1C

Stages 1 (A, B and C) have been re-instated to the scope of the application, as a result of the latest S92 response provided (dated 22 January 2021) following removal of these stages from the application prior to notification. The 19 vacant residential lots and Lot 500 (pumping station) that comprise these three sub-stages of the development are located outside of the 'lifestyle village' and have direct access to Eriksen Road. Whilst these sites have been approved pursuant to RMS200026, the resultant amendment proposed for the three waters servicing has necessitated re-instatement of this stage to the current application – i.e. inclusion of 'Lot 500'.

As these lots are not considered part of the 'lifestyle village' it is considered that the re-introduction of these sites to the current application did not necessitate re-notification of the application, as it did not materially change the 'effects' of the overall activity, given that these sites (excepting Lot 500) can be considered to form part of the receiving environment.

Stages 2 - 8

Proposed stages 2 – 8 comprise the total extent of the proposed gated community – being a total of 179 lots (162 residential lots/ dwellings) and are to be marketed to the aged 55+ retirees as a 'lifestyle village' that caters to the required 'perception of safety'ⁱ that this age group seeks.

A summary of the development of lots within each stage is detailed as follows:

Stage	Residential Lots	Reserves	Private Roads/Parking
2	27	2 (Lot 301 and 305)	Lot 401
3	27	2 (Lot 306 and 302)	Lot 402
4	17	-	Lot 403
5	29	2 (Lot 303 and 307)	Lot 404
6	18	-	JOAL (Lot 417) and Lot 405
7	24	2 (Lot 308 and 304)	Lot 406 and Lot 24 (to be utilised for parking)
8	20	-	Lot 407
Total	162	8	9

Noting that with each Stage detailed above, a reducing 'balance lot' is also to be formed.

1.2 Earthworks, Land Modification and Contamination

The proposal will include land modification as detailed on submitted Plan referenced C005, prepared by Strata Group and titled '*Earthworks Plan*'; comprising:

- cut/excavation of 41,466m³ to undercut the existing ground by 300mm depth;
- fill of 26,481m³ being imported hard-fill from topsoil undercut to top off design fill surface levels;
- a further 22,268m³ of fill to design surface.

These bulk earthworks are being assessed as part of the proposed subdivision/joint land-use and therefore are exempted from the earthworks provisions of the plan pursuant to Rule 52A.8.

The proposed earthworks are required to bring the land above the modelled 2% AEP floor level for the Te Awa development area (being RL 11.28). It is noted that achieving this RL for finished

ground levels will still require a free board of 300mm above the flood level for any dwellings or habitable buildings (RL 11.58).

The application site is known to have had pastoral farming, market gardening and orchard activities undertaken on it, which are included in the Hazardous Activities and Industries List – HAIL. As a result, the applicant has commissioned a Detailed Site Investigation report for the site, prepared by Development Nous in conjunction with GeoSciences (refer **Appendix 8**).

This report concludes that that soil contamination within the site boundaries does not exceed the applicable standard in regulation 7 (Section 13 - page 28) and as such, will not generate a threat to human health, nor does the land require any remediation works as part of the current application.

1.3 Reserves

The proposal has been subject to considerable modification with regard to the provision of reserves since the initial lodgement of the application in 2019.

Initially, the development proposed the establishment of four 'pocket parks' (Lots 301, 302, 303 and 304 – comprising areas of 508m², 194m², 194m², 194m² respectively) in addition to the main drainage reserve Lots 305, 306, 307 and 308.

Subsequent to discussions between the applicant and Council, the southern pocket park (Lot 301) was increased in size to 2059m² by including former residential Lots 48 – 51 as 'reserve'. This (Lot 301) is now largely representative of the identified 'neighbourhood reserve' located within the Te Awa Structure Plan Map (Appendix 29B of the District Plan) and as such, is to be vested to Council as *Recreation Reserve – Reserves Act*.

The western and southern storm water reserve (Lots 305, 306, 307 and 308 - comprising 31,249m² across Stages 2, 3, 5 and 7) are consistent with the designation requirements; and are abutted by the remaining three pocket parts (Lots 302, 303 and 304). On this basis, Lots 302, 303 and 304 (the pocket parks), along with Lots 305, 306, 307 and 308 are to be vested to Council as *Local Purpose - Drainage Reserve*.

Noting that these reserves are to be vested to Council the proposed fencing solution will traverse the 'internal' boundaries of each of these lots, as detailed in Figure 1 below – ensuring that these reserves do not form part of 'lifestyle village' and allows for unimpeded public entry into these spaces. The proposed fencing materiality as detailed by red line on the submitted Landscape Concept Design (rev. M) and replicated below in Figure 1, includes 1.8m high, semi-transparent fencing, and pedestrian gates are to be provided within the eastern extent of the fencing solution for Lots 302, 303 and 304.

Figure 1:



It is noted that while the three 'pocket' parks will provide a degree of amenity and connection to the proposed reserve, it is noted that their main users will likely be persons from within the lifestyle village accessing the swale walkway, rather than a space for active recreation (due to their small scale).

To summarise, the latest iteration of the proposal with regard to reserves seeks to vest all proposed reserves, comprising a total area of 33,890m² across Lots 305, 306, 307, 308 (Local Purpose – Drainage Reserve), Lot 301 (Local Purpose Reserve) and Lots 302, 303, 304 (Local Purpose – Drainage Reserve).

The proposed landscaping that is to occur within these reserves is provided in 'concept form' (refer **Appendix 10**). Noting that this is concept design only, and does not include a finalised planting plan for the proposed reserves that are to be developed and vested as part of the overall development. Notwithstanding this, the overall palette and design concept is able to be understood and it is considered appropriate to defer final detail as a recommended condition of consent, should the Commissioner be of the mind to approve the application.

1.4 Infrastructure

1.4.1 Access and Roding

The proposal includes a private network of ten roads (created by 7 'lots' – being 401, 402, 403, 404, 405, 406 and 407) which are to be amalgamated across the progression of Stages 2 – 8. This network of private roads are to be accessed by two entrances to Eriksen Road and the establishment of a further jointly owned access lot (Lot 417).

Importantly, 'Road 10' does not comprise a through-road, as would generally be inferred from the submitted scheme plans, the proposed formation of this access is punctuated by a series of 7 cul-de-sac heads, with shared 'private driveways' extending to the north and south respectively.

The roading network is to be constructed within a 13.5-metre-wide access corridor. The carriageway is proposed to be 6 metres wide (3 metres each lane) with asphalt surfacing and kerb and channel both sides. A single 1.4 metre concrete footpath down one side is to provide for pedestrian linkage to the open space areas.

The road network has been assessed by Council's Transportation Engineer to be generally in accordance with the Code of Practice and District Plan requirements for 'minor roads'.

However, the proposed implementation of gates at both entrances effectively negates the ability for Napier City Council to accept vesting of the roading network. To this end, the development of the 162 dwellings/ residential lots within Stages 2 – 8 is to be accessed by a network of private roads, that are to be managed by a residents society.

1.4.2 Water, Wastewater and Stormwater Servicing

The water, wastewater and stormwater infrastructure to service the proposed subdivision is detailed within the submitted infrastructure report titled '*Land Development Servicing Report*' Rev. D prepared by Strata Group and shown on the plans associated with this report (refer **Appendix 9**).

In summary:

Water

Water is proposed to be provided from the 200mm diameter public water main in Eriksen Road, which currently terminates at Hurunui Drive. The applicant is reliant upon the Council extending this along Eriksen Drive.

Stage 1 of the development will be provided with direct connections to the water main along Eriksen Drive.

With regard to Stages 2 – 8, two points of connection are to be provided to the boundary, as shown on the water supply plans appended to the land development report. Within the development, it is proposed to provide a principal DN150 main running along one side of the road with a looped 63mm rider main running back along the opposite side. A series of appropriately

sized feeder branches will be run up each access way to service the required lots. The water infrastructure within the development is to be held in private ownership.

Wastewater

It is proposed to provide wastewater services to each of the Stages of the Development by way of a single pumping main that is located within proposed Lot 500 (Stage 1 of the development). This will connect to the existing Eriksen Road pumping main located approximately 250 metres to the south of the development, and is to be vested to Council.

Lot 500 has been established within Stage 1A of the development, to the immediate north of the main vehicle entrance to the lifestyle village. This lot comprises 47m² and has a 9.7 metre boundary to Eriksen Road and a 9.8 metre boundary to the main entrance road/ Lot 401.

For lots fronting to Eriksen Road (Stage 1) a gravity connection will be extended along the length of Eriksen Road to which Lots 1 – 19 will discharge directly to, (and will subsequently discharge to the pump station Lot 500).

Stages 2 – 8 will also utilise a gravity network that is to discharge to the same pumping station, however all infrastructure for wastewater within Stages 2 – 8 is to be retained in private ownership.

Stormwater

The storm water system has been designed to convey the development catchment through a piped network to the proposed structure plan swale drain along Western and Southern boundaries.

This connects into Te Awa structure plan attenuation pond via the upgraded Cowshed drain swale. The swale drains are located within the 40m wide designation area and would be constructed to the profile determined in the Beca report and the structure plan.

The piped network has three discharge points into the swale drain. The Stage 1A, B and C allotments are to be serviced with a piped system discharging to the box culvert under Eriksen Road.

Storm water design parameters have been taken from NCC CoP 2015; 11.9. Coefficients have been set at 0.55 for all allotments except lots 12-19 of Stage 1 where owing to the potential for higher site coverage (up to 56%) a higher coefficient of 0.65 ('Town house development' from NZBC E1/VM1) has been adopted. Roads and reserves have been assigned coefficients of 0.85 and 0.30 respectively.

The pipe network has been designed to allow for both a 10% and combined 10/2% AEP events. Rainfall data has been taken from the NCC Code of Practice which has been extracted from the April 2008 NIWA report titled Impacts of Climate Change on Napier High Intensity Rainfall with the extracted rainfall depths under the year 2090 and includes the mid-range temperature climate change scenario.

Where the three waters infrastructure is located outside of the extent of the 'lifestyle village' these services are to be vested to Council. Where the networks are located within the extents of Stages 2 – 8, these are to remain in private ownership.

The applicant has proposed that the three waters infrastructure be vested to Council, with access for maintenance and repair being provided by way of easement. As detailed within the Addendum Assessment of Environmental Effects (refer **Appendix 2**), the application and associated Scheme Plan have been prepared on this basis.

Notwithstanding the above, and as per the evidence provided by the Director of Infrastructure; Council have the right to specify at what point a connection to the public three waters services will be provided to any development based on what is best for the network and public at large.

For the reasons explained in more detail in section 7.5 of this report, Council considers there will be significant risk associated with the vesting of infrastructure under a roading network that is to remain in private ownership. Therefore, if the internal road is to remain in private ownership, the Council does not agree to the Three Waters infrastructure internal to the subdivision being vested in Council. The connections to the public networks for Stages 2 – 8 are to be provided to the boundary of the public/private interface i.e. the gates; with the three waters networks servicing Stages 2 – 8 to be maintained as 'private' and operated/repared by the proposed Residents' Society.

1.4.3 Utility services

The Strata Group Report details that power and telecommunications have been laid through to the proposed development site as part of the Eriksen Road and Hurunui Road residential development. It is intended to extend these services through the development. Further, Power-Co have been approached to service the site for gas which is to run concurrently with other utilities in proposed trenches.

There is the existing issue of the overhead, 33kVA powerlines that traverse the adjacent road frontage of the site. The latest iteration of the Land Development report still states:

The existing overhead power lines in Eriksen Road would remain in place. Undergrounding would be undertaken in the future by Unison as part of their seismic upgrade programme.

This applicant's planner however advised by email on 22 April 2020 that:

Overhead Power Lines

Having reviewed the overhead power lines matter, it seems logical that these are replaced with underground lines at the time of Stage 1 road widening, as envisaged by the Te Awa Structure Plan. This position supersedes any previous statement in this respect.

As there was no corresponding request to provide for overhead services (contrary to the requirements of the Code of Practice), the decision RMS 200026 required by way of condition that:

9.2 All electrical mains cables and telecommunication cables within the subdivision shall be underground.

And this is the expectation for the current application in the absence of any further information in this regard.

1.5 Multi-Unit Development

The proposal includes the staged, multi-unit development for the 162 dwellings that are proposed to be constructed over Stages 2 – 8. Specifically, the development of the dwellings is to occur in accordance with the proposed stages, as follows:

Stage 2 – 27 residential dwellings (including 3 sets of duplex units)

Stage 3 – 27 residential dwellings (including 3 sets of duplex units)

Stage 4 – 17 residential dwellings (including 1 set of duplex units)

Stage 5 – 29 residential dwellings (including 2 sets of duplex units)

Stage 6 – 18 residential dwellings (including 3 sets of duplex units)

Stage 7 – 24 residential dwellings (including 2 sets of duplex units)

Stage 8 – 20 residential dwellings (including 4 sets of duplex units)

The purpose of this component of the application is to provide for the commencement of construction of dwellings prior to the issue of Records of Title for each of the proposed lots, within the development of each stage.

The multi-unit development comprises two main types of housing styles, including two-bedroom (plus study/third bedroom) duplex units, as well as two-bedroom (plus study/third bedroom) stand-alone dwellings – shown in Figures 2 and 3 below:

Figure 2 – Duplex Units



Figure 3 – Single Dwelling



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These dwelling units have been well designed and will provide for a high degree of on-site amenity for future residents, with direct access afforded to the private landscaped areas from the open-plan living spaces and generally orientated in a northerly aspect. The landscape concept for the open space areas has been well defined within the submitted landscape concept plans (refer **Appendix 10**), however a finalised landscaping plan for these spaces will still be required to be completed.

Where the proposed outdoor spaces are located to the southern aspect (Dwellings 44-47, 48-52, 166, 167, 170, 173-174, 177-178, 149-150, 155, 158, 139-140, 134, 118-119, 122-123, 126, 104-107, 89, 90, 93) it is noted that the single-storey character of the dwellings, combined with the setbacks between buildings ensures that these spaces are still afforded an appropriate degree of light admission and amenity.

Development Condition Infringements

The proposed site sizes and configuration of dwellings will result in a number of infringements to the Main Residential Zone Condition Table (Chapter 5), detailed as follows:

- The nature of the duplex units is such, that they will infringe the internal 1 metre side yards upon completion of the proposed subdivision; (Condition 5.16);
- The proposed format for single dwellings includes a gross building area of 186m² and duplex buildings demonstrate a gross building area of 185m², therefore all Lots below 372m² in area will have a resulting infringement to the 50% site coverage standard (Condition 5.19).
- The proposal requires that the two-vehicle access points in and out of the property be gated, which prevents vesting of the road as public. Therefore, all proposed access roads are to remain in private ownership and the southern vehicle crossing exceeds the maximum width allowance which are infringements to the Code of Practice for Subdivision and Land Development (Condition 5.37) and (Code of Practice, A6, 6.3).

2.0 Site and Locality Description

A description of the site and immediately surrounding locale is contained within the Assessment of Environmental Effects (**Appendix 1**). In conjunction with reviewing this site description, I have also visited the site on 16 October 2019, and again during March 2020.

I consider that the description of the site provided is accurate, and make the following points with regard to the existing dwellings and their vehicle accesses:

- The existing dwelling at 16 Willowbank is located adjacent to the northern-most boundary of this site, and is within Stage 8 of the subdivision application. This property is subject to a lease term for the life of the leasee (being Evelyn Awhina Waaka), which required that access be maintained. It is understood this access is no longer required, and as

such there is no longer any impediment to retiring this vehicle access to Willowbank Road.

- The existing dwelling at 38 Willowbank is located within what is proposed to be Stage 5, with the existing vehicle crossing being located within the boundaries of proposed Lot 307, which is to be vested in Council. There is no restriction regarding the requirement to forfeit this vehicle crossing prior to commencement of earthworks on the site.

Therefore, prior to commencement of activity on the site, these two vehicle crossings to Willowbank Avenue are to be removed, with performance of this requirement being recommended to form a condition of consent, should the Commissioner be of the mind to grant consent to the application.

3.0 Application Background

To allow for a complete understanding of the proposal and the key dates applicable to the application, it is necessary to provide some background/ a timeline for the application, as follows:

Date (2019)	Action
21 January	Application received by Council
28 January	S88 Check completed and application formally lodged
22 February	S92 Request for Further Information Issued
15 March	Preliminary S92 response provided
2 April	Official S92 response provided

Post review of the S92 response provided to Council by email on 2 April 2019, a number of meetings and email correspondences occurred between the developer, their planning agents and various Council staff to seek to resolve the key matter in contention, being the provision of the gates preventing the vesting of the road network proposed to service the development, and the preference of Council to have such a scale of access ways as vested, public road.

A letter was issued to Council from the legal counsel representing the applicant on Friday 13 September 2019 seeking further clarification with regard to the key matter in contention, noting that the applicant wishes to progress the application urgently and sought response from Council with regard to the above matters.

Further to receipt of this letter, it was established that satisfactory information had been provided by the applicant to be able to complete the notification assessment, which was formalised on 05 November 2019. An email was issued on Monday 11 November 2019 for the applicant to provide a cohesive set of updated plans (to reflect the changes that had been made during the progression of the application) to allow for a consistent package of information for notification of the application. This information was not forthcoming.

A number of 'follow up' attempts to obtain this information to allow for notification were made by Napier City Council on 11/11/19, 15/11/19, 29/11/19, 13/12/19, 13/01/20 and 4/02/20.

On 20 March 2020, a revised application was made available by the applicant and a meeting was undertaken between the applicant, their agent, Council officers and the processing planner. This identified the changes to the application for consideration.

Various email correspondences have occurred in the subsequent time since this amended application has been made available, with the final information being furnished by email on 21 April 2020.

The applicant then placed the application 'on-hold' whilst they undertook further discussions with Council's infrastructure team, and advised by email on 15 July 2020 confirming that they wanted to proceed with the notification.

This occurred on Wednesday 19 August 2020 and submissions closed 20 days following on Wednesday 16 September. Post receipt of submissions, the applicant sought to place the application 'on-hold' as of 24 September 2020 whilst they undertook discussions with the submitters. A further S92 request for additional information was issued on 25 September 2020.

The applicants subsequently undertook discussions with each of the submitters and furnished the response to the S92 on 22 January 2021.

The applicant was able to reach private agreement with the submitters, with the final submitter (being Napier Boys High School) formally advising of withdraw of their submission on Monday 8 March 2021.

4.0 Reasons for the Application

The reasons for the application are detailed as follows:

4.1 Napier Operative District Plan

- The proposal is to undertake a residential subdivision 'out of stage' within the Te Awa Structure Plan area and associated multi-unit development that does not comply with 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).
- The proposal includes subdivision and multi-unit development that fails to meet conditions 5.16 – yards, 5.19 – Site Coverage and 5.37 - Code of Practice for Subdivision and Land Development. This requires consent for a **Restricted Discretionary** activity pursuant to Rule 5.12.
- The proposal results in a non-compliance with Table C5.7.1 – Non-Public Access (Subdivision and Land Development Requirements) as whilst the proposed widths of the

non-public access-ways meet the standards for a minor roads, these are not to be vested as public roads and as such will service in excess of 8 residential lots. This requires consent for a **Discretionary** activity pursuant to Rule 61.11(1).

- The proposal is specifically listed as a Discretionary activity in Volume 1, and as such requires consent for a **Discretionary** activity pursuant to Rule A6, 6.3 (Volume1, Code of Practice).
- The proposed lifestyle village is to include entry signage, of which indicative detail has been provided (*refer Appendix 11*). The village name is yet to be determined; however the proposed location of the signage is to be mounted on the fencing between the main village entrance and will comprise an indicative area of 3.3 metres x 0.6 metres (total face area of 1.98m²). This signage is to be discreetly underlit during the hours of darkness. The proposed signage requires consent for a **Restricted Discretionary** activity pursuant to Rule 58.21.

Note: *In accordance with Rule 52A.8(a) the proposed earthworks are to be assessed as part of the subdivision application, and as such are exempted from the relevant conditions of the Earthworks Activity table.*

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

The submitted Detailed Site Investigation (DSI) prepared by Development Nous in conjunction with Geosciences (deemed as suitably qualified and experienced practitioners – SQEP) concludes that the soils at this site present no risk to human health from the development and confirms that whilst there are isolated areas of low level, elevated contaminant levels within the site, overall compliance with the relevant soil contamination standards for residential use is achieved and no further work is required with regard to remediation. This requires consent for a **Controlled activity** pursuant to Regulation 9(3) of the NESCS.

5.0 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**.

6.0 Notification and Submissions

6.1 Notification

The application was publicly notified on Wednesday 19 August 2020 in accordance with the notification determination released on 28 April 2020.

6.2 Submissions

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At the close of the notification period (being 5.00pm, Wednesday 16 September 2020), submissions had been received from the following persons:

Submitter	Relevant Property	Support/Neutral/Opposition
Napier Boys High School c/- The Catalyst Group	6 Willowbank Avenue	Neutral
Maraenui Trust c/- Richard Hale	51 Willowbank Avenue	Neutral
Hawke's Bay Regional Council	N/A	Oppose

A copy of these submissions has been included within **Appendix 13** to this report, and I have summarised the particular matters raised as follows:

- Reverse Sensitivity Effects
- Rural Amenity Values
- Stormwater and Flooding Effects
- Traffic and Connectivity Effects
- Construction Effects
- Natural Hazards

These matters are addressed in detail in Sections 7.0 and 8.0 of this report below.

7.0 Section 106 Assessment

Section 106 relates to circumstances when the consent authority may refuse an application to subdivide and states:

(1) A consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that:

- (a) there is a significant risk from natural hazards; or*
- (b) [Repealed]*
- (c) sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.*

(1A) For the purpose of subsection (1)(a), an assessment of the risk from natural hazards requires a combined assessment of:

- (a) the likelihood of natural hazards occurring (whether individually or in combination); and*
- (b) the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and*
- (c) any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).*

(2) Conditions under subsection (1) must be:

- (a) for the purposes of avoiding, remedying, or mitigating the effects referred to in subsection (1); and
- (b) of a type that could be imposed under Section 108.

In terms of (1)(a), the applicant has provided a copy of the Hawkes Bay Hazards Portal Maps for each of the subject sites, which detail that the sites are subject to the following identified hazards:

16 Willowbank Avenue	38 Willowbank Avenue
High liquefaction vulnerability	High liquefaction vulnerability
High relative earthquake amplification	High relative earthquake amplification
Flood risk within south-eastern site extent Low risk remainder of site	Flood risk within eastern and south-eastern site extent Low risk remainder of site
Tsunami near source inundation extent	Tsunami near and distant source inundation extent

With reference to the above hazards and the requirements of 1(a), I make the following comments:

7.1 High Liquefaction Vulnerability and High Relative Earthquake Amplification

The applicant has provided an 'Assessment of Liquefaction Potential' prepared by RDCL and dated 4 November 2020 following the request for further information following close of submissions (dated 25 September 2020). This report states:

The site is considered suitable for residential development with well accepted mitigation measures available to protect against the anticipated magnitude of liquefaction induced deformation.

And:

Based on preliminary investigations, foundations in accordance with Technical Category 2 (TC2)(MBIE, 2012) specification are considered appropriate for the site, except within ~ 35 m of the proposed 2 m deep open drain.

Foundations within ~35m, of the open drain will need to conform to TC3 Specifications.

And:

Further geotechnical testing is recommended at a higher density, and which could potentially reduce the magnitude of protection works.

Based on the findings of the above report, it is considered that the risk associated with ground liquefaction and lateral spread is able to be satisfactorily mitigated, provided that the building foundations for all lots are completed in accordance with the requirements of Technical Category

2 (MBIE, 2012), and where sites are within 35 metres of the proposed open drain, that building foundations are undertaken in accordance with TC3 specifications, unless further detailed, site specific geotechnical investigation demonstrates an alternative is suitable.

This was a particular matter raised in the submission received from the Hawke's Bay Regional Council, with specific conditions of consent sought, should consent be granted, to seek to mitigate the risk by way of detailed geotechnical testing and provision of specific building foundations.

Section 3.0 of the submitted S92 response letter (dated 21 January 2021) refers to the above report, that the risk of lateral spread for properties within 35 metres of the proposed open drain is able to be mitigated through the use of TC3 building foundations.

The response goes on to state that *'the expression of any lateral spread effects on the reserve lots would require ground re-instatement after the SLS event'* however then goes on to state that *'no ground improvement mitigation works are proposed to these lots for the purpose of lateral stretch resistance'*.

To this end, it is noted that the risk with regard to lateral spread on the residential sites proposed within Stages 1 – 8 of the development is able to be satisfactorily mitigated through the inclusion of the above foundation requirements within consent notices to be recorded on each of the Records of Title. To this end, it is recommended that said consent notices form a condition of consent, should the commissioner be of the mind to grant consent to the application.

The residential sites that are identified as within 35 metres of the open drain are identified as:

Stage	Lot Reference/s
1A	1
2	43 - 47 and 301
3	48 – 58 and 302
4	59 - 62
5	63 -65 and 303
6	66 - 69
7	70 - 73 and 304
8	74 - 77

However, it is noted that the applicant has identified the risk of material damage to the Drainage Reserve Lots 302, 303, 304 305, 306, 307 and 308 along with Recreation Reserve 301, that would require ground re-instatement post a seismic event.

The S92 response letter states that there is no corresponding ground improvement measures proposed to mitigate or reduce the identified risk of lateral spread for these Lots, which are to be vested to Council and will accommodate critical stormwater infrastructure for Stages 3, 4 and 5

of the wider, Te Awa Structure Plan area by way of construction of an open drain. Therefore, the likelihood of liquefaction is acknowledged by the applicant, as is material damage to this stormwater infrastructure and land in response to a seismic event occurring; however there is no ground improvement proposed to mitigate this risk. This is not considered to be an appropriate response to an identified risk, in the absence of any further information that demonstrates that said risk to the future land owners (Napier City Council) is able to be appropriately mitigated.

7.2 Flood Risk

The flood risk associated with the Te Awa Structure Plan area has been modelled within the Beca Three Waters Report, with the required RL level for finished ground required to be 11.28 metres and the 300mm for buildings requiring an RL level for buildings of RL 11.58. The proposed earthworks on the site required the importation of fill to raise the ground to these levels, with the finished contours of Stages 1A, B and C directing stormwater run-off to the east/ kerb connections to be provided along Eriksen Road. Stages 2 – 8 are to be contoured to divert overland flows to the western, open drains through Lots 302, 303 and 304

To this end, the flood risk to the subject site is considered to be appropriately mitigated through inclusion of Consent Notices related to the requirement finished ground level (RL 11.28) and finished floor levels of all buildings at RL 11.58, which is consistent with the existing examples of development within the Structure Plan area. Therefore, should consent be granted, it is recommended that these consent notices be registered on the Records of Title for each of the lots.

7.3 Tsunami Near Source Inundation Extent

The subject site is identified as being within the Tsunami Near and Distant Source Inundation Extent and this area of specific risk has been raised within the submission received on behalf of the Hawkes Bay Regional Council.

The applicant has provided basic commentary with regard to the assessment of risk regarding the Tsunami hazard applicable to the site within Section 9.0 of the Addendum Assessment of Environmental Effects (refer **Appendix 2**).

Further to the above commentary, it is noted that a large proportion of Napier City is subject to this particular hazard risk, and such a risk is not as easily mitigated as other more site-specific hazards, such as liquefaction or flooding. However, as the applicant identifies, the site is located 400 metres inland, behind other tracts of land that are either already developed for residential purposes, or are earmarked for the same under preceding and also future stages of the Structure Plan.

It is noted that the knowledge around the Tsunami risk remains essentially unchanged since the implementation of the Structure Plan area under Plan Change 6 (Operative in 2012), which zoned this area as 'Main Residential' with no further consideration of the potential tsunami risk relevant to the Te Awa locale in general. To this end, the risk to the site with specific risk of Tsunami is not considered to be any greater with regard to the subject site, than it is across the remainder of Napier City also subject to this risk.

The proposed site layout provides for pedestrian permeability along the western extent of the subject sites, by way of egress gates from Lots 302, 303 and 304 (Drainage Reserves) to the larger drainage reserve and Willowbank Road. With reference to vehicle egress points, Stages 1A, B and C are to be provided with direct vehicle access to Eriksen Road. Stages 2 – 8 are to be provided access to Eriksen Road via 2, gated vehicle entrances. It is noted that the development of the site itself is not the defining factor with regard to potential delayed evacuation, rather, it is the public network of roads within the wider Te Awa locale that has the potential to generate congestion-related delays.

The applicants have undertaken further discussion with Ms Ellen Robotham (HBRC) and Ms Lisa Pearce (Team Leader, HBCDEM) with regard to proposed wording for a condition of consent requiring the preparation of a detailed Emergency / Hazard Management Plan, inclusive of an evacuation plan to be reviewed by the resident's society a minimum of every 5 years, with annual training provided for all members of the society. To this end, should consent be granted, it is recommended that the proposed condition, as worded by Ms Pearce by email dated 25 November 2020 (provided in **Appendix 17**) be included as a condition of consent.

7.4 Summary with regard to Section 106(1)(a) Natural Hazard Risk

It is considered that the risks of natural hazards identified for the subject site, that are applicable to the sites that are to remain in private ownership are able to be suitably mitigated by way of Consent Notices (should consent be granted).

However, there is an identified risk with regard to ground deformation in the drainage and recreation reserve lots that are to be vested to Council, and no ground strengthening works are proposed in this regard by the applicant.

In terms of risk that this potentially poses to Council as the future land and open drain infrastructure owner, the information as supplied with regard to Lots 301 - 308 is not sufficient to be able to quantify the risk with regard to land and/or critical stormwater infrastructure. To this end, it is not considered that this risk has been appropriately avoided, remedied or mitigated and that there remains a significant risk as a result of an identified natural hazard.

7.5 Section 106(1)(C) – Sufficient Provision for Legal and Physical Access

Section 106(1)(c) also requires consideration as to whether sufficient provision has been made for legal and physical access to each allotment to be created by the subdivision. It is considered that sufficient provision has been made for physical access to each lot to be established in the subdivision. Specifically, the lots included within Stages 1A, 1B and 1C are each provided direct frontage to Eriksen Road, with the proposed construction of vehicle crossings being deferred until such time as these sites are developed for residential purposes. With reference to Stages 2 – 8 (i.e. the lifestyle village), the proposed network of ten private roads, that are to be held in one, amalgamated lot as the stages of the development progress and a Jointly Owned Access Lot (417), are to be physically constructed to a width and standard that is considered consistent with the provisions of the Code of Practice. Therefore, from a practical perspective, the development is considered to provide for appropriate physical access to each residential lot for pedestrians,

cyclists, and vehicles, at least upon immediate delivery and construction of this roading network. I note that provision of sustained, physical access is contingent on the on-going maintenance of such infrastructure, and this is work that is commonly undertaken by Council as the Asset Manager. In this instance, the retention of ownership of this roading network by the Residents' Society, and subsequent responsibilities of maintenance is considered problematic given the proposed legal mechanism of the resident's society, teamed with the scale of such infrastructure.

The applicant has confirmed by way of their Addendum of Assessment of Effects dated March 2020 that the intention of the application is to retain the internal road network as 'private'. This confirmation follows extension discussion between the applicant and Napier City Council regarding the inability to vest a network of roads that are to be 'gated' i.e. restricted access between the hours of 6pm – 7am.

However, for the purposes of assessment of the application pursuant to Section 106(1)(c) the application is for the roading network servicing Stages 2 – 8 i.e. 162 residential dwellings, to be retained as a series of private roads, managed, maintained and repaired by a 'Residents' Society'. A copy of the draft constitution of the Residents' Society was provided by Mr. Matthew Holder on a 'without prejudice' basis by email on 24 March 2020.

Legal advice obtained by Napier City Council with regard to the proposal that the internal roading network be retained as a private way, and maintained by the 'Residents' Society', has raised concerns about the Residents' Society's ability to provide a sustainable long term and guaranteed mechanism by which the private roads (and the infrastructure therein) will be managed and maintained. The explanation provided by the Council's legal advisor is that, as the development will have a fee-simple ownership structure (as opposed to being governed by the Retirement Villages Act 2003 or the Unit Titles Act 2010), the Society would be a body corporate constituted under either the Companies Act 1993 or the Incorporated Societies Act 1908. Whereas, for example, a body corporate established under the Unit Titles Act would be subject to statutory requirements imposing various powers, obligations and means by which the obligations of the body corporate are to be met in perpetuity, there are no such safeguards in place for an incorporated society or company. The advice notes that there are numerous examples of incorporated societies and companies being struck off the register for failing to meet simple compliance requirements such as filing annual returns. Further, the advice notes that the success of a body corporate requires the ongoing goodwill and cooperation of all members of that body corporate and that it is not uncommon for disputes to arise between members. The likelihood of disagreements occurring would appear to be heightened in the context of a development consisting of more than 150 units. In the event of the Society becoming paralysed in its decision-making due to an internal dispute, the advice identifies a risk that the Society could fail to meet its obligations to properly maintain the road and other infrastructure servicing the development to an appropriate standard, and there would be no ability for the council to have any oversight or control over this occurring.

Accordingly, there is an identified risk with regard to the ability of the 'rear' lots i.e. those contained within Stages 2 – 8 of the development, to maintain both legal and physical access under the ownership of the Residents' Society. There is no enforceable imperative for regular and/or routine maintenance to be undertaken to this access network by the Residents' Society. However it is noted that given the scale of this network and the number of dwellings that it provides access

for (being a total of 162 dwelling units) that Council would be in the position of having to vest/ take over this asset (both in terms of maintenance requirements and ownership) should the body corporate be struck from the register for any reason, with no recourse should said asset be in a state of disrepair.

With particular reference to the requirements of Section 106(1)(c), the proposed access arrangements for Stages 2 – 8 is not considered to represent an appropriate mechanism for long-term provision of physical and legal access to these lots. To seek to provide access to such a large-scale, greenfield subdivision is not considered to be consistent with the intent of Section 106, nor is there any imperative for Council to accept or facilitate such a risk in this regard.

8.0 Section 104 Assessment

Section 104(1) states that when considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to-

- (a) Any actual and potential effects on the environment of allowing the activity; and*
- (ab) 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;*
- (b) 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, a plan or proposed plan; and*
- (c) Any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

The assessment of the above matters follows:

8.1 Actual and Potential effects (Section 104(1)(a))

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.

The assessment of the adverse effects of the activity is to be guided by (but, as a discretionary activity, not restricted to) the relevant assessment criteria of the District Plan, being Section 12.2 – Residential Environments, the Design Outcomes of the Te Awa Structure Plan (Appendix 29A) and A8.3 (Volume 2 – Subdivision). In addition, the particular matters raised within the submissions have been consideration, along with the provisions of Chapter 65 with regard to payment of Financial Contributions. This assessment follows:

Chapter 12 – Assessment Criteria (Residential Environments)

General Criteria 12.2

- A) Any unusual circumstances including, but not limited to, those listed below:*
 - i. Inherent site considerations: including unusual size, shape, topography, substratum, vegetation or flood susceptibility;*

- ii. *Particular site development characteristics: including the location of existing buildings or their internal layout, achievement of architectural harmony, compliance with engineering or bylaw standards, enhancement of private open space, achievement of a better relationship between the site and the road, building renovation or restoration of demonstrable merit, the design and arrangement to facilitate access for the disabled, or legal impediments;*
- iii. *Unusual environmental circumstances: including adverse topography, unusual use or location of buildings on adjacent sites, improved amenity for neighbouring sites, the presence of effective on-site screening.*
- iv. *Proximity to the Rural Environment.*
- v. *In the absence of adequate private open space, whether the maintenance and enhancement of public reserves or amenity treatment appropriate with the level of impact of the development is required.*

Comments:

- The subject site is not considered to have any inherent site considerations, such as unusual size, shape or topography. The site is of a suitable size to provide for a greenfield development, is included within the Te Awa structure plan area and is of a fairly regular shape when the two parcels of land are viewed holistically as 'the subject site'. The topography is essentially level. The site is detailed as being susceptible to flooding impacts, however appropriate infill of the sites to the levels required by the Structure Plan (being RL 11.28 finished ground level and RL 11.58 finished floor level) ensures that this risk is appropriately mitigated.
- The subject site is to be vacant of building prior to the commencement of bulk earthworks works on the site. Overall, the proposed site layout has been informed by the Design Outcomes of the Te Awa Structure Plan, with no particular site development characteristics considered relevant other than the proposed Staging of the Development – Stages 1 (sub stages 1A, B and C) and 2 – 8.
- There are no unusual environmental circumstances applicable to the proposed development.
- The proximity of the site to the rural environment is a relevant consideration, and the continued efficient operation of this adjacent site for rural purposes has been raised as part of the Napier Boys High School submission. In this instance, the proposal relates to out of sequence development and the impact that this may have on the rural amenity experienced within the locale, along with the potential for reverse sensitivity effects. To seek to mitigate this effect, the applicant has proposed a 'no complaints' covenant to be imposed as a Consent Notice, along with a boundary treatment along the northern boundary of a close-boarded 1.8-metre-high fence to seek to mitigate potential effects with regard to reverse sensitivity. To this end, it is recommended that, should consent be granted;
 - o that the proposed 'no-complaints' covenant be applied to all residential lots across all Stages; and
 - o the required fencing treatment along the northern boundary of site, affecting Stage 1C (Lot 19) and Stage 8, specifically Lots 20, 77, 78, 79, 80, 81, 82, 83, 84 be recorded within a Consent Notice on the Records of Title for these lots.
- As a separate matter, it is noted that the entirety of the Te Awa Structure Plan area has been zoned Main Residential, with an expectation that the land will continue to be

developed in accordance with the requirements of the structure plan. As such; effects on the rural amenity experienced in the locale are anticipated to be temporary and are not deemed adverse such that these effects would need to be avoided.

- The proposed lots have been designed to provide for appropriate outdoor living space, and this combined with the provision of reserves is considered to ensure that amenity effects from the proposal are less than minor.

B) Where the site is located within the Te Awa Development area the extent to which the relevant Te Awa Structure Plan Design Outcomes can be met (in Appendix 29A-F of the District Plan)

An assessment of the development against each of the criteria has been provided on pages 9 – 14 within the Assessment of Environmental Effects provided by the applicant. In general, I concur with this assessment and with reference to it, make the following further comments:

Design Outcome 1

- The site area (net of reserves and private roads) is 7.6ha and a total of 162 dwellings are proposed to be constructed results in an overall density of 1 dwelling per 469m², which is consistent with the outcome anticipated within the Main Residential zone. It is noted that there are some lots proposed that are below the minimum 350m², however compliance with the open space requirements for these lots have been demonstrated and a concept plan has been provided as part of the overall development. Therefore, the proposal is considered to be consistent with the intent of Design Outcome 1.

Design Outcome 3

- The proposal represents a comprehensive development on the site, with the use of this land up until the present day remaining in pasture.

Design Outcomes 4 and 5

- The proposed development represents 'out of stage' development, being located within Stage 5 of the anticipated staging for the Structure Plan area. Notwithstanding this, the intent of such a design outcome is to achieve orderly and cost-efficient progression of infrastructure associated with the Structure Plan area.
- The extension to the watermain along Eriksen Road will likely acquire a capital contribution for completion, noting that the implementation of the subdivision is reliant upon this infrastructure work being undertaken.
- The proposal requires the upgrade of the Cowshed Drain, and the extension of the existing watermain along Eriksen Road. The applicant is proposing to install a new wastewater pumping station to service the development. The proposed lot size, and configuration of Lot 500 has been assessed by Councils Three Waters and Roding Infrastructure experts (refer **Appendices 14 and 15**). Whilst the inclusion of a separate lot for the purpose of accommodating the wastewater pump station is an improvement from the former iteration, the size and configuration of this lot is considered problematic for the following reasons:

- *Whilst the requirement for the wastewater pump station to be in a separate Lot is technically met, it does not meet the other requirements in the CoP, by providing a safe work site for operators or public, buffer zone, parking and manoeuvring for operator vehicles.*
 - *The use of the lot will likely impact upon the sight lines of the intersection. No particular information has been provided of the finished layout of the lot, and no confirmation of sightlines for vehicles exiting the site.*
 - *The wastewater operators will need to access the pump for operation and maintenance tasks with small trucks and/or utes.*
 - *There are also residual concerns regarding the reverse sensitivity of the pump station, however I am confident that these can be resolved through conditions of consent.*
- Noting the above concerns, the proposed location and scale of Lot 500 does require additional detail to be provided/ alternative design solutions to be explored. However, given the scale of the adjacent Lot 8 (within Stage 1B) at 583m², it is considered that -re-configuration would be able to be achieved and confirmed through the Engineering Plan approval process, with the S223 process being used to facilitate such a change.
 - In terms of provision of a buffer to adjacent rural land uses, it is noted that the drainage reserves provide a natural buffer for sites to the south, and the applicant has offered both boundary treatments along the northern site boundary with registration of a no-complaints covenant across the sites to remedy potential reverse sensitivity effects.

Design Outcome 7

- The block layout is generally consistent with the range provided by this design outcome.
- The layout of the internal roading network is laid out in a grid-type arrangement, however vehicle connectivity along Road 10 (western road) is prevented by the inclusion of 7, cul-de-sac heads which segments the site.
- The retention of the private road network precludes the future provision of public transport, noting that pedestrians will be required to exit to Eriksen Road to access public transport; with some residents having a minimum duration walk in the vicinity of 200 metres to exit the site.
- Therefore, the retention of the roading network as private is considered to be inconsistent with Design Outcome 7.

Design Outcome 8

- The design of the development is such that passive surveillance to the rear, drainage reserves is afforded by way of visually permeable fencing from the outdoor living spaces of the dwellings; and passive surveillance of the road environment is provided by way of the glazing of the main internal living areas facing the road. It is noted that the landscape concept plans seeks to provide for plantings immediately adjacent to the fencing, which is not considered to meet the intent of passive surveillance of the adjacent reserves land.
- However, and noting that the landscaping plan is in concept form only, it is considered that final locations of the proposed planting is able to be negotiated by way of formalisation of a planting plan, and it is recommended that this forms a condition of consent.

- Provided that a final landscaping plan is furnished for approval prior to S224 stage, the proposal is considered to meet the intent of Design Outcome 8.

Design Outcomes 9 and 10

- The application includes the landscaping concept for the development, along with the provision of reserves to be vested, being generally in accordance with the requirements of the Structure Plan, as detailed within the submitted Napier City Council Parks and Reserves Specialist input (refer **Appendix 16**).
- In particular, the diversion of pedestrian linkage to the proposed open swale reserves land to the west of the site, rather than provision of connectivity through the core of the development site (as indicated within the Structure Plan Map detailed in Appendix 29B of the District Plan) is considered to represent appropriate pedestrian connectivity, in general accordance with the intent of the structure plan.
- With regard to the required landscaping to occur within the proposed reserves that are to be vested to Council, the information provided can be considered as 'concept' only. In particular, the supplied concept design does not detail the minimum requirement to plant 75% of the buffer setback adjacent to Willowbank Avenue with species that reach 3 – 5 metres at maturity. The rationale for this has been detailed on page 13 of the Original Assessment of Environmental Effects (refer **Appendix 1**) as *the concept landscape design includes planting of this buffer strip with ground cover plants and trees that will have clear trunks to best retain visibility into the public area of the stormwater swale in accordance with the requirements of this design outcome.*
- Noting that a particular deviation from the requirements of Design Outcome 10 has not been sought, and that the landscape concept instead includes provision of relatively dense planting immediately adjacent to the visually permeable fencing, it is considered that the existing landscaping proposed could be re-configured to provide for visibility and passive surveillance of this reserve area from the subject development, along with compliant edge planting within the identified buffer setback, without resulting in a wholesale change from the concept that is currently proposed. It is considered that this is able to be achieved through imposition of a condition of consent, requiring finalised landscape detail and associated plans be furnished for the reserves land prior to the commencement of construction works on the site.
- Provided that a condition of consent is included requiring provision of, and approval of a finalised landscaping plan/detail for the reserves area; it is considered that the proposal is able to meet the intention of Design Outcome 10.

Design Outcome 11

- The off-road pedestrian linkage indicated on the Structure Plan map provides for a central spine to the proposed recreation reserve located within the southern area of the site. The proposed 'gated' nature of the lifestyle village effectively prevents this connection through the site as indicated, However, it is noted that the proposed path to the west of the open drain has been assessed by Parks and Reserves, and is considered a feasible alternative to provide for pedestrian connectivity within the wider Structure Plan area, that is wide, open, safe and connected.
- To this end, whilst not in strict accordance with the provision of the Structure Plan map, the proposal is considered to be consistent with the intent of this Design Outcome.

Design Outcome 12

- The proposal includes the road frontage upgrade required along Eriksen Road, with either the developer to complete this work, or via payment of the road frontage upgrade charge provided for within the financial contributions detailed in Chapter 65.
- The submitted Traffic Assessment Report (refer **Appendix 7**) concludes:

The amount of traffic that the proposed development will generate onto the road network will be low, too low to have a significant effect on the network capacity or traffic safety. That part of Eriksen Road immediately adjacent to the site will be widened and kerbed and channelled, and a footpath provided, along its western side to an urban standard. The work will be carried out in to satisfy the relevant design outcomes in the Te Awa Structure Plan.

- Mr Dave Curson, as the Napier City Council Traffic Engineer has reviewed the application material, and has not raised any particular concern with regard to traffic generation or movements from the site. He has detailed concern with the proposed circulation and efficient operation of the roading network around Lot 24, being the proposed RV parking lot; as well as the retention of appropriate sightlines along Eriksen Road from the main vehicle entrance/exit, given the location and design of proposed Lot 500.
- After review of Mr Curson's comments, I consider that the finer detail of the operation of these spaces are able to be addressed at Engineering Plan Stage, with any minimal variations required able to be appropriately addressed at the S223 Stage, without compromising the overall intent of the development such that it would not be considered '*in general accordance with the submitted application material*' condition that is recommended within the supplied, draft condition set. To this end, the proposal is consistent with the intent of Design Outcome 12.

Design Outcome 13

- The proposal seeks to gate the development, which means that the entirety of the roading network within Stages 2 – 8 of the development is to be retained in private ownership. The physical specifications provided for the proposed roading network is to be in general compliance with the requirements of the Code of Practice for 'minor roads', noting that the implementation of the cul-de-sac heads prevent Road 10 from being upgraded to a collector road.
- The proposal to gate the development (between the hours of 6pm – 7am) has been justified by the applicant as necessary "to provide the safety and sense of place that residents would require to purchase within the development". However, this requirement has resulted in an ownership issue/ failure to be able to vest the road, which at the proposed scale cannot be considered to 'generally comply' with the Napier City Council Standards, which specifies that access for more than 8 dwellings/ lots is to be achieved via public, vested road.
- The proposed internal roading network, combined with the provision of two entries to Eriksen Road is considered to appropriately restrict any 'through traffic' and the entry treatment to the development is considered to provide for a 'sense of place', without the requirement to restrict access by way of gates. To this end, it is not considered that it is appropriate to view the proposal in a 'favourable' light as required by Design Outcome 13, when it is viewed 'in

the round', as the intent of this condition is able to be achieved by the development without the use of gated entries/exits.

Design Outcome 14, 15, 16 and 17

- The proposal has been identified as out of stage development; however the submitted Land Development Report provides for three waters serving solution, with the final design for said services able to be sought through the engineering plan approval process.
- Notwithstanding this, Mr Jon Kingsford, Director of Infrastructure Services has identified a risk with regard to issues such as cross connections of water mains and conflict with other undergrounded utilities, should the three waters infrastructure be vested under a private roading network. To this end, and noting the risk with regard to public health if cross connections did occur, Council is unwilling to vest the three waters infrastructure within Stages 2 – 8 as proposed (as is their right), and instead will provide connection to the boundary/ the three waters infrastructure within Stages 2 – 8 is to be owned, maintained and operated by the proposed Resident's Society.
- It has been recommended to the applicant that all three waters infrastructure that is to be retained in private ownership should however be designed and constructed to meet the NCC Code of Practice for Subdivision and Land Development requirement; as private services installed under the Building Code are likely to be too restrictive for a practical solution to be achieved at this scale.

Design Outcome 18

- Design outcome 18 provides that developers shall meet fair and reasonable costs towards the provision of essential utility services, road upgrading and open space; and that this obligation may be met by physical works, financial contributions or a combination of both.
- The financial contributions payable for each stage of the development are to be calculated in accordance with Chapter 65 of the District Plan and it is recommended that payment of these financial contributions be included as conditions of consent to be paid for each stage either:
 - at the time of uplift of the building consent for the multi-unit development; or
 - an application for 224 Certification is made for each stage of the subdivision;
 being whichever occurs first, should the Commissioner be of the mind to approve the consent.

The proposed Financial Contributions have been calculated for each Stage of the development as follows, noting that indexation of these amounts will occur again as of 01 July 2021:

Stage 1A

Total of **\$927,318.26** comprised of:

<i>Te Awa (per lot)</i>	$\$22,989.70 \times 7^* = \mathbf{\$160,927.90}$
<i>Te Awa (plus: per hectare) local off site</i>	$\$549,868.60 \times 4613\text{m}^2 = \mathbf{\$253,654.39}$
<i>Te Awa (plus: per metre of road frontage)</i>	$\$3568.10 \times 143.7 \text{ metres} = \mathbf{\$512,735.97}$

* Lot 500 is proposed to be vested, therefore road frontage charge of 9.7 metres is N/A

Stage 1B

Total of **\$983,086.45** comprised of:

Te Awa (per lot)	$\$22,989.70 \times 8 =$	\$183,917.60
Te Awa (plus: per hectare) local off site	$\$549,868.60 \times 4982\text{m}^2 =$	\$273,944.53
Te Awa (plus: per metre of road frontage)	$\$3568.10 \times 147.2 \text{ metres} =$	\$525,224.32

Stage 1C

Total of **\$398,497.19** comprised of:

Te Awa (per lot)	$\$22,989.70 \times 4 =$	\$91,958.80
Te Awa (plus: per hectare) local off site	$\$549,868.60 \times 2502\text{m}^2 =$	\$137,577.12
Te Awa (plus: per metre of road frontage)	$\$3568.10 \times 73.1 \text{ metres} =$	\$260,828.11

Stage 2

Total of **\$1,587,453.08** comprised of:

Te Awa (per lot)*	$\$22,989.70 \times 27 =$	\$620,721.90
Te Awa (plus: per hectare) local off site**	$\$549,868.60 \times 16478\text{m}^2 =$	\$906,073.48
Te Awa (plus: per metre of road frontage)***	$\$3568.10 \times 17 \text{ metres} =$	\$60,657.70

* Lot 401 has been excluded from payment of per unit charge.

** Lots 301 and 305 that are to be vested as reserve have been excluded from hectare charge

*** Where Lot 401 is to remain as 'private' the road frontage charge has been applied to the 17 linear metre frontage to Eriksen Road

Stage 3

Total of **\$1,423,969.95** comprised of:

Te Awa (per lot)*	$\$22,989.70 \times 27 =$	\$620,721.90
Te Awa (plus: per hectare) local off site**	$\$549,868.60 \times 14608\text{m}^2 =$	\$803,248.05

* Lot 402 has been excluded from payment of per unit charge

** Lots 302 and 306 that are to be vested as reserve have been excluded from hectare charge

Stage 4

Total of **\$942,068.17** comprised of:

Te Awa (per lot)*	$\$22,989.70 \times 17 =$	\$390,824.90
Te Awa (plus: per hectare) local off site	$\$549,868.60 \times 10,025\text{m}^2 =$	\$551,243.27

* Lot 403 has been excluded from payment of per unit charge

Stage 5

Total of **\$1,573,929.50** comprised of

Te Awa (per lot)*	$\$22,989.70 \times 29 =$	\$666,701.30
Te Awa (plus: per hectare) local off site**	$\$549,868.60 \times 16499\text{m}^2 =$	\$907,228.20

* Lot 404 has been excluded from payment of per unit charge

** Lots 303 and 307 that are to be vested as reserve have been excluded from hectare charge

Stage 6

Total of **\$923,267.86** comprised of

Te Awa (per lot)*	$\$22,989.70 \times 18 =$	\$413,814.60
Te Awa (plus: per hectare) local off site	$\$549,868.60 \times 9265\text{m}^2 =$	\$509,453.26

* Lots 405 and 417 (JOAL) have been excluded from payment of per unit charge

Stage 7

Total of **\$1,426,216.03** comprised of

<i>Te Awa (per lot)*</i>	$\$22,989.70 \times 24 =$ \$551,752.80
<i>Te Awa (plus: per hectare) local off site**</i>	$\$549,868.60 \times 14800\text{m}^2 =$ \$813,805.53
<i>Te Awa (plus: per metre of road frontage)***</i>	$\$3568.10 \times 17 \text{ metres} =$ \$60,657.70

* *Lot 406 has been excluded from payment of per unit charge.*

** *Lots 308 and 304 that are to be vested as reserve have been excluded from hectare charge*

*** *Where Lot 406 is to remain as 'private' the road frontage charge has been applied to the 17 linear metre frontage to Eriksen Road*

Stage 8

Total of **\$1,035,121.52** comprised of

<i>Te Awa (per lot)*</i>	$\$22,989.70 \times 20 =$ \$459,794.00
<i>Te Awa (plus: per hectare) local off site</i>	$\$549,868.60 \times 10,463\text{m}^2 =$ \$575,327.52

* *Lot 407 has been excluded from payment of per unit charge*

A8.3 – Subdivision

The specific assessment criteria for subdivision is detailed in Section A8.2 of Volume 2 of the District Plan. These criteria include:

- Assessment in terms of performance criteria in Part B and the requirements of Part C of the CoP.
- Scale and Intensity
- Access
- Infrastructure
- Hazards and Contaminated Sites
- Cumulative Effects; and
- General.

With reference to the above, I make the following comments:

- The proposed subdivision and associated roading and three waters infrastructure has been designed in a physical sense to be in general accordance with the provisions of the Code of Practice. However, it is noted that as the roading infrastructure and associated three waters infrastructure proposed for Stages 2 – 8 is to be retained in private ownership, the application is not consistent with the overall intent of the Code of Practice for Council, which seeks to provide for vested road access where this is required to service rear lots in excess of 8.
- The refusal of Napier City Council to vest the proposed Three Waters Infrastructure underneath a private road network, instead opting to provide private connections at the public/private interface of the development, with subsequent Three Waters Infrastructure within the lifestyle community being retained as 'private' results in drainage infrastructure at a scale that far exceeds the expectations of the drainage requirements of the Building Act and as such, an Engineering Plan approval process would be recommended in the event that consent be granted to the application.

- The proposed wastewater pumping station being located within an individual lot referenced as Lot 500 does not meet the performance criteria of the Code of Practice as detailed above in this report within the commentary surrounding Design Outcomes 4 and 5. However, as this asset is to be vested to Council, the final detail surrounding the location/ infrastructure is able to be deferred to Engineering Plan approval stage.
- It is noted that *Table F1 – Recommended Road Design Standards* of the Code of Practice requires a minimum legal road width of 14 metres, whereas the Land Development Report states that the access corridor within the internal network is 13.5 metres. I note that this is representative of a 0.5 metre reduction from the minimum width required by F1, however, and as confirmed by Mr Dave Curson, this reduction would not prevent the vesting of this roading asset, should the requirement to gate the entrances be removed by the applicant.
- It is noted that the physical design of the roading network is generally in accordance with the CoP for minor roads, however this reliance on the physicality of the construction of the roads does not mitigate the adverse effects resulting from the proposed ownership structure for this access network.
- Specifically, the proposal to retain private ownership of a roading network that is to be formed and finished in a manner that is consistent with the physical requirements of the District Plan is only one area of consideration when viewing the appropriateness of the development in light of the intent of the Code of Practice. The retention of physical access remains dependent on regular maintenance and upkeep of such assets in perpetuity. The use of a Residents Society to own, operate and maintain this asset is considered to represent a significant departure from the intent of Part C of the Code of Practice (being that such an asset be vested where it services over 8 dwellings/lots) and, with the only perceived benefit being the ability to gate the development between the hours of 6pm – 7am.
- The scale and intensity of the proposed residential development is generally consistent with the density, bulk and location provisions of the District Plan.
- The submitted Traffic Effects Assessment states:

The proposed vehicle crossings will have adequate sight lines to enable them to operate safely.

The accesses will both be remote enough from any road intersections that conflicts with turning vehicles will not occur.

Separate footpath accesses will be provided into the site for pedestrians all around the site, which will enable pedestrians to access the site conveniently and safely.

The proposal will exceed the District Plan parking requirement by a significant margin. I consider that there will be an adequate supply of on-site parking to accommodate expected demands. Adverse off-site parking effects are unlikely to occur.

The proposed on-site parking will comply with the dimension requirements specified in the District Plan. I consider that the parking spaces shown on the plans will be accessible by the types of vehicles they are intended for.

It is noted that this Traffic Assessment Report was prepared prior to the inclusion of Lot 500 within Stage 1A of the development. This has resulted in a potential impediment of the sightline afforded from the vehicle egress for Stages 2 – 8. Notwithstanding this, it is considered that appropriate re-design of this lot is able to be undertaken during the Engineering Plan Approval Stage, and that appropriate sightlines will be able to be provided

Therefore, from a practical perspective, the actual and potential effects associated with the physical road formation and the resultant traffic generation are considered to be acceptable, subject to further detailed design being undertaken with regard to Lot 500.

- The existing overhead powerlines within the subject site are to be undergrounded (as stated by the applicant's planner), therefore the development is not anticipated to interfere with the efficient use and/or operation of the existing high voltage transmission lines. To this end, and should consent be granted, a condition of consent requiring this to be completed prior to issue of the Section 224 certification for Stage 1 of the development is recommended.
- The application remains silent with regard to provision for solid waste collection and mail delivery. It is noted that the retention of the roading network as private effectively precludes the ability for Stages 2 – 8 to be serviced by public waste collection services. This will need to be provided by way of private collection undertaken by the resident's association, or alternatively adequate provision of space provided at the entrance to the development, as this has the potential to generate unacceptable adverse cumulative effects along the Eriksen Road frontage of the site.
- The proposed earthworks are able to be quantified and are to occur in a staged manner across the site. It is recommended that, should consent be granted, that conditions are imposed requiring provision of a finalised sediment and erosion plan, along with a construction management plan to be provided to Council prior to commencement of each stage of the development. The requirement of such documentation is considered to adequately address adverse effects generated by the temporary construction timeframe of the overall development.
- The proposed construction of dwellings will be temporary, and will be mitigated by the construction management plan inclusive of specified hours for construction that is recommended to form a condition of consent, should consent be granted.
- The natural hazards applicable to the subject site have appropriately addressed, and are able to be satisfactorily mitigated as detailed in the Section 106 assessment of this report above.

Positive Effects

As part of the consideration of actual and potential effects, consideration must be given to the positive effects of the proposal. These are considered to include:

- The opportunity for persons aged 55+ to enjoy a village-type environment, in a manner that allows for capital gains to be achieved i.e. fee-simple title arrangements. This is considered to provide an alternative for persons seeking the security and sense of place provided for by a more traditional retirement village mechanism, but with more freedoms and independence being able to be achieved.
- The proposal represents an efficient use of a valuable land resource to provide for an additional 162 houses, where there is a demonstrable demand for additional housing supply targeted at this particular demographic (i.e. 55 years+).
- The proposal will provide for the upgrade of the western extent of Eriksen Road which abuts the subject site, to match the existing urban form evident along the eastern extent of Eriksen Road. This will result in a consistent development standard and will contribute to the continued development of this anticipated growth area.
- The proposal will contribute to the overall biodiversity of the locale, noting that the additional landscaping that is proposed within the western and southern drainage

reserves will significantly improve the amount and diversity of vegetation within the existing locale from that which currently exists.

8.2 Any measure proposed or agreed by the Applicant for the purpose of ensuring positive effects on the Environment (Section 104(1)(ab))

The applicant has not proposed, nor agreed to any measure to ensure a positive effect on the environment to offset or compensate for any adverse effects on the environment, beyond those matters proposed to mitigate adverse effects as detailed in Section 8.1 above.

8.3 Any Relevant Provisions of a NES, Other Regulations, NPS, NZCPS, RPS or Plan or Proposed Plan (Section 104(1)(b))

Of documents specified in Section 104(1)(b), I consider that following to be applicable to the assessment of the current application:

- National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health;
- National Policy Statement for Urban Development 2020;
- The (non-statutory) Heretaunga Plains Urban Development Strategy and the Hawke's Bay Regional Policy Statement;
- The City of Napier District Plan 2011.

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

These regulations provide a national environmental standard for managing activities on pieces of land whose soil may be contaminated in such a way as to be a risk to human health. The activities are removing or replacing a fuel storage system, sampling the soil, disturbing the soil, subdividing land, and changing the use of the piece of land. The activities are classed as permitted activities, controlled activities, restricted discretionary activities, or discretionary activities.

In this instance, the activity is a controlled activity in accordance with Regulation 9, as a detailed site investigation report has been provided. This report demonstrates that the existing site does not exceed the applicable standards detailed in Regulation 7, and the minimal exceedances of the background levels applicable to Hawkes Bay does not necessitate any specific soil management on the site.

The site sampling that has occurred across the site has been reported on in sufficient detail and is considered to be representative of conditions across the site. The samples have been assessed in a laboratory and the overall risk assessment considered to be robust.

Overall, Geosciences Ltd has confirmed that *"the site has been mildly impacted by the former and current site activities, it poses no risk to human health and to current and future land users based on the acceptable statutory guideline level under the NES"*. On this basis, there are no recommended conditions that are required to be implemented on the consent to mitigate effects with regard to soil contamination, which are considered to be less than minor.

8.3.2 National Policy Statement for Urban Development

The NPS-UD 2020 came into force on 20 August 2020 and replaced the NPS-UDC 2016. This document recognises the national significance of having well-functioning urban environments that enable all people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety, now and into the future; and providing for sufficient development capacity to meet the different needs of people and communities.

The proposal is within an identified growth area, that has been subject to a Structure Planning process and re-zoning to facilitate residential development as proposed by the current application. The type and scale of development is considered to be entirely consistent with the intent of the NPS UD, and would contribute to the overall supply of housing to service anticipated demand within Napier City.

8.3.3 Heretaunga Plains Urban Development Strategy and the Hawke's Bay Regional Policy Statement

The *Heretaunga Plains Urban Development Strategy (HPUDS)* is a non-statutory document that has been adopted by all three partner Councils, being Napier City Council, Hastings District Council and the Hawke's Bay Regional Council. This document is predominately concerned with protecting versatile soils and the transition to a more compact city form for both Napier and Hastings City. This document takes a long-term approach to addressing the key issues facing the Heretaunga Plains and seeks to encourage strategic integration of land use and infrastructure.

The Hawke's Bay Regional Policy Statement is included within the Regional Resource Management Plan and the specific section on Managing the Built Environment (S3.1B) has been developed to implement the principles and purposes of HPUDS. Specifically, this document gives effect to the general tenets of HPUDS at a regional levels and places them within a statutory framework/document. 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.

With reference to the current application and the above policy documents, it is noted that:

- The Te Awa Structure Plan area is included within HPUDS as a key residential growth area for Napier;
- This growth area has an operative structure plan framework within the District Plan (being Appendix 29), to guide the development within the identified Te Awa growth area. It is noted that the current proposal is considered to be generally in accordance with the development anticipated by the relevant provisions of the Structure Plan applicable to this growth area and as such, is considered to represent 'planned' urban development;
- To this end, the proposal is considered to be consistent with the direction and intent provided within HPUDS;

- With specific reference to the RRMP and RPS, particularly the objectives and policies of Section 3.1B; the proposal is considered to:
 - provide for planned urban form, that has a sense of character and identify and contributes to the housing choice in Napier City;
 - contribute to continued residential growth, within a key, identified growth area that has been subject to structure planning; and
 - has been designed to accommodate infrastructure servicing that is consistent with the intent of the planned infrastructure networks detailed for this area.

To this end, the proposal is considered to be entirely consistent with the intentions, objectives and policies of HPUDS, the RRMP and the RPS.

8.3.4 City of Napier District Plan - Objectives and Policies

The relevant assessment criteria of the District Plan have been considered in Section 8.1 of this report, with reference to the assessment of the actual and potential effects of the activity. In terms of S104(1)(b), the objectives and policies relevant to the current application are those which are included in Chapter 4 – Residential Environments, Chapter 61 – Transportation and Volume 2, A5 – Management Strategy for Land Development. With reference to the above objectives and associated policies and the current application, I make the following comments:

Chapter 4 – Residential Environments

The objectives and associated policies that are considered applicable to the subject application are considered to be 4.2, 4.3, 4.5 and 4.7. With particular reference to these objectives, I make the following comments:

- The proposal is considered to provide for a range of housing typologies at a density that is entirely anticipated by the District Plan with adequate open outdoor space and access to recreational reserves/facilities within an area identified as suitable for housing development.
- The proposal provides for growth through a greenfield development which seeks to establish a further 162 dwellings on the site.
- The intensity of the development is entirely anticipated by the Structure Plan.
- The character of the proposed subdivision is inherently residential and seeks to maintain a high degree of on-site amenity for residents.
- Each of the proposed dwellings will be afforded excellent admission of sunlight, noting that all the proposed dwelling are setback from all external boundaries (excepting the proposed duplex units) and are all single level.
- The proposal includes a proposed landscaping concept, which is to be refined and subsequently implemented within each of the subject sites, along with the proposed reserves to be vested.

Overall, the proposal is considered to be entirely consistent with the objectives and policies for residential environments.

Chapter 61 – Transportation

With reference to Objectives 61.3, 61.4 and 61.5 and the associated policies, I make the following comments:

- The submitted Traffic Assessment report has concluded that the traffic effects arising from the subdivision will not compromise the safe and efficient functioning of the surrounding roading network;
- The proposal includes the removal of the existing vehicle crossings to Willowbank Avenue, which is considered to improve safety along this existing roading network. Should consent be granted, it is recommended that the closure/retirement of these existing vehicle accesses be included as conditions of consent.
- There is adequate car-parking provided for each dwelling within internal garaging and standing bays, along with a separate lot that is to be dedicated for larger vehicle parking and storage.
- The proposed vehicle accesses have been assessed as having unimpeded and appropriate sightlines in both directions afforded along Eriksen Road. This is excepting the current configuration proposed for Lot 500, which will require refinement to meet full compliance with all aspects of the Code of Practice at the Engineering Plan approval stage (should consent be granted).

A5 – Management Strategy for Land Development

With reference to Objectives 1 – 13 and associated policies, I make the following comments:

- The proposal will safeguard the air, water, soil and ecosystem, through imposition of consent conditions related to sediment controls, should consent be granted.
- The amenity values of the Te Awa locale will be maintained, noting that the form, scale, and intensity of the proposed development is entirely anticipated by the District Plan. Whilst the proposal will appear as a gated/segregated residential development as viewed from external viewpoints, the inclusion of visually permeable fencing elements will decrease the perceived separation of the development from the wider locale.
- The proposed development provides a range of open spaces that are able to be vested to Council and utilised for dual purposes being both drainage, pedestrian connectivity and recreation.
- The risk to the development site from natural hazards is generally considered acceptable, and indeed is no greater for the subject site than any other site within the Te Awa Structure Plan area, noting that there is an outstanding matter with regard to liquefaction effects associated with a seismic event and the reserve land proposed to vest to council.
- The proposal includes provision of physical infrastructure that will provide for the current and reasonably foreseeable needs of the community. However, the proposed ownership mechanism is considered problematic and of considerable risk to the Council where the expectation is that infrastructure of this scale both in terms of roading/ access and three-waters infrastructure would be managed and maintained by the Council.
- The provision of the allotments within Stages 2 – 8 are all considered to be ‘rear lots’, noting that the roading network is not to be vested/ is to be retained in private entity ownership, the structure of which is proposed to be a ‘Residents Society’. Notwithstanding this, the physical form of the roading is considered to be appropriate and in general compliance with the Code of Practice.
- The proposal will not affect any areas of significant vegetation, habitat, or fauna; nor high-quality soils, landscapes or natural features.
- The proposal will have no effect on heritage values.

- The proposal will not compromise the Maori traditions or culture with regard to ancestral land, water, waahi tapu or other taonga.
- The health and safety of future residents of the development has been considered. To this end, it is noted that the western extent of the development has three pedestrian permeability points, affording pedestrian egress from the development in the event of a tsunami.
- The provision of reverse sensitivity covenants to be registered on the Records of Title within the site is considered to appropriately address potential reverse sensitivity effects with regard to the existing rural land resource adjacent to the site, particularly to the north. The proposed drainage reserve along the southern and western extents of the site is considered to adequately mitigate any perceived reverse sensitivity effects from sites adjacent to these environs.

8.4 Any Other Matters (Section 104(1)(c))

There are three additional matters that are considered relevant to the assessment of the current application, with the latter two forming the main areas of contention with regard to the assessment of the current application. These particular matters are summarised as:

- 1) Interests on the Record of Title
- 2) Precedent Effects/ Plan Integrity
- 3) Local Government Act 1974

And commentary of these matters follows:

8.4.1 Interests on the Record of Title

The interests on the Records of Title for the property have been provided as Appendix A to the application, and it is noted that Easement Certificate 322767.4 is to be surrendered as per Note 4 on supplied Sheet H20180069-C012.

The lease 10596014.4 is no longer required, and it is recommended that should consent be granted, that the existing vehicle crossings to Willowbank Avenue for both 16 and 38 Willowbank Avenue be physically closed prior to commencement of construction activity on the site, by way of inclusion as a consent condition.

I note that this requirement would satisfy the area of concern canvassed in the submission of the Maraenui Trust.

8.4.2 Precedent Effects/ Plan Integrity

Separate to the identified issues regarding the proposed Body Corporate ownership mechanism detailed above, is the matter of precedent and plan integrity effects related to the implementation of the District Plan and the Code of Practice.

These matters are still relevant 'effects', however they sit outside of what can be considered as an 'effect on the environment'.

The application seeks to provide for a total of 162 dwellings/ fee-simple residential lots to be serviced from a network of ten, private roads; which represents a considerable departure from the 'no more than 8 rear lots serviced by a non-public accessway' as provided for by Table C5.7 and F1.12 of the Code of Practice.

Whilst it is acknowledged that the granting of a particular resource consent does not, in any way *guarantee* approval of a different, but similar application (as all resource consents are assessed on their individual merits), it is an accepted principle that 'like cases should be treated alike'¹ and that the standards of the District Plan would be implemented in a generally consistent manner.

This is not to be confused with a rigid and immovable application of the District Plan rules, with no consideration to a particular fact set that would mean it would otherwise be appropriate to grant resource consent to an infringement of these standards. Indeed, there are a number of recent examples where additional lots beyond the specified 8 have been granted resource consent to achieve access via a non-public accessway. However, these examples have been limited to an additional 2 - 3 lots/ dwellings rather than the current 162 as proposed.

With particular reference to the setting of precedent, I do not consider that there are any 'distinguishing' circumstances applicable to the proposal that would avoid setting a precedent with regard to provision of vested roading infrastructure in relation to any future subdivision applications. In reaching this conclusion I note:

- The development is of a greenfield site, that is, in most other respects consistent with the intended development outcomes of the Te Awa Structure Plan;
- Compliance with the formation of the roading network to the standards required by the Code of Practice is generally achieved, should the gates no longer be required for the development; and
- There are no topographical or geographical restrictions with regard to provision of access.

Indeed, there is no practical reason not to vest the roading network, other than the applicants' desire to include gates at the two points of entry to the village to '*support the character of the development and resulting perception of safety that is desired by the target demographic*'². Noting that these gates are to remain open between the hours of 7am – 6pm, as specified within the application material, it is not considered that any positive effect resulting from the ability to restrict public access to the lifestyle village in any way adequately or commensurately justifies the approval of such a large infringement to the requirement and intent of the Code of Practice that such scale of development should be accessed by way of public, vested roads.

The precedent set by such an approval, where there is a very obvious remedy evident to resolve this matter; would make it very difficult for Napier City Council to look to refuse an application that sought to retain private ownership of access for any number of lots exceeding the permitted 8, up to an additional 154, where physical formation of the private roading network was able to meet the requirements of the Code of Practice. This precedent has a real potential to change the

¹ Baragwanath J in *Murphy v Rodney District Council* [2004] 3 NZLR 421.

² Para 3, Pg 5, Addendum to Assessment of Environmental Effects

existing style and pattern of development in a way that would result in fragmented and disconnected 'sub' villages within particular suburbs.

The effect of precedent is evident within the applicant's own *Addendum of Assessment of Environmental Effects*³, where the existing developments at 156 Eriksen Road (Summerset Retirement Village) and Domett Street (Princess Alexandra Retirement Village), 9 Humber Street, 14 West Quay and Nelson Quay have been detailed as 'precedent developments' with regard to the gating of the development. Notwithstanding this, the above examples are easily distinguishable from the current application, as none relate to fee-simple ownership structures (all are either governed under the Retirement Villages Act 2003 or relate to unit-title ownership structures). The exception to this is the Nelson Quay development, however this is also considered distinguishable from the current application, given that the scale of this development is limited to 21 units, and all but 4 have legal frontage to the existing public road of Nelson Quay. The current application for 162, fee simple lots far exceeds the scale of the Nelson Quay development, and importantly, will not be afforded legal frontage to an alternative public road.

As detailed above, the current application is generally representative of the type of greenfield subdivision anticipated by the Te Awa Structure Plan, excepting the retention of the roading network as 'private'. To this end, it is considered to hold considerably more weight/risk with regard to setting precedent, as it will not be easily distinguishable from other subdivision applications that seek to adopt such a 'gated' characteristic.

An unintended consequence of the retention of the roading network as 'private', is that Napier City Council considers that there would be a significant risk posed to the Council's assets if it were to accept vesting of the Three Waters Infrastructure underneath a roading corridor that is retained in private ownership. The provision of 'easements in gross' in favour of the Council to facilitate access, maintenance and operation of these networks proposed by the applicant is not considered to provide suitable certainty or control over these networks. In particular, the Council would not have any control over the installation and/or maintenance of third-party assets such as power, gas or telecommunications under the privately owned road. These third-party assets (and the works associated with them) could interfere with the proper operation of the Council's wastewater and water supply assets, including by damaging those assets and/or resulting in cross connections between the Council's wastewater and water supply systems, with inevitable flow-on effects for the wider public network. Further it is unclear to what extent the Council would be expected and/or able to carry out works or maintenance in relation to the public stormwater management systems within the subdivision, as stormwater drainage would likely be provided on or alongside the privately owned road, and/or on other private property over which the Council would have limited rights. Council is unwilling to accept the potential future liabilities associated with these networks, and has therefore declined to vest the Three Waters Infrastructure within the subdivision if the road is to remain in private ownership.

Accordingly, if the internal roads are to remain in private ownership, and not vested in Council, the internalised Three Waters networks must also be retained in private ownership, with connections provided to the public/private interface. Clearly, provision of Three Waters infrastructure at this scale, being held in private entity ownership (that is not otherwise governed

³ Para 2, Pg 13, Addendum to Assessment of Environmental Effects
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by specific legislation – such as the Unit Titles Act, or the Retirement Villages Act) is not anticipated by the Code of Practice. Further, the same concerns as to the ability of the Residents' Society's ability to guarantee that the private road would be properly maintained in the long term exist in relation to the private Three Waters assets.

Further to the precedent effect that would likely be set by approval to the application in its current form is consideration of Plan Integrity. Whilst the District Plan and associated Code of Practice provides for an anticipated level of development, the resource consent process allows for development to vary from what is permitted, and anticipates that the effects of such non-compliance be assessed. To this end, the scale or degree of non-compliance is a relevant consideration, and what is permitted by the Plan and/or Code sets the standard for the **intended** type of development.

The clear intention provided within the Plan is that where more than 8 rear sites are to be accessed, that this should be by way of a vested, public road. If it is deemed that provision of non-public access to 162 lots is in fact an appropriate outcome in this instance, it directly challenges the intended type and style of development provided for by the District Plan and is considered to severely compromise the consistent application and administration of the District Plan, to such an extent in the current fact set that there is the possibility of altering the pattern of development within Napier City.

9.0 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.

The application as presented provides for the use of the land resource to provide for peoples social, cultural and economic wellbeing, by providing an alternative to a standard retirement village option through provision of fee-simple land parcels with associated dwellings.

However, associated with this point of difference is, of course the remaining difficulty with regard to the anticipated longevity and functionality of the proposed ownership mechanism that is tasked with maintaining and operating the critical access and three waters infrastructure for Stages 2 – 8 of this development 'for future generations'. The proposed degree of infringement to the District Plan and Code of Practice resulting from the retention of this critical infrastructure in private ownership, particularly a form of private ownership that is not suitably robust cannot be considered to appropriately 'avoid, remedy or mitigate' the adverse effects of the proposal with regard to on-going servicing and/or functionality of infrastructure. As such, I cannot consider that the application represents 'sustainable management of physical resources' and therefore, it is my opinion that the application as currently presented is contrary to Section 5 of the Act.

Section 6 of the Act sets out a number of “matters of national importance” which need to be recognised and provided for as follows:

- a) The preservation of the natural character of the coastal environment, (including the coastal marine area, wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:*
- (g) the protection of protected customary rights:*
- (h) the management of significant risks from natural hazards.*

The current application will not compromise the character of the coastal environment, noting the distance of the site from the coast itself, nor will the development in any way be detrimental to provision of public access to or along the coastal marine area. Further the Te Awa locale is not an outstanding natural feature, nor landscape and there are no areas of significant indigenous vegetation or habitats of indigenous fauna present within the subject site.

Turning to the relationship of Maori and their culture and traditions with their ancestral lands, water, sites waahi tapu and other taonga, I do not consider that the subject application will result in any adverse effects in this regard. In addition, the development will not result in the destruction of any historic heritage, nor will it compromise any protected customary rights.

The subject site is known to be affected by natural hazards, which have been addressed in detail under the Section 106 assessment in Section 7 of this report above. To this end, the risks of natural hazards that are particular to the site are considered to be appropriated managed and addressed (excepting effects with regard to lateral spread within the reserves to vest to Council), however overall, it is considered the development is generally in accordance with Section 6.

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 (amongst others) the efficient use of natural and physical resources, the maintenance and enhancement of amenity values and the maintenance and enhancement of the quality of the environment.

The proposal is considered to be an efficient and appropriate use of the existing land resource, in a way that is consistent with the physical layout and design intent of the Te Awa Structure Plan. The proposal provides for a good degree of residential amenity with regard to the proposed site sizes as well as the quality of dwellings to be constructed upon these sites. However, the proposed ownership mechanism for the roading network, resulting from the inclusion of gated entry/exits and the subsequent inability to vest the road does have the potential to result in a reduced degree environmental quality, noting that there is no appropriate certainty or enforceable

mechanism to ensure the maintenance of the roading asset to an acceptable standard into the future.

Section 8 requires Council to take into account the principles of the Treaty of Waitangi. In this case the current development does not raise any particular matters that would compromise the principles of the Treaty of Waitangi.

10.0 Recommendation

After considering all the matters set out above in terms of Sections 106 and 104, it is my recommendation that the application for resource consent be **declined**.

The proposed development is generally in accordance with the scale, form and intent of development provided for by the Te Awa Structure Plan area, however, the proposal to gate the development between the hours of 6pm – 7am, and the associated retention of the roading network (at the applicants request) and three-waters infrastructure (as a result of an unwillingness of Napier City Council to vest such infrastructure underneath a private road network) for Stages 2 - 8 as 'private/ managed by a Resident's Society' results in disproportionate adverse effects with regard to:

- certainty of legal and on-going physical access to Stages 2 – 8; and
- precedent effects and plan integrity.

The scale of the development subject to retention of access and three waters infrastructure as private, comprising the entirety of Stages 2 - 8 represents a significant degree of infringement to the District Plan and Code of Practice, where there is discretion afforded to Council to reject such an application.

The proposal to provide access to an additional 154 (162 minus the 'permitted' 8 lots) dwellings/lots by way of private road network, where it would otherwise be entirely feasible for the roading and three waters infrastructure to be vested to Council should the gates be excluded from the application; is not considered to provide an adequate rationale or appropriate degree of positive effect to the application that would warrant a grant of consent to such a large degree of infringement, particularly given the concerns raised with regard to the legal robustness of the proposed ownership model for this infrastructure.

5 May 2021
