

Contact: Matthew Holder  
Ref: H20180069

21 January 2021

The Chief Executive  
Napier City Council  
Private Bag 6010  
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Sent by email: paulo@napier.govt.nz

Attention Rebecca Sutton

Dear Rebecca,

**RMS19006 Resource Consent Application – Durham Property Investments Ltd, Land at 16 and 38 Willowbank Avenue, Napier**

**Response to Second Section 92 Request for Further Information.**

I write in response to your request of 25 September 2020 for further information pursuant to Section 92 of the Act to support the application for resource consent for the Durham Property Investments Ltd development of the land at 16 and 38 Willowbank Avenue, Napier.

This response follows the order of the matters as they are raised in your letter. This letter is accompanied by the details of a revised wastewater servicing arrangement set out in a revised Land Development Report and associated wastewater servicing plans. Additional geotechnical reporting also accompanies this letter.

Council has directed the Applicant towards the provision of a single wastewater pumping station. This is proposed to be located adjacent to the southern site entrance, within the area of approved Lot 8 of Stage 1b of the development.

The revised wastewater pump location provides opportunity for revision to the wastewater servicing approach of the approved Stage 1 lots, enabling these lots to gravity drain to the pump station.

For ease of consideration and implementation, the previously approved extent of Stage 1 of the development has again been incorporated into the scope of the current application. To facilitate this widening of the scope of the current application, additional scheme plans for Stages 1A, 1B and 1C are provided for inclusion within this application and revised scheme plans for Stages 2 – 8 are included, which reflect the change to Lot 8 required to accommodate the pumping station.

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In addition to the response to the S92 matters, this letter also provides an update of our discussion with the three submitters to the application and a brief response to the letter from Council received 18 December 2020.

## 1.0 Effects of Out-Of-Stage Development On Surrounding Rural Use

As you are aware, the applicant has discussed the concerns raised by NBHS through the notification submission with that party. Pursuant to that discussion, the Applicant proposes that imposition of the following conditions forms part of the application:

1. *That a covenant pursuant to Section 108(2)(d) of the Resource Management Act 1991 be registered against the records of title for Lots 19,20,77-84 resulting from the subdivision of Lot 1 DP 144417 and Lot 2 DP14417 (being those lots immediately adjoining Lot 1 DP 6396), in favour of the consent authority. The covenants shall be prepared and registered at the applicant's expense and shall read as follows:*

*This property adjoins Napier Boys High School land (contained in record of title [to be inserted] being Lot 1 DP 6396) where school activities occur (these may include sports activities and educational agricultural, viticultural and horticultural management practices such as agrichemical spraying and the use of farm machinery, and other similar activities).*

*Where school activities are carried out on the Napier Boys High School land lawfully, in accordance with existing use rights and/or the relevant District Plan requirements the property owner, or their successors in title shall not:*

1. *Make, or cause any other party to make, any complaint arising from the use of that land; or*
2. *Make, nor lodge, nor be party to, nor finance, nor contribute to the cost of, any application, proceeding or appeal pursuant to the Resource Management Act 1991 (or to any statutory amendment or replacement thereof) designed or intended to limit, prohibit or restrict the continuation of the activities on Napier Boys High School land, including without limitation any action to require the school to modify the activities carried out on their land."*

2. *Boundary treatment to the northern boundary shall take the form of a close-boarded 1.8m tall fence.*

With the above matters incorporated into the scope of the application scheme, it is envisaged that the submission from NBHS will be withdrawn. This will be confirmed separately by NBHS.

The withdrawal of the NBHS submission will signify the acceptability of the arrangements to address the potential reverse sensitivity issues with the NBHS property to the north.

## 2.0 Stormwater and Flooding Effects

### 2.1 Effects on Properties to the North and South

The existing site grades from west to east towards two low points on the property boundary along Eriksen Road with surveyed ground levels ranging from RL12.0m to RL10.9m. These low points serve as the existing overland flow drainage areas prior to discharging onto the existing open drain on Eriksen Road. The formalised drainage structure of the development, both piped and overland flow, will reverse this pattern, directing drainage to discharge to the open swale drains that will be formed to the western and southern boundaries.

The controlled stormwater of the 19 lots fronting Eriksen Road that form Stage 1 of the development, will be discharged through kerb connections to a formed public roadside stormwater system of the urbanised Eriksen Road.

The formed stormwater system within the development will be structured to receive all of the controlled and surface water from Stages 2 – 8. The western leg of the open swale drain will receive three piped stormwater discharges from the development.

The open swale drain will effectively truncate any stormwater flow towards the western and southern boundaries.

The contouring of Stages 2 – 8 of the development will ensure that water is directed to drain into the development, preventing water from spilling northward or eastward. Drainage from the limited extent of Stage 1 will be contained within the roadside infrastructure to be formed with the urbanisation of the western side of Eriksen Road.

The appropriate design of the development to accord with the Te Awa Structure Plan requirements will therefore avoid any stormwater effects being experienced by the neighbouring rural properties to the north and south of the application site.

## 2.2 Stormwater Quality

As the development will provide solely local level roads serving the neighbourhood, it is expected that the stormwater will have a comparatively lower heavy metal and hydrocarbon loading than other, more heavily trafficked, urban areas of Napier. Proprietary devices such as interceptors and filters are being investigated to manage stormwater quality. These can be readily incorporated into the stormwater system without conflict with lateral spread mitigation measures. Council has been unwilling to progress discussion of these methods in advance of the wider planning matters being resolved and it is therefore envisaged that this aspect will be resolved at detailed design.

## 3.0 Liquefaction/Lateral Spread Effects

The enclosed Resource Development Consultants Ltd (RDCL) Report on Liquefaction Assessment for Willowbank Subdivision Te Awa provides a summary of further geotechnical assessment of the development in consideration of the swale drain to be formed to the western and southern boundaries.

Identifying a risk of liquefaction under SLS conditions, the RDCL report concludes that within 35m of the formed swale drain, there is a risk of lateral stretch exceeding 50mm. The report accompanies this conclusion with a recommendation that this risk of lateral stretch is mitigated through the use of TC3 building foundations. The report further notes that further ground investigation at detailed design stage has the potential to reduce the extent of required protection works.

It is anticipated that the expression of any lateral spread effects on the reserve lots would require ground reinstatement after the SLS event. No ground improvement mitigation works are proposed to these lots for the purpose of lateral stretch resistance.

## 4.0 Wastewater Infrastructure and Servicing

Pursuant to discussion with the Council's engineering staff, the wastewater servicing arrangement for the development has been revised and is detailed in the enclosed Strata Group Engineers Land Development Report (Revision D) and associated servicing plans.

As originally proposed, Stage 1 Lots were to gravity drain to Council services in Eriksen Road and Stages 2 – 8 were to gravity drain to two pump stations located within the swale area to the west and south of the development.

The revision arrangement now proposed is based on all lots of Stages 1 – 8 gravity draining to a pump station located adjacent to southern site entrance. The south eastern corner of Lot 8 of Stage 1 is proposed to be chamfered to accommodate the pump station, and this land vested in Council. The pump station will then be located external to Stages 2 – 8, accessed directly from Eriksen Road.

As the revised arrangement involves Lot 8 of Stage 1 and revises the servicing approach for the Stage 1 Lots, these 19 lots fronting Eriksen Road have been returned to the scope of this application. The Stage 1 lots are as previously approved by council under reference RMS2000026, with the exception of lot 8, which reduces in area from 625m<sup>2</sup> to 583m<sup>2</sup>.

I trust that the above suitably addresses the issues and questions raised in your s92 request and that you now have sufficient information to continue with the determination of the resource consent application.

#### Other Matters – Notification Submissions

In addition to the anticipated resolution of matters raised by NBHS, we note that HBRC have advised that they will not seek to be heard at a hearing if the following matters are incorporated as conditions:

- *Prior to the occupation of the Willowbank sub-development, the consent holder shall provide a detailed Emergency / Hazard Management Plan (E/HMP), detailing the provisions to ensure the safety of occupants of the subdivided lots in the event of inundation of the site from either tsunami or overland flow from stormwater. This shall be submitted for the approval of the Napier City Council Community Resilience Team. The E/HMP shall include but not be limited to the following measures:*
  - *Ensuring the provision of an evacuation plan for tsunami and flooding, to be reviewed every 5 years by the residents' society*
  - *Provision of evacuation signage which meets the Technical Standard [TS01/08] National Tsunami Signage principles, and is acceptable to the Napier City Council Community Resilience Team*
  - *Ensuring members of the residents' society receive as minimum annual training in compliance with the provisions of the E/HMP.*
- *The consent holder shall provide to the Napier City Council Community Resilience Team a copy of the documentation establishing the Residents society and setting out to the satisfaction of the Napier City Council Community Resilience Team the responsibilities of the residents' society in terms of on-going site management. This includes arrangements to ensure compliance of the E/HMP; and providing Council with an annual report demonstrating on-going compliance. This is to be prepared by an independent certifier appointed by the residents' society and acceptable to the Napier City Council Community Resilience Team.*
- *The consent holder shall upload all geotechnical data to the Hawke's Bay Civil Defence Emergency Management Hazard Portal.*
- *Prior to occupation of the Willowbank development, the consent holder shall provide information to Napier City Council on how they will mitigate liquefaction and enable re-habitation of homes post-event in accordance with the Canterbury method ([MBIE, 2012](#)).*

We can confirm that we do not have any objection to the imposition of these conditions.

Following initial productive correspondence with Richard Hale, we have been unable to confirm that we have satisfactorily addressed the Maraenui Trust concerns. However, we do note that the submission seeks approval of the application “subject to clear direction/conditions imposed that access to Willowbank Road will not be possible”. This concern arose from the former requirement to maintain

access to the existing house at 16 Willowbank Avenue, as part of the continued occupation of this home by the former owner. This is no longer a requirement, and the existing access to 16 Willowbank Avenue will be closed at commencement of development.

#### Other Matters – NCC Letter of 18 December 2020

The Applicant received a letter from Jon Kingsford in December 2020 raising a series of points that Mr Kingsford perceived as problematic application issues. As there appears to be some confusion as to these matters by the Council, the matters raised in the letter are noted below with brief commentary in response:

##### *Points 1 and 2 – Gating of a Public Road*

The application was originally submitted on the basis of Council's pre-application advice that the roads within the development could be both vested and controlled by a gate. The application was subsequently amended to clarify that the internal roads are proposed to be held privately (as internal driveways). This position was clarified by the Addendum AEE submitted to the Council in March 2020, prior to the notification of the application.

The commentary of the letter regarding the gating of a public road is therefore now irrelevant and it is somewhat concerning that Council's Director of Infrastructure is commenting on fundamental superseded details of the application.

##### *Point 3 – Council Services Within Development*

The clarification from Council that services infrastructure within the development must remain private is understood.

While we remain of the view that Council could readily access infrastructure within the private driveways by way of easement, as is the case in many locations across Napier (including within the nearby Summerset development), we appreciate the clarification. As we have previously stated, while the Applicant's preference was for the three waters infrastructure to be vested, we would readily accept the requirement for this to be retained within ownership of the future residents' society by way of conditions.

Again, clarification from the Council that the three waters infrastructure must remain within the control of the residents' society is understood and we will proceed on that basis.

##### *Point 4 Legal Ownership of Each Lot*

The letter questions the legal title structure of the development. As submitted, the subdivision application clearly proposes individual free hold (fee simple) titles for each lot. In addition to the subdivision consent, the application seeks multi-unit (land use) consent to facilitate commencement of development in advance of the issuing of individual records of title.

For clarity, and as noted in the application documents, the application does not propose a freehold unit title structure, which would be more appropriate for a three-dimensional title structure (for example, flatted development across multiple levels).

The application does however, propose the formation of a Residents' Society to facilitate the management and ongoing maintenance financing of communal infrastructure within the development. This will provide the equivalent to a body corporate entity without being bound by the requirements of the Unit Title Act.

*Point 5 Standards for Services*

The letter recommends that infrastructure services within the development, while remaining private, should be designed and constructed to the Council's Engineering Code standard. This recommendation is entirely consistent with the development as proposed and defined by the application.

The clarity of Council's support for this design approach is appreciated.

*Point 6 Development Contributions*

The general advice provided by the letter regarding development contributions is appreciated. We await Council's clarification of proposed development contributions and any contributions necessitated by the development proceeding in advance of the defined structure plan staging.

The clarification that there is no difference within the contribution structure between general subdivision and a retirement village approach (such as the nearby Summerset development) is appreciated.

Despite the package of Summerset contributions being public information that is germane to our application, we have been unsuccessful in our requests to Council for the detail of the overall package of contribution and works undertaken. Assistance in provision of this detail would be appreciated to guide consideration of required contributions.

*Point 7 Resource Consent Structure*

The letter questions "the appropriateness of the Resource Consent application in its present form". The intention has always been for a subdivision creating individual free hold records of title. The application has never intended to seek approval for a lease hold retirement village where occupiers are bound by resale limitations. We are not aware of any required revisions to the structure of the resource consent application. If Council holds a specific view on this, we would welcome further clarification of this and related discussion.

I trust that the additional commentary of the status of notification submissions and the questions raised by Council's Director of Infrastructure is of assistance in providing further clarification of our current understanding of matters and the general consistency of the scheme with the Council's engineering requirements.

We look forward to the continued processing of the application and, with the benefit of agreed engineering requirements and resolved submissions, clarification as to whether a hearing is now required. Please contact Matthew Holder or myself to discuss any aspect of this letter as necessary.

Yours faithfully

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