



**NAPIER**  
CITY COUNCIL  
*Te Kaunihera o Ahuriri*

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# HEARINGS COMMITTEE (RESOURCE CONSENT HEARING)

## Open Minutes Attachments

APPLICATION BY JANINE AND KWOK CHENG FOR THE  
REMOVAL OF A GROUP 3A HERITAGE ITEM – 69 HARDINGE ROAD, NAPIER

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Meeting Date: Monday 18 July 2022

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Time: 9.30am (Applicant: Kwok and Janine Cheng)

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Venue: Breakout Room 2  
War Memorial Centre  
Marine Parade  
Napier

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## Minute of the Hearings Panel

RM210183

Demolition of the existing and construction of a new dwelling at 69 Hardinge Road, Ahuriri

Issued 11 July 2022

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The hearings commissioners issue the following minute:

1. Please provide the commissioners with a copy of the updated written approvals from affected parties at 70 Hardinge Road and 156 Waghorne Street, along with the signed plans noting the revisions from the applicant's evidence dated 4 July 2022.
2. It is requested that the author of the building condition report (Appendix C - Building Condition Report (Doc Id 1475529) attend the hearing and is available for questions from the commissioners.
  - a. Note attendance via video link can be arranged if required



Annette Brosnan  
Chair



Nigel Simpson  
Commissioner

# WRITTEN APPROVAL OF AFFECTED PERSONS



**NAPIER**  
CITY COUNCIL  
Te Kaunihera o Ahuriri

## PART A (completed by applicant)

### Part A - APPLICATION

Applicants Name (in full)	Janine and Sing Chen
Address of proposed activity	69 Hardinge Road, Ahuriri
Consent Number (if known)	RM210183

Brief description of proposed activity:

Demolition of the existing dwelling, associated site works and the construction of a new dwelling and swimming pool.

Plan references (including title, author and date):

Plans titled Cheng House, Janine and Sing Cheng, 69 Hardinge Road, Ahuriri, plan references RC-R3, RC-2R3 and RC-3R3 dated Monday 4th July 2022.

Resource consent(s) being sought for (describe area(s) of non-compliance):

The proposal infringes the height in relation to boundary plane and yard setbacks along both the eastern and western side boundaries (with 68 and 70 Hardinge Road). The proposal also does not meet the minimum open space requirement of 40% and requires consent to demolish the existing dwelling.

## PART B (completed by person/s and/or organisations providing written approval)

### Part B - AFFECTED PERSON(S)

Full Name	Brian and Shirley Lucas and Heretaunga Trustees 2012 Ltd
Full Name	BRIAN LUCAS
Full Name	
Address of affected property	70 Hardinge Road, Ahuriri
Phone:	021 582 272

**Part B - AFFECTED PERSON(S) (continued)**

I have authority to sign on behalf of all the other:

☐ OWNER(S)      ☐ OCCUPIER(S)

of the property. Please provide documentation proving this authority.

Please note: the approval of all the legal owners and the occupiers of the affected property may be necessary.

### PART C (to be completed by persons and/or organisations providing written approval)

**Part C - DECLARATION**

☒ I/We have been given details of the proposal and plans to which I/we are giving written approval.

☒ I/We have signed each page of the plans in respect of this proposal. These need to accompany this form.

☒ I/We understand that by giving my/our written approval, the Council when considering the application cannot take account of any actual or potential effects of the activity on my/our property.

☒ Further, I/we understand that at any time before the determination of the application, I/we may give notice in writing to the Council that this approval is withdrawn.

*Note: You should only sign below if you fully understand the proposal. If you require the resource consent process to be explained you can contact the Duty Planner at the Council who can provide you with information phone: 06 835 7579*

Signature(s):

Signature(s):

Signature(s):

**PRIVACY INFORMATION**

The council requires the information you have provided on this form to process your application under the RMA and to collect statistics. The council will hold and store the information, including all associated reports and attachments, on a public register. The details may also be made available to the public on the council's website. These details are collected to inform the general public and community groups about all consents which have been processed or issued through the council. If you would like to request access to, or correction of any details, please contact the council.













Scale @ A1: 1:50  
Monday, 4 July 2022  
RC-2R3

Janine and Sing Cheng  
69 Hardinge Road, Ahuriri, Napier  
Cheng House

Studio26 Architects Ltd.  
p.(06) 844 0223 f.(06) 844 0580  
26 Guppy Road | PO Box 5058  
Greenmeadows, NAPIER  
www.studio26architects.co.nz

STUDIO26 ARCHITECTS

15-7-2022









# WRITTEN APPROVAL OF AFFECTED PERSONS



**NAPIER**  
CITY COUNCIL  
Te Kaunihera o Ahuriri

Item 1 Attachment 2

## PART A (completed by applicant)

### Part A - APPLICATION

Applicants Name (in full)	Janine and Sing Chen
Address of proposed activity	69 Hardinge Road, Ahuriri
Consent Number (if known)	RM210183

#### Brief description of proposed activity:

Demolition of the existing dwelling, associated site works and the construction of a new dwelling and swimming pool.

#### Plan references (including title, author and date):

Plans titled Cheng House, Janine and Sing Cheng, 69 Hardinge Road, Ahuriri, plan references RC-R3, RC-2R3 and RC-3R3 dated Monday 4th July 2022.

#### Resource consent(s) being sought for (describe area(s) of non-compliance):

The proposal infringes the height in relation to boundary plane and yard setbacks along both the eastern and western side boundaries (with 68 and 70 Hardinge Road). The proposal also does not meet the minimum open space requirement of 40% and requires consent to demolish the existing dwelling.

## PART B (completed by person/s and/or organisations providing written approval)

### Part B - AFFECTED PERSON(S)

Full Name

ROBERT THOMAS DALLAS

Full Name

Full Name

Address of affected property

156 Waghorn Street, Ahuriri

Phone:

0275078999 / 068352159



**Part B - AFFECTED PERSON(S) (continued)**

I have authority to sign on behalf of all the other:

☒ OWNER(S)      ☐ OCCUPIER(S)

of the property. Please provide documentation proving this authority.

Please note: the approval of all the legal owners and the occupiers of the affected property may be necessary.

**PART C (to be completed by persons and/or organisations providing written approval)**

**Part C - DECLARATION**

☒ We have been given details of the proposal and plans to which I/we are giving written approval.

☒ We have signed each page of the plans in respect of this proposal. These need to accompany this form.

☒ We understand that by giving my/our written approval, the Council when considering the application cannot take account of any actual or potential effects of the activity on my/our property.

☒ Further, I/we understand that at any time before the determination of the application, I/we may give notice in writing to the Council that this approval is withdrawn.

*Note: You should only sign below if you fully understand the proposal. If you require the resource consent process to be explained you can contact the Duty Planner at the Council who can provide you with information phone: 06 835 7579*

Signature(s):

*R. Ballag*

Signature(s):

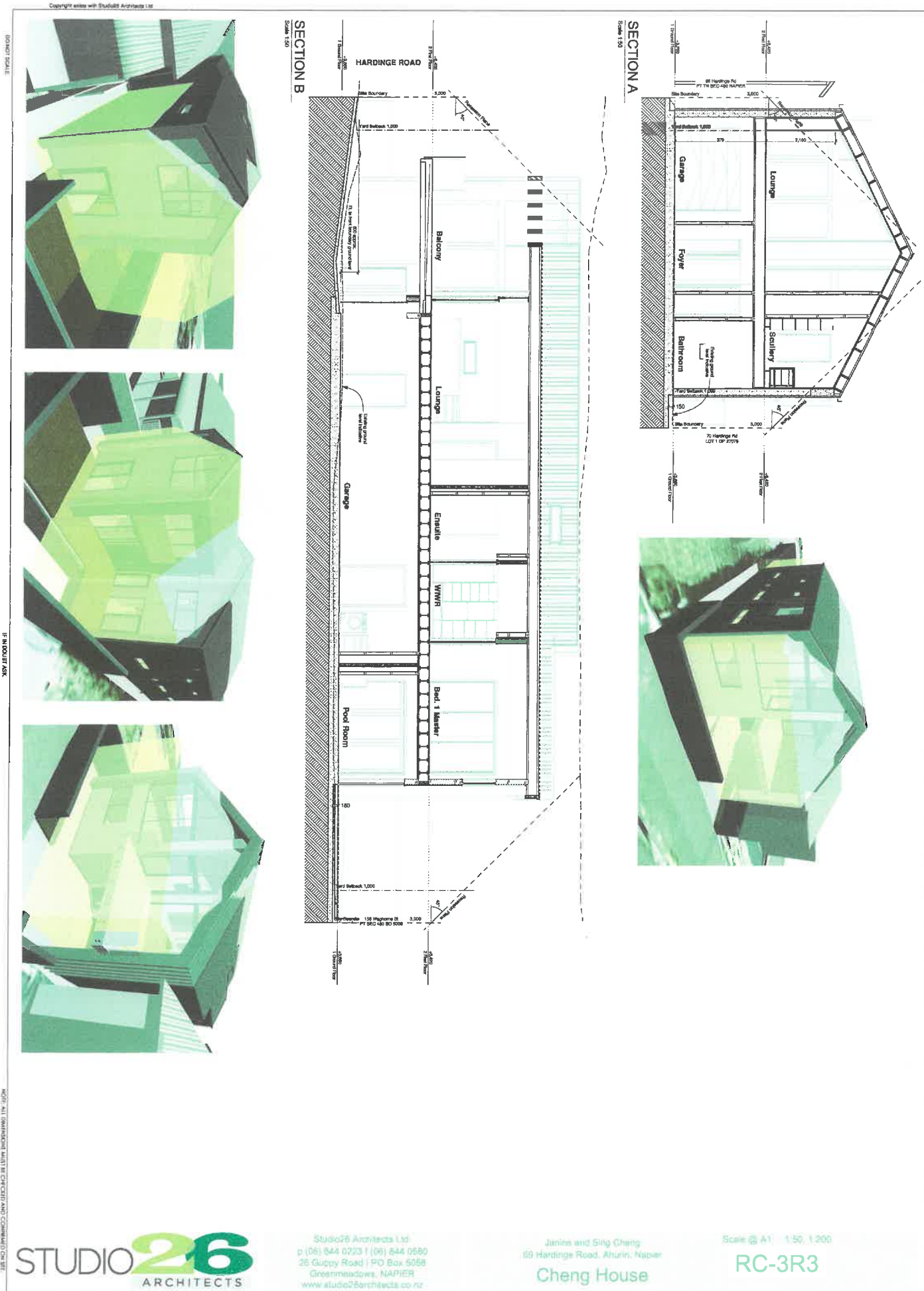
Signature(s):

**PRIVACY INFORMATION**

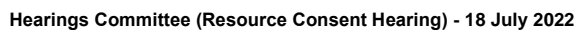
The council requires the information you have provided on this form to process your application under the RMA and to collect statistics. The council will hold and store the information, including all associated reports and attachments, on a public register. The details may also be made available to the public on the council's website. These details are collected to inform the general public and community groups about all consents which have been processed or issued through the council. If you would like to request access to, or correction of any details, please contact the council.



Item 1 Attachment 2







2

**Before the Hearing Commissioners appointed by Napier City Council**

**IN THE MATTER**

of the Resource Management Act  
1991

**AND**

**IN THE MATTER OF**

removal of the existing dwelling  
and construction of a new  
dwelling at 69 Hardinge Road,  
Ahuriri

**BY**

**Janine and Sing Cheng**

**Applicant**

**Item 1 Attachment 3**

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**Introduction of Proposal and Evidence**

18 July 2022

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**INTRODUCTION**

1. My name is Cameron Drury.
2. I am a Principal Planner and Director of Stradegy Planning Limited.
3. I graduated from Massey University with a bachelor's degree in Environmental and Resource Planning in 2003 with a Second Specialization in Water and Wastewater Technologies and have 18 years professional planning experience.
4. During this time, I have worked with the Hawke's Bay Regional Council and Napier City Council as a Consents Planner and a number of private consultants as a Senior Planner.
5. I am a Full Member of the New Zealand Planning Institute and hold a current RMA Hearing Commissioner certification.
6. I have assisted Ms Beachen in the management of this application.
7. For any evidence I may give through answering questions of the panel, I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses.

**WITNESSES**

8. Today I have with me Ms Phillipa Beachen and Mr Gary Pidd.
9. Ms Beachen is a Senior Planner at Stradegy and holds a Masters of Urban Planning. Her qualifications and experience are further outlined in her evidence in Chief.
10. While further evidence was not provided by Mr Pidd, he is in attendance at the request of the Hearing Panel, and to answer any questions on the material he has contributed to in the application and evidence.
11. Graduating in 1981, Mr Pidd has a B.BSC and B.Arch Victoria university of Wellington. He is a member of the New Zealand Institute of Architects (NZIA). He commenced his professional career with The Natusch Partnership in Napier in 1983 and has 39 years local experience. Mr Pidd grew up in Ahuriri and is very familiar with the area.

## APPLICATION

12. The application is to construct a new dwelling at 69 Hardinge Road, Napier. With the site being within the Hardinge Road Character Area, the existing dwelling falls to be considered under the rule framework pertaining to Group 3A heritage items – the demolition or relocation of which is classified as a Discretionary Activity under Rule 56.17c.
13. The application document and Section 42A report outlines additional reasons for consent owing to infringements with bulk and location controls. Overall however, the application has been classified and assessed as a Discretionary Activity.

## EVIDENCE

14. Ms Beachen has pre circulated expert planning evidence (evidence in chief). This responded to matters raised in the Section 42A report and introduced changes to the proposal to address concerns around built dominance and shading effects. The amended concept was supported by further shading analysis undertaken by Mr Pidd. Ms Beachen also responded to matters raised in the submission.
15. Evidence has since been pre circulated by the submitter's experts.
16. This has raised a number of points that Ms Beachen would like to respond to, and to assist the panel, she has prepared supplementary evidence to record this.

**Cameron Drury**

18 July 2022

3

**Before the Hearing Commissioners appointed by Napier City Council**

**IN THE MATTER**

of the Resource Management Act  
1991

**AND**

**IN THE MATTER OF**

removal of the existing dwelling  
and construction of a new  
dwelling at 69 Hardinge Road,  
Ahuriri

**BY**

**Janine and Sing Cheng**

**Applicant**

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**Summary of Evidence and Supplementary Evidence of Phillipa Audrey Beachen**  
18 July 2022

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**Item 1 Attachment 4**

**INTRODUCTION**

1. My name is Phillipa Beachen.
2. I am a Senior Planner at Strategy Planning Limited.
3. I have a Master of Urban Planning (Professional) degree and have 7 years professional planning experience.
4. During this time I have worked for a private consultancy as a Planner and with Auckland Council as a Processing Planner.
5. I am an Intermediate Member of the New Zealand Planning Institute.
6. I prepared the s92 response submitted to Council in November 2021 and further information in relation to shading submitted in May 2022. The application report was prepared by my former colleague Rebecca Sutton.
7. I confirm that I have visited the site on 27<sup>th</sup> April 2022 and 18<sup>th</sup> June 2022.
8. In the evidence that follows I:
  - 1) Provide a written summary of my statement of evidence in chief dated 4 July 2022;
  - 2) Provide a further update to the application following clarification with the applicant; and
  - 3) Respond to matters raised in the expert evidence called by submitters.
9. I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses.

**SUMMARY OF MY EVIDENCE IN CHIEF**

10. My evidence in chief responded to matters raised in the Section 42A report, presented an updated proposal following matters raised and responded to matters raised in the submission.
11. My evidence outlined that I was in agreeance with the Reporting Officer in that:
  - 1) I support the officers view that adverse effects in relation to the wider streetscape and character and heritage values are no more than minor and that the removal of the Group 3A heritage item can be approved; and



- 2) I support the officers view that adverse effects in relation to privacy, the open space shortfall, vehicle access, servicing, temporary construction and earthworks, reverse sensitivity and infrastructure are less than minor.
12. I provided further assessment in relation to the wider streetscape character along Hardinge Road and the proposed dwellings influence on, and compatibility with, this character. I noted that dwellings with infringements to both yards and height in relation to boundary on one or both boundaries are not uncommon along Hardinge Road for both new and old architecture. Additionally, the bulk of the dwelling is not a great departure from that of the existing dwelling or that of the dwellings in the existing environment. I consider the proposal to be in keeping with the established bulk, form and mixed character of dwellings along Hardinge Road.
  13. I introduced an updated proposal which includes a modulated western façade providing for compliance with the 1m side yard setback for the rear 9.25m of the dwelling. This was considered appropriate to address the concerns of the Reporting Officer relating to dominance, shading and the availability of sunlight in relation to the submitters property at 68 Hardinge Road. Those concerns were:
    - 1) *"The key issue is the appropriateness of bulk within the side yard, and height recession planes adjacent to the western boundary."*
    - 2) *"Shading in March and September is more than that cast from a permitted building, particularly to the south of the dwelling at 68 Hardinge Road"*
    - 3) *"The information shows that there is an increase in shading of the rear of the submitters' property than what can occur as a permitted activity, and therefore a reduction in availability of sunlight afforded to the submitters property ... I do not consider that shading effects have been mitigated to an acceptable level."*
  14. These concerns were resolved by:
    - 1) Removing the cumulative effect caused by the dwelling along this southwestern portion by achieving compliance with the yard setback and subsequently reducing the height in relation to boundary infringement.
    - 2) Through demonstrating that shading at all times within the March/November scenario is in fact less than that from a permitted building envelope.

15. Further, in relation to the admission to sunlight, I considered that the location of the submitters dwelling being only 0.417m from the common boundary to inevitably compromise their own admission to sunlight and outlook, and that effects beyond the permitted building envelope following the change to set the building further back to be negligible. In this regard I noted that the distance between the structures will have the greatest impact on the perception of space and availability to sunlight, noting that in this case, the submitters dwelling is the main influencer of these outcomes.
16. The proposal was found to have regard to the relevant objectives and policies of the District Plan in relation to providing for the wellbeing of the City's residents - noting that the amended design reduces the overall scale of the building in relation to the submitter, the height and bulk of the building will not be incompatible with its surrounds and adequate levels of daylight and sunlight are considered to reach the submitters site.
17. In relation to the matters raised in the submission, I consider that a number of these were either resolved by the Reporting Officer or through my evidence in relation to dominance, shading, admission to sunlight and onsite amenity, as well as the proposed dwellings compatibility with the dwellings of mixed character and architectural styles along Hardinge Road.
18. Further, my evidence outlined the overall policy framework of relevance to the site and proposal and determined that the proposal does have regard to these matters, which is the appropriate test for Discretionary Activities.
19. Overall, I determined that:
  - 1) The proposal will not conflict with the direction envisaged by the District Plan for future development along Hardinge Road;
  - 2) The key issues contributing to the Reporting Officers recommendation to decline consent for the dwelling have been addressed thus enabling consent to be granted;
  - 3) The proposal has regard to the relevant objectives and policies of the District Plan; and
  - 4) The proposal is consistent with Part 2 of the Resource Management Act 1991.



**UPDATED APPLICATION**

20. Following discussion with the applicant, we wish to inform the Hearing's Panel of an update to the proposal. It is proposed that the existing dwelling will be sold for removal as opposed to being demolished. I understand that this does not affect the activity status of the proposal in any way.
21. I also confirm that my assessments and findings in relation to heritage values apply for relocation of the dwelling in same way as they apply to demolition of the dwelling – except that, relocation now allows the heritage feature to be preserved and re-used in a new location.

**RESPONSE TO MATTERS RAISED IN THE SUBMITTERS EVIDENCE**

22. Expert evidence has been provided by Mr Christie and Mr Lunday in relation to building and heritage matters respectively.
23. I will initially respond to matters raised by Mr Christie before moving on to matters raised by Mr Lunday.
24. In his evidence Mr Christie provides an account of the building work undertaken on 68 Hardinge Road and provides comments in relation to shading on pages 4 and 5 of his evidence.
25. In relation to his account of the building work undertaken on 68 Hardinge Road, Mr Christie is of the view that the subject dwelling can be restored, albeit at a significant cost. I do not debate this.
26. In relation to his comments on shading on pages 4 and 5 of his evidence, along with the photo showing a rod to compare the shading on page 6, it is noted that the rod does not reflect the location of the proposed dwelling as it is located beyond the line of the building and right on the common boundary. My assessment of shading has relied upon the computer generated models provided to me by Gary Pidd of Studio 26 Architects.
27. Turning to the evidence of Mr Lunday, once his evidence commences in paragraph 17, he traverses how the Department of Conservation defines heritage and references statements from the Salmond Report before providing his statement in paragraph 27 that in his opinion "*the group of villas comprising 67, 68 and 69 Hardinge Road should be at best preserved*". This may be Mr Lunday's opinion, but I do not consider that this to be an accurate analysis of the outcomes enabled under the District Plan – being the document that this application is to be assessed against. I will elaborate on this below.

28. This supplementary evidence will provide an overview of the rule framework which determines how Group 3A heritage items are assessed within the Napier District Plan. I will do this initially through determining the Plan policy framework, direction of the rule framework, and then through the assessment criteria and specific site circumstances that evidently inform a consent decision.

#### District Plan Policy and Rule Framework Overview

29. The objectives and policies of the District Plan are given effect to through categorising the various heritage and special character items in the City into different groups and applying a hierarchical rule framework to their management. The Groups are outlined in section 56.6 of the District Plan and it is outlined that Groups 1-3 are in order of importance. The subject site has been identified to be within Group 3A items, these are defined as:

- 1) *"Group 3A Identifies buildings which contribute as a group, or by a recognised style, to the character of Ahuriri. The Council will encourage the protection of this character. It includes buildings within the Ahuriri Advocacy Areas (Iron Pot, Hardinge Road, Battery Road and Coronation Street Character Areas) shown on the planning maps and in Appendix 13A."*

30. This is as opposed to Group 1 or Group 2 items which are described as:

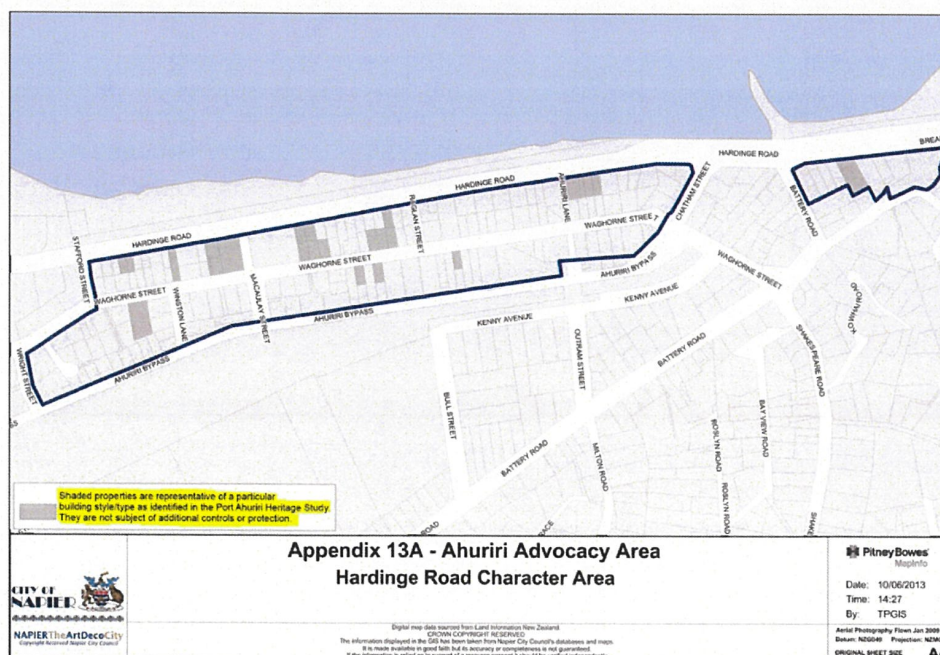
- 1) *"Group 1 identifies individual buildings and streetscapes which are of prime importance to the heritage of the City and must be protected. It includes Those buildings and structures identified as Group 1 in Appendix 13."*
- 2) *"Group 2 Identifies buildings that individually are of primary importance to the heritage of the City and the protection of which is seen as reasonably able to be achieved. It includes those buildings and structures identified as Group 2 in Appendix 13."*

31. It is outlined that these groups were informed by five different documents, one of which being the Port Ahuriri Heritage Study prepared by Jeremy Salmond. This report is referred to throughout Mr Lunday's evidence, however it is important to recognise and view it within the context it was intended for.

32. This report helped develop which items were included in Groups 1 – 5 as referred to in Chapter 56 of the District Plan pertaining to Heritage. From there, it is the policy framework and rules developed to give effect to that policy framework that set out the direction for managing heritage values, not the specific wording or recommendations of a report, commissioned among many to assist the Council in developing its District Plan.



**Figure 1:** Appendix 13A of the District Plan outlining the extent of the Hardinge Road Character Area



36. The direction around the establishment and intent for advocacy and character areas is included in the Principal Reasons for Adopting Objectives and Policies beneath Objective 56.3 and Policies 56.3.1 – 56.3.3 (relating to special character) of the Plan.
37. Mr Lunday included these in page 4 of Appendix A of his evidence, however, did not include the specific paragraph of relevance to advocacy areas and to the treatment of the subject site. This is as follows:
- 1) *"Outside the Character Zones, advocacy areas have been identified. These recognise that there are some excellent examples of the character that is to be preserved in the zones that fall outside the boundary of the character zones. Advocacy areas immediately surround the character areas and an education approach is adopted within these areas to preserve the heritage values. They are something of a transitional area between the character area and the normal zone. Within the advocacy areas preservation of the character is encouraged by means of education and the architectural and landscape design characteristics is recognised in the assessment criteria for discretionary activities."*
- Underline added.
38. It is clear from the above that the preservation of character - within advocacy areas, is by means of education and recognition of architectural and landscape design characteristics. The avoidance of demolition is not referred to. Again, this is an important distinction to be made when considering the context and direction of Plan provisions, and does not support Mr Lunday's assertion that the District Plan expects preservation as the only potential outcome.
39. It has been established that the site is identified within the Ahuriri Advocacy Area, the Hardinge Road Character Area and is within a Group 3A Heritage Item. The above outlines the Plan's direction for this Group, my evidence will now turn to consider the rule framework employed by the Plan to give effect to that direction and policy framework.
40. It is key to note that the rule framework is the same for all Group 3A heritage items. In implementing the Plan provisions, the rules do not afford any further protection to items shaded within Appendix 13A of the Plan or identified within the Port Ahuriri Heritage Study.
41. The methods employed by Council to preserve and recognise Group 3A features include following:



- 1) It is a **Permitted Activity** under Rule 56.11 to undertake any internal or external alteration or redevelopment of a Group 3A heritage item including partial demolition. That means, it is a permitted activity to remove the entire front façade of the dwelling and replace it in any architectural style or form which complies with the District Plan bulk and location controls.
  - 2) Pursuant to Rule 56.17(c), demolition or relocation of a Group 3A Heritage Item is a Discretionary Activity.
42. It can therefore be determined that this framework does not anticipate 'no change' or outright preservation. Given the permissive nature of Rule 56.11 allowing extensive alteration and even partial demolition, the rule framework would in fact seem to enable a high degree of change.
43. Through the application of Rule 56.11, the applicant could entirely remove any element of the dwelling which currently contributes to character, provided that the additions and alterations comply with bulk and location controls. **Figure 2** below demonstrates a non-fanciful renovation to the dwelling which could be established as of right as a Permitted Activity. This is compared to the existing dwelling in **Figure 3**, where the form of the dwelling is maintained, the bay window removed, roofline slightly altered and part of the front façade renovated to accommodate a garage/car port.

**Figure 2:** Architects impression of non-fanciful permitted additions and alterations to the dwelling at 69 Hardinge Road.



**Figure 3:** Render of existing dwelling at 69 Hardinge Road.



44. Noting this Permitted Activity, a permitted baseline in terms of change permitted to the dwelling is therefore relevant in relation to the loss of special character. Section 104(2) of the RMA, states:

*When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*

45. As such, should the permitted baseline be followed in this instance, it would suggest that Council can disregard the effects generated from the loss of character to the front of the dwelling as this can be undertaken by right as a Permitted Activity.
46. I consider this to be of particular relevance in relation to the substantive decision on this application, as well as in relation to understanding the direction and anticipated outcomes of the of the Plan in respect to the management of Group 3A items in this area.
47. In relation to Mr Lunday's suggestion in paragraph 52 of his evidence that a Plan Change would be needed to support the nature of works proposed, what this permitted baseline demonstrates is that change and loss of original fabric is not prevented by the Plan for Group 3A items. I do not agree with Mr Lunday's



comment and consider the opposite to be more accurate in that a change to the Plan would be required if preservation was to be sought as the only outcome.

48. The consistent application of the District Plan in the manner I have explained is evidenced in the following resource consent where demolition or removal of Group 3A heritage items along Hardinge Road and Waghorne Street has been approved:

- 1) 26 Hardinge Road and 62 Waghorne Street – RM180129
- 2) 28 Hardinge Road – RM21076
- 3) 48 Hardinge Road – RM150024
- 4) 56 Hardinge Road – RM140057
- 5) 70 Hardinge Road – RM220006

49. Council has demonstrated a consistent approach in approving these applications in accordance with the appropriate application of the District Plan. None of these applications required public notification or a Plan Change such as Mr Lunday suggests.

#### District Plan Assessment Criteria

50. Noting that there are no specific criteria for the relocation of a Group 3A item, only the assessment criteria contained within Section 56.17(1) of the Plan applies.

51. The assessment criteria contained within 56.17(1) is referred to as a 'General' assessment criteria and covers any unusual circumstances including, but not limited to, matters relating to inherent site considerations, particular site development characteristics or unusual environmental circumstances. These are set out as follows:

- 1) *Inherent site considerations: including unusual size, shape, topography, substratum, vegetation or flood susceptibility;*
- 2) *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;*

3) *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.*

52. In relation to the above, the subject site has a road frontage of only 10.06m with a dwelling onsite which has a ground floor area of less than 100m<sup>2</sup> (approximately 90m<sup>2</sup>) – being half of that of its two neighbours at 67 and 68 Hardinge Road. This provides for only two bedrooms, separate living and dining, one bathroom and a small kitchen and an outdoor laundry. Additionally, unlike adjacent sites, the site has no vehicle access or onsite car parking.
53. Mr Lunday noted in paragraph 27 of his evidence (page 10) that the dwelling should “*at least be adapted to modern use*” and much of Mr Christies evidence is implying that since refurbishment has taken place on the submitters property, then it too should occur on this site.
54. Noting these particular site constraints, and when considering renovation to achieve modern use, I do not consider the subject site or the dwelling to be comparable to the circumstances of the adjoining site and dwelling at 68 Hardinge Road which, as Mr Christie noted, could be renovated within its existing footprint (paragraph 4, Page 1). Specifically, noting the very small footprint of the existing dwelling, its two-bedroom nature and inability to achieve vehicle access and parking in its current form.
55. Further, when considering particular site development characteristics, the condition of the existing dwelling is important to take into consideration. Mr Pidd has highlighted the existing building materials present on the dwelling in the document lodged with the original application at Appendix 3 titled “*69 Hardinge Road – Existing House Review*”.
56. Implying that this report is “*hearsay*”<sup>1</sup> is inappropriate in my view, but again, it is important to not take the document out of context for what it is used for. It is simply a review of existing condition and materials which can inform the level of works required to refurbish the home. This would include:

- 1) Repiling the dwelling.

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<sup>1</sup> Evidence of My Lunday, page 41



- 2) Recladding at least 3 out of 4 of the external walls (providing that the only wall which remains in original cladding does not need to be reclad in which case all 4 external walls would need recladding).
- 3) Replace most external joinery which has been replaced by unoriginal materials and styles over the years.
- 4) Redo (some) ceilings which have been replaced by non-original materials.
- 5) Replace the roof.
- 6) Replace both front and rear decks.

57. Mr Christie's evidence describes how a number of these works occurred through the refurbishment of the site at 68 Hardinge Road. However, to expect every person to undertake a \$1.4 million refurbishment (paragraph 16, page 3 of Mr Christies evidence) contradicts Part 2 of the Resource Management Act 1991 (Part 2, s. 5, s. 2) where the economic well-being of people and the community is considered. Mr Christie outlines in paragraph 9 (page 2):

- 1) *"It was made very clear to them [the submitters] that to complete this project to the standard they wanted would incur quite some considerable cost"*
- 2) *"It was important for them to keep the character of the house in keeping with its surroundings and they were prepared to meet the costs to achieve this and protect the integrity of the area"*

58. Refurbishing a dwelling at all costs is not feasible for every land owner, nor is it the most efficient way to provide for modern use on the site. While I am not arguing that these works cannot be done, these works, coupled with the limitations of the site and the existing layout of the dwelling mean that extensive addition and alteration works will be required to modernise the dwelling. In essence, it would essentially result in a new house and noting the site constraints it is not considered the most appropriate pathway for this dwelling. This is a relevant factor to take into consideration when looking to meet this assessment criteria.

59. Through the review of the consents detailed in paragraph 48 above, it is evident that this consideration has been utilised by decision makers to justify removal in most cases. As such, Council has presented a consistent approach to assessing these applications and it was through experience of these applications that guided the information lodged with the application.

60. The final matter of assessment criteria 56.17(1) refers to unusual environmental circumstances, specifically, *"unusual use or location of buildings on adjacent sites"*.
61. The location of the dwelling at 68 Hardinge Road, being 0.4 – 0.417m from the common boundary, is, undoubtedly, an unusual location of a building for a dwelling on a residential site. Additionally, I also note that on page 2 of Mr Christies evidence he states in paragraph 10 that as a part of the refurbishments to the submitters property that the house was lifted during repiling. This is also evident when comparing Google Street View images as demonstrated in **Figures 4 and 5** below.

**Figure 4:** Google Street View of the adjacent dwellings from December 2012 (source: Google).





**Figure 5:** Google Street View of the dwellings following the refurbishment of 68 Hardinge Road from September 2019 demonstrating that 68 Hardinge Road has been lifted following the refurbishments detailed by Mr Christie (source: Google).



62. It is my view that these works would have required Resource Consent for the following reasons:
- 1) Infringement to *Condition 8.16 Yards*. While the setback of the dwelling from the boundary has not changed, the vertical extent of the infringement within the side yard has been increased.
  - 2) Infringement to *Condition 8.18 Height in Relation to Boundary* noting that through lifting the dwelling the existing infringement to height in relation to boundary has increased.
63. Noting the above, resource consent would have been required for these works pursuant to Rule 8.12 of the Napier City Plan as a Restricted Discretionary Activity.
64. Correspondence from Napier City Council Planner Ellen Gowan on 12<sup>th</sup> April 2022 (Attached at **Appendix A**) confirms that no resource consent applications have been approved on the submitter's property for these works.
65. The reason why this is of particular relevance is due to the potential effects that would have to have been assessed on the applicant's property as a result of this location of the dwelling through the resource consent application process, which were evidently sidestepped. Particularly in regard to the privacy effects from the

rear three bay window shown on page 7 of Mr Christies evidence which, do not believe to have been approved under the building consent in its current form, and, has direct overlooking effects into the only private open space of the applicant's property where no mitigation is provided (building consent plans attached at **Attachment B**).

66. Assessment criteria 56.17(1)(ii) above considers "*enhancement of private open space*". The current "*unusual location and use*" of the submitters dwelling which was exacerbated through the refurbishment works generates adverse privacy and overlooking effects toward the applicant's site which may have been avoided or mitigated through a resource consent process.
67. Redevelopment of the subject site aids to mitigate this and better achieve the assessment criteria 56.17(1)(ii) for the enhancement of private open space.
68. Although assessment criteria 56.17(4), which the original application considered is not strictly applicable, owing to the Discretionary status of the application I recognise the ability for a decision maker to consider such matters. These matters have been thoroughly considered by Ms Sutton in the original application document.
69. I would like to comment on Mr Lunday's statement in paragraph 36 of his evidence, however. Here he states:

*Simply put, this is the wrong site for a two-storey house with onsite carparking, four bedrooms, a double garage, a pool room, and a swimming pool.*
70. Firstly, this is a statement of opinion as opposed to a statement of fact. Secondly, the scale, and what the dwelling and site layout is seeking to achieve is not inconsistent with other dwellings and sites along Hardinge Road, and thirdly, once the existing environment, which includes the new dwelling on 70 Hardinge Road (approved since the lodgement of the application) is taken into account, the building is not out of scale in regard to the character of the immediate streetscape as well as the variable bulk and scale of other dwellings along Hardinge Road.



**Figure 6:** Photomontage of the proposed streetscape including approved dwelling at 70 Hardinge Road.



71. The recently approved dwelling on 70 Hardinge Road is illustrative of a continuously changing residential environment. In this regard, there has been considerable redevelopment along Hardinge Road since the Salmond Report was prepared in 1994 – almost 30 years ago, emphasising the need to avoid too much focus or weight being applied to a single input.
72. In relation to Mr Lunday's suggestion that *"the applicant's architects report did not follow appropriate heritage protocol"*, it is important to note that the building is not a Heritage Item identified in itself, it is not an item listed with Heritage New Zealand or requiring of an Authority under the Heritage New Zealand Pouhere Taonga Act 2014, that consideration of the ICOMOS Charter Principles is not a requirement of the District Plan.
73. The information Mr Pidd provided to Ms Sutton provided a review of the existing materials on the dwelling and their condition, which is within the expertise of an Architect. It is clearly relevant and helpfully notes the extent of non-original materials. Like most planning decisions, various pieces of information are considered, and this is simply another element to take into consideration to assist deciding upon this case specific matter.

#### CONCLUDING COMMENTS

74. Contrary to the evidence provided by Mr Lunday, the identification of the dwelling as a group of three dwellings in a cluster or identified as a specific style within Appendix 13A does not afford the dwelling more protection than any other dwellings within the Ahuriri Advocacy Area or as a Group 3A item.
75. The objectives and policies of the District Plan of relevance to Group 3A heritage items do not require that demolition should be avoided.



76. The conservation method for Group 3A items employed by the Plan does not prevent change to these items. Change is in fact provided for as a Permitted Activity allowing for any external addition, alteration or partial demolition. As such, change to the streetscape cannot be seen as a fatal flaw within the Special Character Area.
77. Application of the permitted baseline allows Council to disregard the effects of altering or changing the facades of buildings.

**Phillipa Audrey Beachen**

18 July 2022

## **Attachment A – Email Correspondence with Council**

**From:** [Ellen Gowan](#)  
**To:** [Pip Beachen](#)  
**Subject:** RE: Planners Report Documents  
**Date:** Tuesday, 12 April 2022 12:18:25 pm  
**Attachments:** [image002.png](#)  
[RM180129 Report.pdf](#)

Hi Pip

I've attached the planners report for you. Let me know if you require anything further.

I've looked through the folder for 68 Hardinge Road and can confirm that there haven't been any consents within the last 10 years.

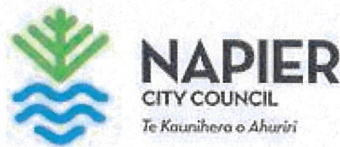
Thanks,  
 Ellen

**Ellen Gowan**

RESOURCE CONSENTS PLANNER

Napier City Council, Private Bag 6010, Napier 4142

t +64 6 834 9825 m +64 27 223 6914 [www.napier.govt.nz](http://www.napier.govt.nz)



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 Refer to the Contract and Commercial Law Act 2017 Part 4 Electronic Transactions.  
 Please consider the environment before printing this email.

**From:** Pip Beachen <Pip@stradegy.co.nz>  
**Sent:** Tuesday, 12 April 2022 12:09 PM  
**To:** Ellen Gowan <ellen.gowan@napier.govt.nz>  
**Subject:** Planners Report Documents

**Caution: This email originated from outside Napier City Council. Do not click links or open attachments unless you recognise the sender and know the content is safe.**

Hi Ellen,

Hope all is well. I'm getting in touch for a wee favour please. I'm just trying to track down a planners report from a consent which we have obtained previously however I can't find it on file. The consent was for a new dwelling at 26 Hardinge Road and the reference number was RM180129. I was wondering if you would be able to forward it on to me please? We have the decision document just not the planners report.

Also, are you able to confirm that no resource consents have been granted for 68 Hardinge Road in the last 5-10 years. Nothing is coming up on the GIS info but just wanted to make sure that was correct.

Thanks heaps

**PIP BEACHEN** BSc MURB Plan(Prof) Int.NZPI



SENIOR PLANNER

MOBILE 027 572 6100

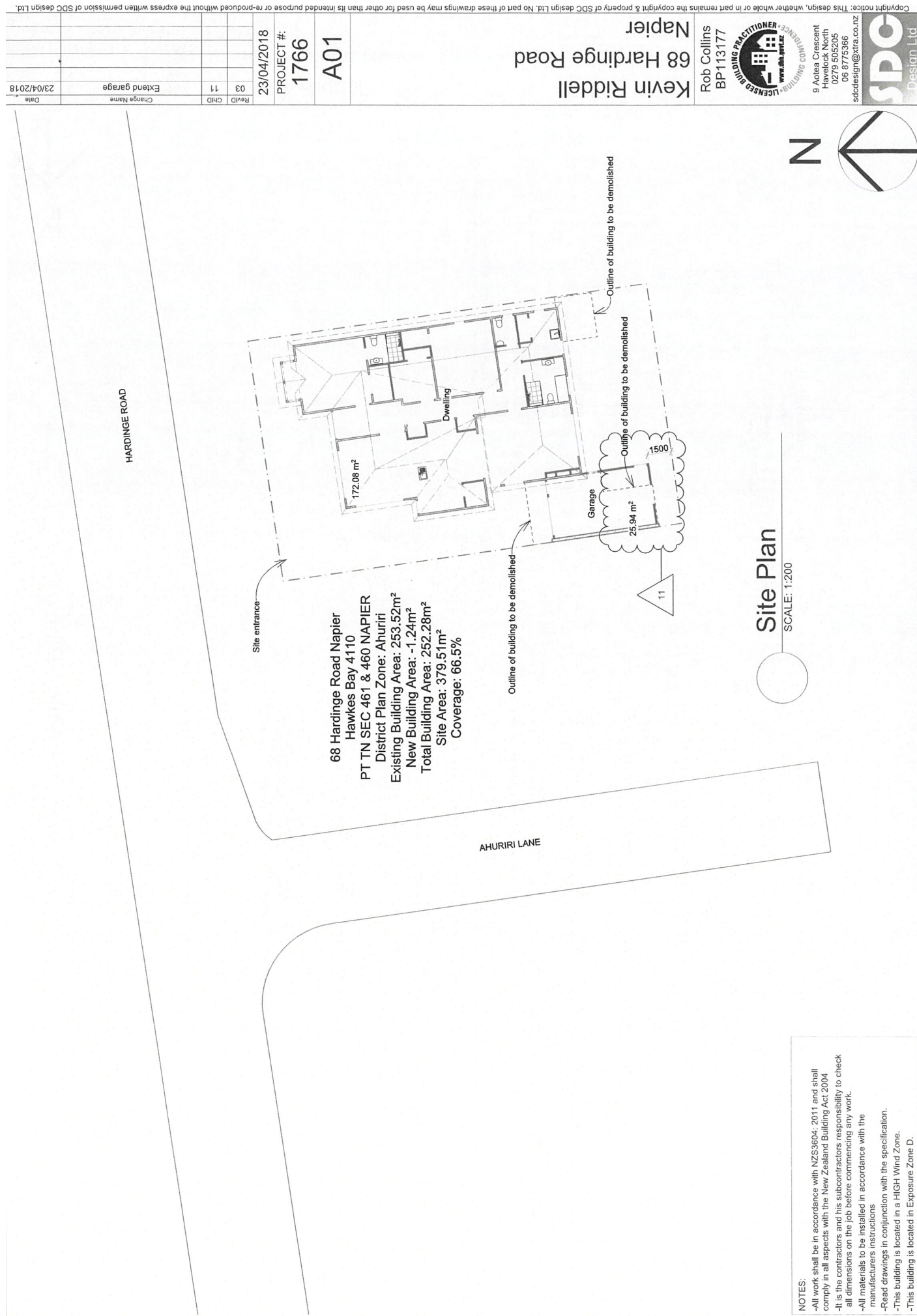
PO BOX 239, NAPIER 4140

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## **Attachment B – 68 Hardinge Road Building Consent Plans**





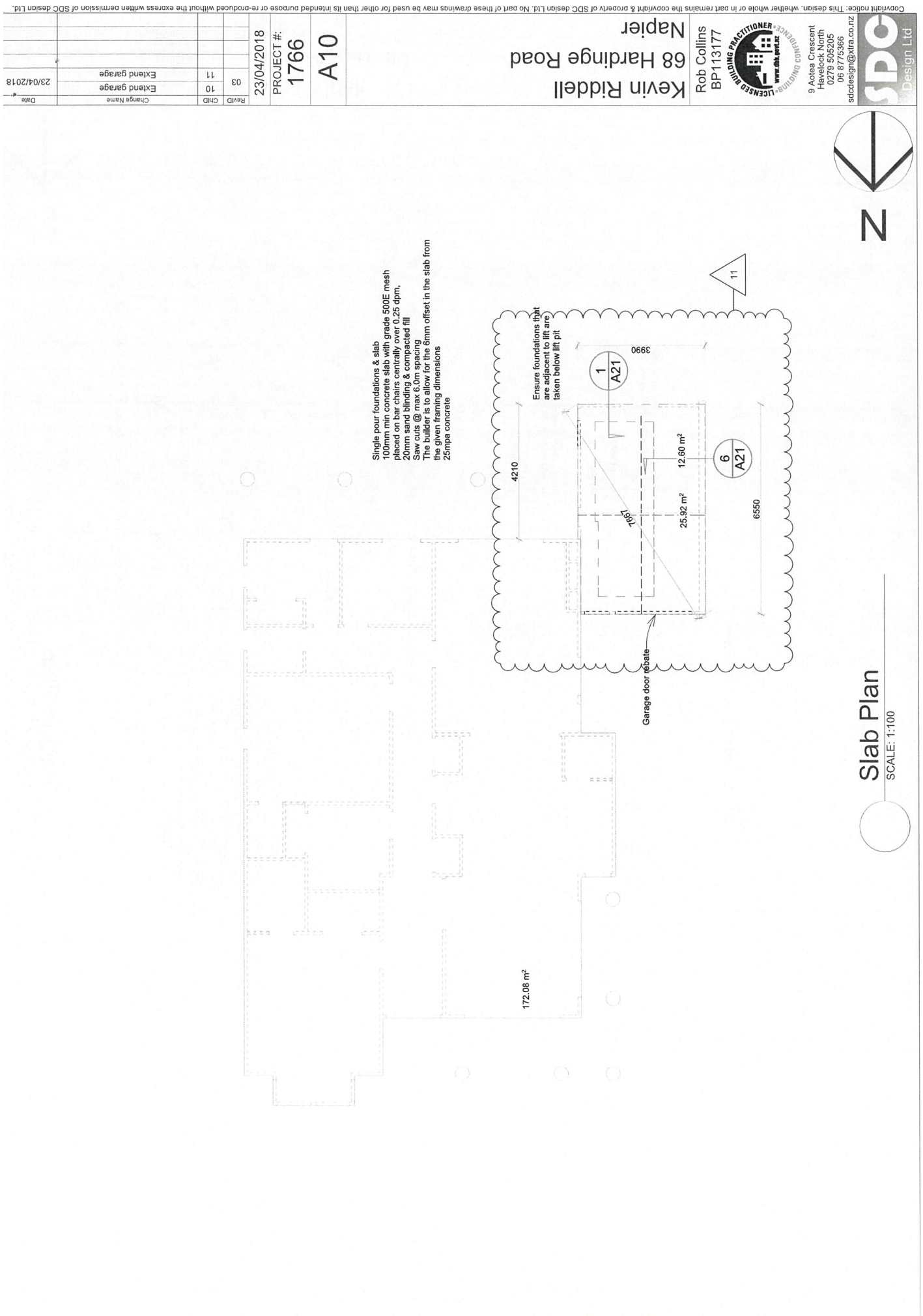












[illegible]



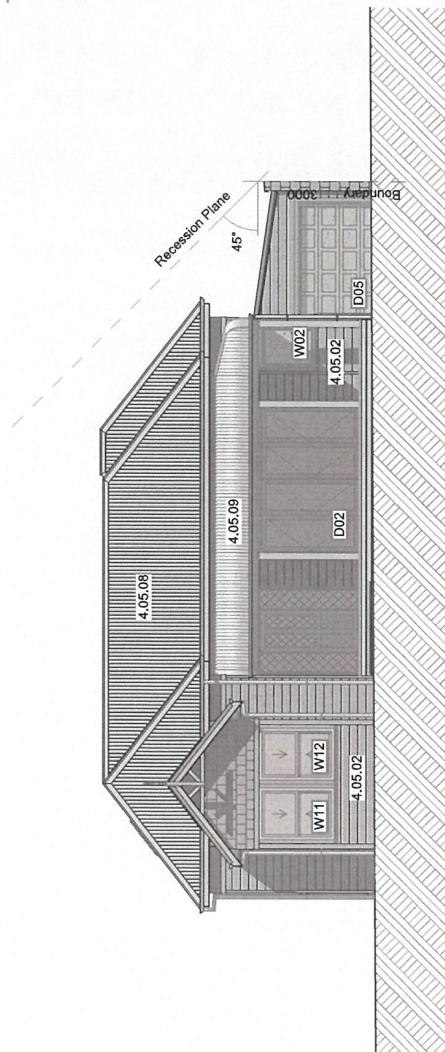
## Notes

## 4 Enclosure

- |         |  |
|---------|--|
| 4.05.02 | <p><b>H3.1 rusticated weatherboards</b><br/> H3.1 rusticated weatherboards on 20mm cavity battens and rigid air barrier over existing rusticated weatherboards</p>       |
| 4.05.08 | <p><b>New corrugated roof cladding</b><br/> 0.40mm bmt corrugated roof cladding (Coloursteel Maxx) on roof underlay, ex 75x50 H1.2 purlins &amp; trusses at 900ctrs.</p> |
| 4.05.09 | <p><b>Bulfinch veranda with corrugated roof cladding</b><br/> Bulfinch veranda with corrugated roof cladding (Coloursteel Maxx) - Min. pitch 8°</p>                      |
| 4.07.09 | <p><b>Roof window</b><br/> 600x900 Velux roof window - Model to be confirmed with owner</p>  |

## 7 Services

- 7.01.02 Bailey BTS3000 water storage tanks**

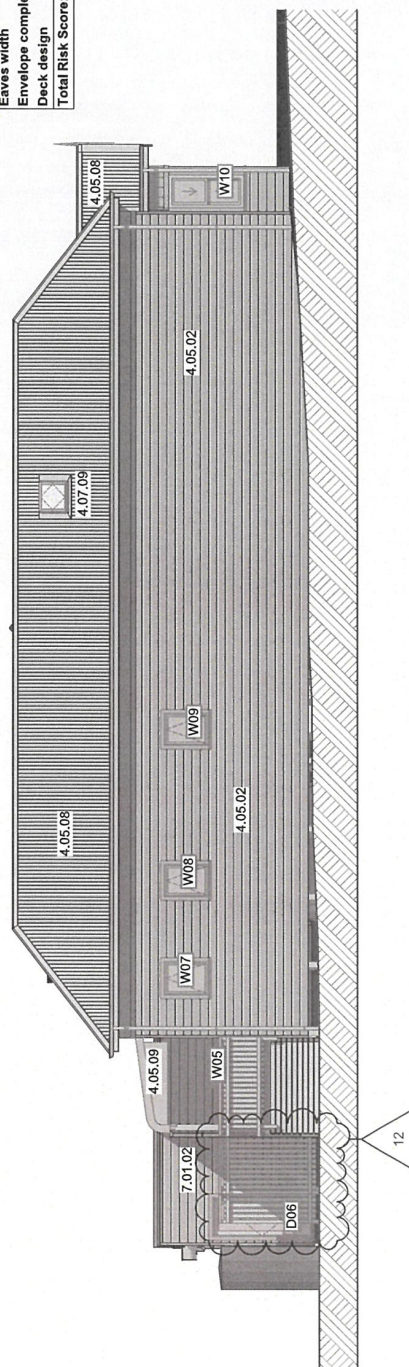


## North Elevation

SCALE: 1:100

BUILDING ENVELOPE RISK MATRIX		
	North Elevation	
Risk Factor	Risk	Severity Risk Score
Wind zone (per NZS 3604)	High risk	1
Number of storeys	Low risk	0
Roof/wall intersection design	Low risk	0
Medium risk	Medium risk	1
Envelopes complexity	Low risk	0
Deck design	Low risk	0
Total Risk Score:		2

BUILDING ENVELOPE RISK MATRIX		
	East Elevation	
Risk Factor	Risk Severity	Risk Score
Wind zone (per NZS 3604)	High risk	1
Number of storeys	Low risk	0
Roof/wall intersection design	Low risk	0
Caves width	Medium risk	1
Envelope complexity	Low risk	0
Deck design	Low risk	0
Total Risk Score:		2



## East Elevation

SCALE: 1:100

23/04/2018		PROJECT #:		1766		A19	
03		12		REVISED		DATE	
23/04/2018		LH		CHANGE NUMBER			

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**IN THE MATTER** of the Resource Management Act 1991  
 (“**RMA**” or “**the Act**”)

**AND**

**IN THE MATTER** of a resource consent application to **NAPIER CITY COUNCIL** for a land use consent to remove a Group 3A Heritage Item and construct a new two storey building within the Hardinge Road Residential Zone at 69 Hardinge Road, Ahuriri, Napier

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**OUTLINE OF SUBMISSIONS  
 ON BEHALF OF KEVIN AND PRUE RIDDELL**

Dated 18 July 2022

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## Introduction and Summary of Argument

1. These submissions are made on behalf of Kevin and Prue Riddell, owners of the villa located at 68 Hardinge Road, immediately to the west of the subject site.
2. As revealed through the conclusions in the s 42A report,<sup>1</sup> the Committee members have two key questions to answer and decisions to make, as raised by the application before you.
3. The first question and decision is whether to allow part of a heritage item to be demolished (destroyed), rather than conserved, maintained and enhanced.
4. The second question and decision is whether to allow a new building in its place, involving a significant height in relation to boundary infringement that remains, despite modification to the proposed plans as now before you.
5. On the first question, I submit that the Group 3A heritage item as a whole is (as Mr Lunday advises), at least the sum of its parts.<sup>2</sup>
6. Within the immediate setting, the villa at 69 Hardinge Road forms part of a rare group of three villas specifically identified in Appendix 13A to the District Plan, to be “representative of a particular building style and type” and whereby the District Plan recognises that “collections of buildings with similar features are important to heritage values”.<sup>3</sup>
7. Simply put, a group of three with one removed, is no longer a group. If you allow this building to be demolished, with respect, the Council may as well abandon the pretence of heritage protection for the Hardinge Road Character Area Group 3A item, as a whole.
8. For not only has the integrity of the Character Area been eroded by past decisions, but if demolition of this villa can be approved, what other cottage or villa would be safe from a similar fate?
9. On the second question, I submit that the proposed replacement building is nothing less than a square peg in a round whole. The proposal is simply too ambitious for the site; asking it to deliver too much.
10. A landowner within the Hardinge Road Residential Zone might expect their neighbour to seek some degree of infringement of the height in

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<sup>1</sup> Section 9 of the s 42A report prepared by Ms Bunny.

<sup>2</sup> Paragraph 32 of Mr Lunday's evidence.

<sup>3</sup> Section 56 of the District Plan, Objective 56.3 (Principal reasons for adopting)

relation to boundary rule, for example to respond to particular site or construction challenges presented.

11. But it is too much to reasonably expect that the rule could be infringed by up to 2 m (on top of the 3 m allowed at the boundary) over the full length of the building, solely to enable a dwelling within a 250 m<sup>2</sup> flat site to accommodate a garage, a mini garage, a pool room, four bedrooms, and still leave enough space at the rear for a swimming pool.
12. The net result as presented to my clients is a 5.3 m high concrete wall now ranging between 380 mm to 1 m from the boundary.
13. Whatever might be said about the shading diagrams (the author of which is not present to explain the methodology employed), the dominance and amenity impact on the submitter's property, especially at the rear, remains substantial.
14. Beyond that, what is particularly galling to my clients is that they have themselves invested so significantly, and taken such care, to restore a building which was arguably in worse condition than the villa at 69 Hardinge Road, to begin with.<sup>4</sup>
15. Their contribution to the heritage values and character of Hardinge Road as yielded through that investment, is a showcase exemplar as to what can be achieved with commitment and imagination by way of restoration of heritage, I submit precisely in the manner directed by the District Plan, and arriving at a restored building which provides all that is needed for modern living in this setting.
16. It is nothing less than a "slap in the face" to my clients, having made that investment and contribution to the heritage character of Group 3A, to now be presented with the destruction of a villa in equivalent condition right next door, and on top of that, its replacement with a form of modern architecture which they consider to be incongruous, verging on an insult to them as neighbours -in both heritage character and dominance and amenity terms.
17. With these overriding submission points made, I now address the proposal and its associated effects in the context of the District Plan and statutory framework, under which your decision falls to be made, and with reference to the evidence being called by the submitters.

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<sup>4</sup> Mr Christie's evidence, paragraph 24.



## Objectives and Policies of the District Plan

18. Relatively recent case law confirms that District Plan frameworks, generated through a process of public scrutiny and testing, should generally be given significant weight in directing how the otherwise very broad discretions under the RMA should be applied.
19. Specifically, in *R J Davidson Family Trust v Marlborough District Council*,<sup>5</sup> the Court of Appeal resolved a longstanding debate over the place of District Plan provisions, relative to the broader set of Part 2 considerations which they “flesh out” in the particular circumstances of a district or region.
20. The Court of Appeal stated:

[73] We consider a similar approach should be taken in cases involving applications for resource consent falling for consideration under other kinds of regional plans and district plans. In all such cases the relevant plan provisions should be considered and brought to bear on the application in accordance with s 104(1)(b). A relevant plan provision is not properly had regard to (the statutory obligation) if it is simply considered for the purpose of putting it on one side. Consent authorities are used to the approach that is required in assessing the merits of an application against the relevant objectives and policies in a plan. What is required is what Tipping J referred to as “a fair appraisal of the objectives and policies read as a whole”.<sup>6</sup>

[74] *It may be, of course, that a fair appraisal of the policies means the appropriate response to an application is obvious, it effectively presents itself.* Other cases will be more difficult. *If it is clear that a plan has been prepared having regard to pt 2 and with a coherent set of policies designed to achieve clear environmental outcomes, the result of a genuine process that has regard to those policies in accordance with s 104(1) should be to implement those policies in evaluating a resource consent application.* Reference to pt 2 in such a case would likely not add anything. It could not justify an outcome contrary to the thrust of the policies. Equally, if it appears the plan has not been prepared in a manner that appropriately reflects the provisions of pt 2, that will be a case where the consent authority will be required to give emphasis to pt 2.

21. The District Plan aspiration and direction as applicable in this case is abundantly clear, in the way it expresses the requirements of s6 (f) of

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<sup>5</sup> (2018) 20 ELRNZ 367.

<sup>6</sup> *Dye v Auckland Regional Council* [2002] 1 NZLR 337, (2001) 7 ELRNZ 209 (CA) at [25].

the RMA (requiring the protection of historic heritage from inappropriate use and development, as a matter of national importance).

22. Consider the following objectives and policies.

**Objective 56.2**

To *identify, conserve and enhance* heritage features to *ensure that* the heritage of the city be reflected in the future.

**Policies**

- 56.2.2 *Avoid the loss of* heritage value associated with heritage resources listed in the Plan.

**Objective 56.3**

To *maintain and enhance* the areas of the city that have a recognised special character.

**Policies**

....

- 56.3.2 Encourage any future development and use within the identified character areas to be sympathetic with the elements that make the area special.

- 56.3.3 To *maintain and enhance* where appropriate the character of the Hardinge Road, Battery Road, Iron Pot and Coronation Street Character Areas identified in the Port Ahuriri Heritage Study (refer to Appendix 13A for maps of character areas).

**Objective 4.4**

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

**Policies**

- 4.4.6 Along Hardinge Road and Waghorne Street:

...

- (b) *Restrict land use and development to maintain and enhance* the scale and design of the built environment that contributes to the area's character.

**Objective 4.5**

To *maintain and enhance* those qualities and characteristics that contribute to the wellbeing of the city's residents and the amenity of the residential zones.

**Policies**

...

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

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

23. It will be noticed in the reading of these provisions that a number of them are expressed in relatively directive terms, employing words such as "avoid the loss", "maintain and enhance", "ensure that" and "restrict" as well as "control".
24. As the Supreme Court ruled in *Environmental Defence Society Inc v New Zealand King Salmon Company Limited*,<sup>7</sup> the choice of language matters.
25. That is, where objectives and policies are expressed in specific and directive terms they must be applied in that way; conversely where they provide more flexibility or are less prescriptive, a broader discretion is conferred.<sup>8</sup>
26. In that regard, the Supreme Court ruled that the word "avoid" as employed under District Plan Policy 56.2.2, means exactly that, ie to "not allow" or "prevent the occurrence of".<sup>9</sup>

**Heritage Character Effects**

27. In this case, the s 42A report has determined that despite the "inevitable" effect on heritage values of the character zone "*that has not been avoided*" (raising some inconsistency with Policy 56.2.2<sup>10</sup>), demolition of the villa would not be inconsistent with the objectives and policies of the Plan.<sup>11</sup>

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<sup>7</sup> (2014) 17 ELRNZ 442.

<sup>8</sup> *King Salmon* at [127].

<sup>9</sup> *King Salmon* at [96].

<sup>10</sup> Section 42A report at 8.5.2.6.

<sup>11</sup> Paragraph 8.5.2.21.



28. The essential reasoning appears to be as follows:

*The plan is clear this is not an individual listing, and it is rather a grouping that contributes to the character of the Hardinge Road character overlay. Therefore, although the removal of the individual building will generate potential adverse effects on heritage values due to the inevitable loss in a building that currently contributes to the character of Hardinge Road and Ahuriri, the removal is not inconsistent with the surrounding character of the District Plan overall, should the provisions of the residential chapters be met.*<sup>12</sup>

29. Similar reasoning is recorded elsewhere in the report, for example with paragraph A.4 stating:

Being considered a Group 3A Heritage item, the removal of the existing dwelling will remove an inevitable contribution to heritage values associated with the character overlay that requires consideration.

30. Nevertheless, it is reasoned that:

- (a) The Group 3A heritage item is the collective of a number of buildings along the streetscape that attribute to heritage values, *rather than being individually listed*;<sup>13</sup> and
- (b) “Significant works” would be required to allow for continued occupation of the building and “efficiency of the use of the site” for continued residential occupation, and therefore potential adverse effects on heritage values are not more than minor.<sup>14</sup>

31. Similarly, the report reasons that the plan does not protect Group 3A heritage items where there is “evidence that removal is an appropriate option”,<sup>15</sup> and as the building has had alterations (rather than being in an original condition), renovation or restoration is not considered to be of demonstrable merit.<sup>16</sup>

32. With respect, the reporting officer has lost sight of two very important points here.

33. The first is that, while a group rather than individual listing is at stake, the group is (as I submitted earlier) at least the sum of its parts. Where, as here, the District Plan specifically identifies the villa at 69 Hardinge

<sup>12</sup> Paragraph 8.5.2.20 of the s 42A report.

<sup>13</sup> A.6.iv.ii and A.3 of the s 42A report.

<sup>14</sup> A.6.iv.iv.

<sup>15</sup> A.7.iii.1.

<sup>16</sup> A.6.2.iii.

Rd as being within three properties of a particular building style and type,<sup>17</sup> to remove the individual is to risk undermining the collective. As Mr Lunday will explain, groups of three villas together are becoming a truly rare commodity, including within the Hardinge Road Character Area as a whole.<sup>18</sup>

34. To that extent, Ms Beachen is right that the “group” in this case is not just the three dwellings.<sup>19</sup>
35. But if this argument or line of reasoning is upheld for *group* heritage items, their protection as a collective, is necessarily imperilled.
36. An applicant will always be able to say that it is not the group as a whole which is being demolished or affected, just part of it.
37. By “picking away” at members of the group in the round, the net result is the inevitable and continued erosion of heritage character, and it would seem that this is exactly what has been happening, as demonstrated across the Hardinge Road Character Area more broadly in recent years.<sup>20</sup>
38. I submit that the Council needs to draw a line in the sand here.
39. Conversely, if the Council is to approve the demolition of this villa, it may as well abandon the cause.<sup>21</sup>
40. I make the following further points in support of that submission.
41. Firstly, with reference to the explanatory text to Objective 56.3, which underscores the importance of each part of the collective in forming the heritage item, as warranting protection:

...For the most part, the character areas have a common scale and design and have elements that can be linked to the history of the area. *Collections of buildings with similar features area important to heritage values. This is particularly evident on West Quay, Ahuriri ...*

...While individually all buildings in the character areas may not warrant protection as heritage items, and they do not all share common features, the Council wishes to recognise those features which

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<sup>17</sup> Appendix 13A, areas shaded.

<sup>18</sup> Paragraph 43 of Mr Lunday's evidence.

<sup>19</sup> Paragraph 50(12) of Ms Beachen's evidence.

<sup>20</sup> Refer for example the list of new developments approved as identified at section B.4.v of the s 42A report.

<sup>21</sup> Noting paragraph 52 of Mr Lunday's evidence in this respect.

contribute to the overall character of Ahuriri and the linkages to the past.<sup>22</sup>

42. This section of the District Plan in turn references the Port Ahuriri Heritage Study.
43. That study was completed by one of New Zealand's most renowned heritage architects, Mr Jeremy Salmond, in 1994.
44. With respect to the Hardinge Road Character Area, and as well as specifically identifying the villas at 67 to 69 Hardinge Road,<sup>23</sup> the report recommends as follows:

To maintain the existing character of the Hardinge Road Character Area, traditional subdivision patterns of the area should be preserved and site amalgamation should be resisted. *It is of great importance that the earliest buildings in this area are preserved and that the historic scale of the area is not overwhelmed by further large scale development. Hence, bulk and location controls should aim to preserve the existing residential building, scale and site densities.*

45. In addition to the point being made here about the collective significance of each building to the Group, there is also an evident connection between the heritage character question raised by the application, and the scale of what is proposed through the new replacement dwelling, as I return to presently.
46. The point I am making here however is, in essence, to not lose sight of the fact that each part of the collective heritage item is important, and if not approached in that way, the purpose of setting the heritage status for the Group 3A Hardinge Road Character Area would be put at risk, if not ultimately undermined.
47. Dealing with the second key reason raised in the s 42A report (as summarised above), i.e. that building renovation or restoration is not of "demonstrable merit" and there is evidence that removal is an "appropriate option", I submit that my clients' renovation project proves the fallacy in that reasoning.
48. As Mr Christie (who undertook the project) confirms,<sup>24</sup> he started with an arguably inferior building condition, and yet has delivered precisely what Policy 56.3.3 of the District Plan seeks to achieve, that is *maintenance*

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<sup>22</sup> Principal reasons for adopting Objectives and Policies 56.3, page 5 of section 56 of the District Plan.

<sup>23</sup> Section 4.02, Page 20.

<sup>24</sup> Paragraph 24 of his evidence.



*and enhancement* of the character of the Hardinge Road Character Area.

49. Mr Lunday will explain that in his extensive experience with heritage architecture and urban design, renovation and restoration is not only feasible, but can be cheaper than a new build.<sup>25</sup>
50. It will always be open to an applicant to say that restoration is too difficult. Every applicant will have their own version of that same story, and again, if it is accepted each time that this means “removal is appropriate”, heritage protection will always lose out.

### **The New Building Proposed**

51. Leaving aside what would be lost from the past, I submit as follows with respect to the impact of what is proposed for the future.
52. Firstly, it is not accepted that in “streetscape character” terms, the new dwelling would be consistent with its setting.
53. In that regard, my clients take issue with the conclusions in the s 42A report to this effect as drawn upon and supported by Ms Beachen in her evidence for the applicant.<sup>26</sup> Mr Lunday will address that dimension of the proposal in his evidence at the hearing today.<sup>27</sup>
54. With respect, as image 3 in the s 42A report itself reveals, the proposed new building is simply nothing like its neighbours. It is instead, out of keeping with the heritage character of the three existing buildings comprising the immediate part of the Hardinge Road Character Area.
55. My clients challenge “head on” the arguments made in the application that the architectural design has retained aspects of the Hardinge Road Residential Zone and character,<sup>28</sup> or that mitigating factors have been applied to reduce the streetscape effect to an acceptable degree.<sup>29</sup>
56. My clients do not accept this view of the situation any more than the remarkable proposition in the AEE that what is proposed as a new building, “acts to conserve the historical setting of the area”.<sup>30</sup>

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<sup>25</sup> Paragraph 40 of Mr Lunday’s evidence.

<sup>26</sup> Refer paragraph 19 of Ms Beachen’s evidence.

<sup>27</sup> Noting paragraph 36 of Mr Lunday’s evidence in this respect.

<sup>28</sup> For example as set out at section A.7.1 of the s 42A report.

<sup>29</sup> Section 42A report at B.4.viii.

<sup>30</sup> AEE page 21.

57. The recent approval of the removal of a further Group 3A heritage building, and its replacement with an overtly modern architectural form at 70 Hardinge Road must be acknowledged.<sup>31</sup>
58. However, and with respect to the committee members, one poor decision by the Council does not justify or warrant another.
59. In addition, as recorded in the decision report for 70 Hardinge Road and (unlike the case to hand), the bungalow which is being removed from that site had *not been* individually identified in the original Salmond Reed Heritage report.
60. Where my clients are in agreement with the s 42A report, is on the question of amenity and dominance effects with respect to the impacts of the proposed new building, particularly in terms of the use and enjoyment of the rear part of the dwelling at 68 Hardinge Road, and the outdoor courtyard.
61. As also touched on earlier, and notwithstanding the amendments to the plans, a very significant infringement of the height in relation to boundary control remains on the table. The net effect of this would be that a 5.3 m high concrete wall would present directly to the outdoor living area of my clients' property, as well as become the exclusive and entire view from the rear bedroom and laundry (and well as bathroom) on the eastern side of that dwelling.
62. While going some way to address shading effects perhaps, the dominance and amenity impact remains significant, and is strongly opposed.
63. I submit that this element of the proposal is also contrary to the express terms of the objectives and policies of the District Plan, noting also in this context the interface between issues of heritage and bulk and location, as revealed on the face of Hardinge Road Zone Policy 4.4.6 b and the extract of the Salmond Report (Port Ahuriri Heritage Study) as set out above.
64. As also submitted earlier, this extent of infringement and impact would not be necessary, if the applicant were not attempting to cram not only four bedrooms, but a garage, another garage, a pool room and a swimming pool within a 250 m site.

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<sup>31</sup> Paragraph 13.2 and Figure 3 to Ms Beachen's evidence.

### **Conclusion**

- 65. For all of these reasons, my clients seek that the application be declined.
- 66. Heritage, dominance and amenity impacts would be significant.
- 67. All other factors aside, granting the proposal would represent an injustice to my clients, given the very significant investment and contribution they have made to the heritage character and fabric of what the District Plan seeks to protect, maintain and enhance.

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**Martin Williams**  
Counsel for the Kevin and Prue Riddell



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



**NAPIER**  
CITY COUNCIL  
Te Kaunihera o Ahuriri

Discretionary Activity Dwelling - Internal Yards, Height in Relation to Boundary, Removal of a Group 3A Heritage Item

## 1. Application description

Application number:	RM220006
Applicant:	Brian Lucas
Site address:	70 Hardinge Road Napier
Legal description:	Lot 1 DP 27076
Site area:	528m <sup>2</sup>
<b>Napier Operative District Plan</b>	
Zoning:	Hardinge Road Residential
Overlays, controls, special features, designations, etc:	Hardinge Road Character Area Port Noise Boundary Group 3A Heritage Item Very High Relative Earthquake Amplification Medium Liquefaction Vulnerability. Sea Spray.

## 2. Locality Plan



Source: Napier City Council IntraMaps

## 3. The proposal, site and locality description

### Proposal

The proposal entails the two-stage redevelopment of the subject site entailing the removal of an existing dwelling, preparatory site works (stage 1) and the subsequent construction of one new dwelling (stage 2).

The proposed two level dwelling will encompass a gross floor area (GFA) of 330m<sup>2</sup>, which includes ground floor (GFA 175m<sup>2</sup>) accommodating double garaging, laundry/storage and three bedrooms, whilst the upper level (GFA 147m<sup>2</sup>) will contain kitchen, living, one bedroom and a 53m<sup>2</sup> deck extending across the northern/front and western/side. An additional 64m<sup>2</sup> area of north facing outdoor living is also at ground floor level adjacent bedrooms 1 and 2.

Vehicle access to the site which is partially overhung by the first floor western deck, is provided adjacent the western side boundary with parking provided to the rear, south east corner of the site which is unusual for this area where most parking is provided adjacent to the front boundary due to constraints created by site configuration. The single level garage, which is attached to the dwelling, is located to the rear of the site whilst the two level portion of the dwelling is set back approximately 8m from the rear boundary

It is proposed to service the site with three waters connections that serve the existing dwelling and this approach is supported by Councils Development and Standards Team.

The application acknowledges that due to the site's likely occupation prior to 1900, an Archaeological Authority may be required to be obtained from Heritage New Zealand prior to any site or building works commencing.

### Site and surrounding environment description

Matthew Morley of Strategy Planning Limited has provided a description of the proposal and subject site on pages 3-5 of the Assessment of Environmental Effects (AEE) entitled, 'Resource Consent Application for Land Use-70 Hardinge Road Ahuriri, Napier'.

Having undertaken a site visit on 18 February 2022, I concur with that description of the proposal and the site and have no further comment.

## 4. Background

### Specialist Input

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

- Councils Development and Standards Team have assessed the proposal and have provided their support as it is considered that the proposed development can be serviced from Councils existing infrastructure and adequate provision has been made for safe ingress and egress of vehicle to and from the site. Appropriate conditions have been provided.
- Councils Urban Design Lead has assessed the application in terms of its urban design response and states that the proposed house design is considered relatively positive in terms of urban design outcomes, with architectural relief provided by way of stepped rooflines, façade modulation, and a good proportion of windows / doors overlooking the street along the northern façade providing much important streetscape activation from the second storey, all of which enhance the overall amenity of the building and contribute positively to the streetscape. It is also a positive outcome to have the garage located to the rear of the s, ensuring that the street interface is not dominated by a garage door. The only criticism is the largely inactive frontage at ground level, due to the high windows on the facade in combination with the block wall/fence along the boundary. To mitigate the impact of this from Hardinge Road it is recommended that landscape planting be incorporated under the windows and/or along the inside of the boundary

fence to soften the overall appearance of the house at ground level. A condition is to imposed to this effect.

- Councils Strategic Planning Lead has assessed the proposal in terms of heritage matters and although this property lies within the Hardinge Road Character Area, the dwelling has not been identified in the original Salmond Reed report as being one of representational value. Additionally, although the property is included in the Draft District Plan Ahuriri Spit Special Character Precinct, the loss of the neighbouring dwelling, and the introduction of the NPS-UD has meant that Council will be re-assessing what areas it will look to protect. It is likely that there will be limited justification to protect any properties along Hardinge Road. Therefore, it is not considered that there is sufficient justification to prevent the demolition of the existing dwelling on-site.

## 5. Reasons for the application

### The operative plan provisions

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

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

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

In this instance the proposal entails the following components:

- The removal of a dwelling which is identified as a Group 3A heritage item by virtue of its location within the Hardinge Road Character Area requires Resource Consent approval as a Discretionary Activity pursuant to District Plan Rules 8.8 and 56.17.
- The proposed replacement dwelling has eaves located 0.972m and 0.74 respectively, from its western and eastern side boundaries rather than 1m as required by Rule 8.16 and this aspect requires Resource Consent as a Restricted Discretionary Activity under Rule 8.12.
- The dwelling also infringes the height in relation to boundary control at the two side boundaries and at the Hardinge Road frontage (Rule 8.18) and this aspect requires Resource Consent as a Restricted Discretionary Activity under Rule 8.12.
- The dwelling complies in all other respects with specified District Plan conditions in relation to front yard, site coverage, maximum height, open space, parking and access, landscapes area and earthworks.



### Resource consent is required for the following reasons:

- Rule 8.16 (1) (b)-Internal Yards
- Rule 8.18-Height in Relation to Boundary
- Rule 8.8-Heritage

### Land use consent (s9) RM220006

#### Napier Operative District Plan

##### *Hardinge Road Residential Zone 8.16 Yards*

1. The following yard conditions shall apply to all land uses:

a. Front Yards

i. Any part of a building must not be erected closer than 1 metre to the road boundary, except that:

- Eaves, fascias, gutters, down pipes, chimneys and flues may encroach on the front yard by a distance of up to 1 metre measured horizontally.
- Any part of a garage/carport must not be erected closer than 5m to the road boundary, in order to provide a vehicle standing bay. (Refer to Rule 61.16).

b. Other Yards

i. Any part of a building (including eaves and guttering) must not be erected closer than 1 metre to a side or rear site boundary.

- Provided that where this is the only condition infringement and the written approval of the adjacent landowner(s) is provided at building consent stage, a resource consent application will not be necessary.

ii. Any part of a building, fence or permanently fixed structure must not be erected closer than 6 metres from the top of the bank of any watercourse or open drain.

##### *Hardinge Road Residential Zone 8.18 Height in Relation to Boundary*

1. The following height in relation to boundary conditions shall apply to all land uses:

a. Any part of a building or structure must not project beyond a building envelope constructed by drawing planes along all parts of all site boundaries. The planes must commence 3.0 metres above ground level at the site boundary and must be inclined to the horizontal at an angle of 45 degrees.

b. Provided that:

i. In relation to multi-unit development, the building envelope must be constructed by drawing planes along all parts of all building site boundaries and must commence at the building site boundary.

ii. The height in relation to boundary control does not apply to the length of common wall between two or more attached buildings.

iii. Where the site abuts an entrance strip or access lot, the furthest boundary of the entrance strip or access lot may be deemed to be the site boundary for the purpose of applying the height in relation to boundary control.

iv. No account must be taken of aërials, lines, support structures, solar heating devices, air conditioning units and similar structures housing electronic or mechanical equipment or chimneys no more than 1 metre wide in any horizontal direction and less than 2.5 metres in height beyond the building envelope.

#### *Hardinge Road Residential Zone 8.28 Heritage*

1. The relevant provisions of Chapter 56 (Heritage) of this Plan must be complied with.

#### *Hardinge Road Residential Zone 8.12 Land Uses Not Complying With Conditions*

1. Any subdivision, use or development of land referred to in Rules 8.2 to 8.11 that does not comply with all of the relevant conditions in the Hardinge Road Residential Zone activity table and condition table, is a restricted discretionary activity, unless stated by a rule elsewhere in this Chapter.

#### *Heritage 56.17 Discretionary Activities*

1. The following land uses are discretionary activities. A resource consent application must be made and consent may be declined or granted with or without conditions. The Council will have regard to the objectives and policies of this Plan and the relevant assessment criteria elsewhere in this Plan. The Council's discretion is unrestricted.

- a. The internal and/or external alteration (excluding safety alterations), relocation and/or demolition of any Group 1 heritage item.
- b. The demolition, including partial demolition, or relocation of any Group 2 heritage item.
- c. The demolition, excluding partial demolition, or relocation of a Group 3A heritage item.

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

The AEE includes an assessment under the provisions of the NES-CS which concludes that there is no evidence available to suggest that a HAIL activity has or is likely to have occurred upon the site, with this assertion made after reviewing Council property files and historic aerial photography. Council concurs with this assessment given that the site has also been used for residential purposes since the early 1900's and thus the proposal does not require any additional consents under the NES-CS.

The reasons for consent are considered together as a Discretionary Activity overall.

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

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

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

No mandatory notification is required as:

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

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

The application is not precluded from public notification as:

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

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

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

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

Only those effects that relate to matters that are within the council's discretion under the rules [are considered in this assessment. These matters are:

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

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

The applicants consultant has provided, in accordance with schedule 4 of the RMA, an assessment of adverse environmental effects in such detail as corresponds with the scale and significance of the effects that the activities may have on the environment. This can be found on pages 15-22 of the AEE. The AEE also includes a notification assessment contained on pages 22-23.

I concur with this assessment.

The AEE concludes that overall the actual and potential effects of the proposal on the receiving environment are considered to be less than minor, with this conclusion based around an assessment of the proposal in relation to relevant District Plan assessment criteria for the heritage and residential environments and in relation to the specific matters identified for non-compliance with District Plan conditions (i.e. yards and height in relation to boundary). The AEE specifies that the existing dwelling is not representative in style of the pre-1900 era typical of the area and its retention is not warranted, whilst the design and character of the proposed dwelling is sympathetic



with the existing form of development in the area. The dwelling will not dominate the streetscape and its design and layout will reduce impacts upon properties located to immediately to the south. The notification assessment concludes that for these reasons, public notification is not warranted under Section 95A RMA.

### Effects that must be disregarded

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

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

Address
69 Hardinge Road
70 Hardinge Road
156 Waghorne Street
158 Waghorne Street
160 Waghorne Street

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

The following persons have provided their written approval and any adverse effects on them have been disregarded:

Address	Legal Description	Owner
69 Hardinge Road	Lot 4 DDP 317	S & J Cheng
71 Hardinge Road	Lot 1 DP 26915	B & S Lucas

### Effects that may be disregarded

#### Permitted baseline

The permitted baseline refers to the effects of permitted activities on the subject site. The permitted baseline may be taken into account and Council has the discretion to disregard those effects where an activity is not fanciful. In this case the permitted baseline is not considered relevant and has not been applied, given the removal or a Group 3A heritage item is not permitted. However, the permitted baseline has been used as a tool more generally to help provide context to the assessment, particularly regarding permitted bulk and location relating to the establishment of a new dwelling on the site.

## Assessment

### Receiving environment

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

The site is located within the Hardinge Road Residential zone where residential activities are permitted subject to compliance with performance standards/conditions. The zone description for the Hardinge Road Residential Zone states:

*The Hardinge Road Residential Zone applies to those properties fronting Hardinge Road and Waghorne Street. Some of the oldest buildings in the Ahuriri area lie on Hardinge Road, tightly grouped and close to the road. The early cottages are small in scale and simple in form. The traditional character of the Hardinge Road area is low rise, with spaces between small buildings being comparatively small. Many original buildings sit right on the road edge or have very narrow front yards. Traditionally, roof forms were simple gables or hips with lean-to verandas facing the road.*

*In recent times, very intensive new development has begun to replace the historic cottages, resulting in a mix of old and new styles. The Council considers that provision for intensive development should be maintained to enable development to take advantage of the waterfront location while recognising the historic character of the area.*

The site is located within the Hardinge Road Character Overlay, and thus the existing dwelling is considered a Group 3A Heritage Item. Group 3A Heritage items are those buildings which contribute as a group, or by a recognised style, to the character of Ahuriri. The Council will encourage the protection of this character. It includes the Hardinge Road Character overlay.

There are no unimplemented resources consents that require consideration within the existing environment. A Resource is currently being processed by Council in relation to a new dwelling at 69 Hardinge Road, though this application is subject to notification and no decision has yet been issued.

### Heritage Values

The existing dwelling is located within the Hardinge Road Character Area but is not individually protected nor included within Appendix 13 of the District Plan (Protected Heritage Items). The dwelling has not been identified in the original Salmond Reed heritage report as being one of representational value, in terms of it being of a particular style or type identified in the Port Ahuriri Heritage Study (Salmond Reed Architects). The site was likely occupied pre-1900 and thus it is likely that an archaeological authority will be need to be obtained from Heritage New Zealand.

The overall Hardinge Road streetscape perspective has changed significantly over the years, with many original dwellings having been removed and replaced with modern contemporary dwellings which maximise their sites potential and location and provide significantly higher levels of amenity

for their occupants in terms of functional and private recreational areas, car parking provision and superior building design and durability. Additionally, although the property is included in the Draft District Plan Ahuriri Spit Special Character Precinct, the loss of the neighbouring dwelling, and the introduction of the NPS-UD has meant Council will be re-assessing what areas will be protected in the short term and it is likely that there will be limited justification to protect any properties along Hardinge Road.

In light of the above, it is not considered that the removal of this dwelling will result in adverse effects that are more than minor on the wider area and does not warrant public notification. Remedial works and associated financial cost to bring the existing dwelling up to a standard that meets the applicants aspirations would be significant.

### Character and Amenity

The proposal will introduce a new building into the Hardinge Road streetscape with potential for adverse impacts upon the wider streetscape and visual amenity, privacy, outlook, shading and loss of heritage values. It is considered that the proposal will result in less than minor effects in this respect upon the wider environment for the following reasons:

- Any adverse impact in terms of loss of sunlight/shading will not extend beyond the subject site and upon those persons who have provided written approval. The applicant has obtained written approval from the owners of 69 and 71 Hardinge Road and as such any adverse effects of the proposal on these adjacent landowners has been disregarded. The height infringement affecting the Hardinge Road frontage is minor in extent and any adverse effects less than minor. Any adverse impact upon other boundaries are also minor but will be canvassed further under Section the 95E assessment.
- There are no adverse impacts in terms of privacy and outlook upon the wider environment associated with the proposal.
- The proposed dwelling is of a contemporary style and is compatible with the design and scale of development occurring on Hardinge Road. The dwelling maximises the northern portion of the site in order to take advantage of its coastal setting and to maximise solar gains. The new dwelling will provide improved levels of privacy for its occupants with primary living located at first floor level, whilst the location of all vehicle parking to the rear of the site will provide positive benefits for streetscape amenity with the exclusion of a garage door fronting the street.

### Reverse Sensitivity

The property is located within the (outer) Port Noise Boundary and will thus be required to comply with specified District Plan controls in relation to acoustic insulation in order to avoid and mitigate any adverse noise impacts associated with the operations of the Port of Napier.

### Infrastructure

The activity can utilise existing service connections which is supported by Council and thus any adverse impact upon the wider infrastructural network as a result of this new dwelling will be less than minor.



### Step 4: Public notification in special circumstances

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

Special circumstances are those that are:

- Exceptional, abnormal or unusual, but something less than extraordinary or unique;
- outside of the common run of applications of this nature; or
- circumstances which make notification desirable, notwithstanding the conclusion that the activities will not have adverse effects on the environment that are more than minor.

In this instance I have turned my mind specifically to the existence of any special circumstances and conclude that there is nothing exceptional or unusual about the application, and that the proposal has nothing out of the ordinary realm to suggest that public notification should occur.

### Public notification conclusion

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

- Under step 1, public notification is not mandatory.
- Under step 2, there is no rule or NES that specifically precludes public notification of the activities, and the application is for activities other than those specified in s95A(5)(b).
- Under step 3, public notification is not required as the application is for activities that are not subject to a rule that specifically requires it, and it is considered that the activities will not have adverse effects on the environment that are more than minor.
- Under step 4, there are no special circumstances that warrant the application being publicly notified.

It is therefore recommended that this application be processed without public notification.

## 7. Limited notification assessment (sections 95B, 95E-95G)

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

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

There are no protected customary rights groups or customary marine title groups affected by the proposed activities (s95B(2)).

In addition, the council must determine whether the proposed activities are on or adjacent to, or may affect, land that is subject of a statutory acknowledgement under schedule 11, and whether the person to whom the statutory acknowledgement is made is an affected person (s95B(3)). Within the Napier region the following statutory acknowledgements are relevant:

In this instance, the proposal is not on or adjacent to and will not affect land that is subject to a statutory acknowledgement (when applicable), and will not result in adversely affected persons in this regard.

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

The application is not precluded from limited notification as:

- the application is not for one or more activities that are exclusively subject to a rule or NES which preclude limited notification (s95B(6)(a)); and
- the application is not exclusively for a controlled activity, other than a subdivision, that requires consent under a district plan (s95B(6)(b)).

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

As this application is not for a boundary activity, there are no affected persons related to that type of activity (s95B(7)).

The following assessment addresses whether there are any affected persons that the application is required to be limited notified to (s95B(8)).

In determining whether a person is an affected person:

- a person is affected if adverse effects on that person are minor or more than minor (but not less than minor);
- adverse effects permitted by a rule in a plan or NES (the permitted baseline) may be disregarded;
- the adverse effects on those persons who have provided their written approval must be disregarded; and

### Adversely affected persons assessment (sections 95B(8) and 95E)

The applicants consultant has provided in accordance with schedule 4 of the RMA, an assessment of adversely affected persons in such detail as corresponds with the scale and significance of the effects that the activities may have on persons in the surrounding environment.

The AEE concludes that overall the actual and potential effects of the proposal on the receiving environment are considered to be less than minor, with this conclusion based around an assessment of the proposal in relation to relevant District Plan assessment criteria for the heritage and residential environments and in relation to the specific matters identified for non-compliance with District Plan conditions (i.e. yards and height in relation to boundary). The AEE specifies that the existing dwelling is not representative in style of the pre-1900 era typical of the area and its retention is not warranted, whilst the design and character of the proposed dwelling is sympathetic with the existing form of development in the area. The dwelling will not dominate the streetscape and its design and layout will reduce impacts upon properties located to the south. The notification assessment concludes that public notification is not warranted under Section 95A RMA.

Overall, I agree with the AEE and conclude that limited notification of the application is not warranted given adverse effects on the adjacent land will be less than minor for the following reasons:

- Written consent has been obtained from the owners of 69 and 71 Waghorne Street and thus any potential adverse effects on these properties is now disregarded
- With regards to potential adverse effects on remaining adjacent land, these properties are located to the south (rear) of the subject site and encompass 156, 158 and 160 Waghorne Street. It is considered that any adverse effect upon these properties associated with infringements in relation to internal yards and height in relation to boundary (HIRB) will be less than minor.
- 156 Waghorne Street-this site is located to the south-west of the subject site. The HIRB and internal yard infringement affecting the western boundary of the subject site will have no impact upon 156 Waghorne Street in terms of loss of sunlight/shading, outlook, privacy, and amenity values. A portion of the eave of the dwelling is located 972mm the west side boundary (an infringement of 28mm), whilst the upper story deck enclosure has a vertical HIRB infringement of 2.65m over a length of 10m. Given the minor scale of the yard infringement and the separation of the infringing portions of the dwelling from 156 Waghorne Street, any adverse impact will be negligible. The two level portion of the proposed dwelling is located in the northern portion of the site and its height reduces to a single level structure approximately 10m from the rear boundary thus further reducing its visual bulk and any associated effects in relation to shading, privacy.
- 160 Waghorne Street-this site is located to the south-east of the subject site. The HIRB and internal yard infringement affecting the eastern boundary of the subject site will have no impact upon 160 Waghorne Street in terms of loss of sunlight/shading, outlook, privacy, and amenity values. A portion of the eave of the dwelling is located 740mm from the east side boundary, an infringement of 260mm, whilst a 15m length of the dwelling has a vertical HIRB infringement of 2.15m over a length of 15m. Given the minor scale of the yard infringement and the separation of the infringing portions of the dwelling from 160 Waghorne Street, any adverse impact will be negligible. The two level portion of the proposed dwelling is located in the northern portion of the site and its height reduces to a single structure approximately 10m from the rear boundary thus further reducing its visual bulk.
- 158 Waghorne Street-this site is located immediately to the rear of the subject site and with a common boundary of 20m in length. The eave of the proposed garage is located 1.5m from this rear boundary, whilst the dwelling itself is located approximately 10m from this common boundary. There is no infringement of yard or HIRB controls on this southern boundary. The HIRB and internal yard infringements along the eastern and western boundaries will be visible to the landowner at 158 Waghorne Street. The adverse effect of additional bulk within the two side yards will be less than minor given the west side boundary is infringed by 28mm by a portion of first level eave over a length of 10m and the western side boundary has a 260mm infringement created by an eave over a distance of 14m. These portions of the building are located 16m and 1.5m from the southern boundary, respectively and any adverse effect in this respect will be largely indiscernible when compared to that of a fully complying development. Any adverse effect associated with the HIRB infringements affecting the two side boundaries will also be less than minor. The HIRB infringements are confined to the upper level portion of the dwelling which is located in the northern half of the site, with nearest portion of the upper level portion and associated HIRB infringements being located between 8-10m from the rear boundary. Any loss of

morning sunlight will be negligible and indiscernible from that created by the complying bulk of the building. Any adverse effect is further mitigated by the nature of the HIRB infringement on the west boundary, which is characterised by a portion of eave and a screen which provides privacy and shelter to the west facing, upper level deck and presents as a more lightweight, diffuse structure where daylight is still able to penetrate.

- Any adverse impact upon adjacent land as a result of the removal of a Group 3A heritage item will be less than minor upon adjacent land, given approval has been obtained from the owners of 69 and 71 Hardinge Road.

#### Step 4: further notification in special circumstances

In addition to the findings of the previous steps, the council is also required to determine whether special circumstances exist in relation to the application that warrants it being notified to any other persons not already determined as eligible for limited notification (excluding persons assessed under section 95E as not being affected persons).

Special circumstances are those that are:

- Exceptional, abnormal or unusual, but something less than extraordinary or unique;
- outside of the common run of applications of this nature; or
- circumstances which make limited notification to any other person desirable, notwithstanding the conclusion that no other person has been considered eligible.

In this instance I have turned my mind specifically to the existence of any special circumstances under s95B(10) and conclude that there is nothing exceptional or unusual about the application, and that the proposal has nothing out of the ordinary run of things to suggest that notification to any other persons should occur.

#### Limited notification conclusion

Having undertaken the s95B limited notification tests, the following conclusions are reached:

- Under step 1, limited notification is not mandatory.
- Under step 2, there is no rule or NES that specifically precludes limited notification of the activities, and the application is for activities other than those specified in s95B(6)(b).
- Under step 3, limited notification is not required as it is considered that the activities will not result in any adversely affected persons.
- Under step 4, there are no special circumstances that warrant the application being limited notified to any other persons.

It is therefore recommended that this application be processed without limited notification.



## 8. Notification determination

Acting under delegated authority, and for the reasons set out in the above assessment and recommendation, under sections 95A and 95C to 95D, and 95B and 95E to 95G of the RMA this application shall be processed non-notified.



Paul O'Shaughnessy  
Principal Resource Consent Planner  
City Strategy

Date: 7 March 2022

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

### Discretionary Activity Dwelling - Internal Yards, Height in Relation to Boundary, Removal of a Group 3A Heritage Item

**Application number:** RM220006  
**Applicant:** Brian Lucas  
**Site address:** 70 Hardinge Road Napier  
**Legal description:** Lot 1 DP 27076

**Proposal:** The proposal entails the two stage redevelopment of the subject site entailing the removal of an existing dwelling, preparatory site works and the subsequent construction of one new dwelling.

The proposed two level dwelling will encompass a gross floor area (GFA) of 330m<sup>2</sup>, which includes ground floor (GFA 175m<sup>2</sup>) accommodating double garaging, laundry/storage and three bedrooms, whilst the upper level (GFA 147m<sup>2</sup>) will contain kitchen, living, one bedroom and a 53m<sup>2</sup> deck extending across the northern/front and western/side. An additional 64m<sup>2</sup> area of north facing outdoor living is also at ground floor level adjacent bedrooms 1 and 2.

Vehicle access to the site which is partially overhung by the first floor western deck, is provided adjacent the western side boundary with parking provided to the rear, south east corner of the site which is unusual for this area where most parking is provided adjacent to the front boundary due to constraints created by site configuration.

It is proposed to service the site with three waters connections that serve the existing dwelling and this approach is supported by Councils Development and Standards Team.

The application acknowledges that due to the site's likely occupation prior to 1900, an Archaeological Authority may be required to be obtained from Heritage New Zealand prior to any site or building works commencing.

### Resource consent is required for the following reasons:

- Rule 8.16 (1) (b)-Internal Yards
- Rule 8.18-Height in Relation to Boundary
- Rule 8.8-Heritage

## Land use consent (s9) RM220006

### Napier Operative District Plan

#### *Hardinge Road Residential Zone 8.16 Yards*

1. The following yard conditions shall apply to all land uses:

a. Front Yards

i. Any part of a building must not be erected closer than 1 metre to the road boundary, except that:

- Eaves, fascias, gutters, down pipes, chimneys and flues may encroach on the front yard by a distance of up to 1 metre measured horizontally.
- Any part of a garage/carport must not be erected closer than 5m to the road boundary, so as to provide a vehicle standing bay. (Refer to Rule 61.16).

b. Other Yards

i. Any part of a building (including eaves and guttering) must not be erected closer than 1 metre to a side or rear site boundary.

- Provided that where this is the only condition infringement and the written approval of the adjacent landowner(s) is provided at building consent stage, a resource consent application will not be necessary.

ii. Any part of a building, fence or permanently fixed structure must not be erected closer than 6 metres from the top of the bank of any watercourse or open drain.

#### *Hardinge Road Residential Zone 8.18 Height in Relation to Boundary*

1. The following height in relation to boundary conditions shall apply to all land uses:

a. Any part of a building or structure must not project beyond a building envelope constructed by drawing planes along all parts of all site boundaries. The planes must commence 3.0 metres above ground level at the site boundary and must be inclined to the horizontal at an angle of 45 degrees.

b. Provided that:

i. In relation to multi-unit development, the building envelope must be constructed by drawing planes along all parts of all building site boundaries and must commence at the building site boundary.

ii. The height in relation to boundary control does not apply to the length of common wall between two or more attached buildings.

iii. Where the site abuts an entrance strip or access lot, the furthest boundary of the entrance strip or access lot may be deemed to be the site boundary for the purpose of applying the height in relation to boundary control.

iv. No account must be taken of aerials, lines, support structures, solar heating devices, air conditioning units and similar structures housing electronic or mechanical

equipment or chimneys no more than 1 metre wide in any horizontal direction and less than 2.5 metres in height beyond the building envelope.

#### *Hardinge Road Residential Zone 8.12 Land Uses Not Complying With Conditions*

1. Any subdivision, use or development of land referred to in Rules 8.2 to 8.11 that does not comply with all of the relevant conditions in the Hardinge Road Residential Zone activity table and condition table, is a restricted discretionary activity, unless stated by a rule elsewhere in this Chapter.

#### *Hardinge Road Residential Zone 8.28-Heritage*

1. The relevant provisions of Chapter 56 (Heritage) of this Plan must be complied with.

#### *Heritage 56.17 Discretionary Activities*

1. The following land uses are discretionary activities. A resource consent application must be made and consent may be declined or granted with or without conditions. The Council will have regard to the objectives and policies of this Plan and the relevant assessment criteria elsewhere in this Plan. The Council's discretion is unrestricted.

- a. The internal and/or external alteration (excluding safety alterations), relocation and/or demolition of any Group 1 heritage item.
- b. The demolition, including partial demolition, or relocation of any Group 2 heritage item.
- c. The demolition, excluding partial demolition, or relocation of a Group 3A heritage item.

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

The AEE includes an assessment under the provisions of the NES-CS which concludes that there is no evidence available to suggest that a HAIL activity has or is likely to have occurred upon the site, with this assertion made after reviewing Council property files and historic aerial photography. Council concurs with this assessment given that the site has also been used for residential purposes since the early 1900's and thus the proposal does not require any additional consents under the NES-CS.

#### **Decision**

I have read the application, supporting documents, and the report and recommendations on the application for resource consent. I am satisfied that I have adequate information to consider the matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on the application.

Acting under delegated authority, under Sections 104, 104B and Part 2 of the RMA, the resource consent is **GRANTED**.

#### **Reasons**

The reasons for this decision are:



1. In accordance with an assessment under Section 104(1)(a) and (ab) of the RMA, the actual and potential effects from the proposal will be acceptable as:
  - a. The existing dwelling is not individually protected as a heritage item, whilst its design and associated era has not been recognised in the District Plan or the Port Ahuriri Heritage Study (Salmond Reed Architects) as being a dwelling which displays qualities making it of representational value to the area as other pre-1900 dwellings in the area do.
  - b. The proposed dwelling is of a design and scale which is commensurate with the pattern of contemporary residential development that is occurring in the area. The proposed house design is considered relatively positive in terms of urban design outcomes, with architectural relief provided by way of stepped rooflines, façade modulation, and a good proportion of windows and doors overlooking the street along the northern façade providing much important streetscape activation from the second storey, all of which enhance the overall amenity of the building and contribute positively to the streetscape.
  - c. Approval has been obtained from the owners of 69 and 71 Hardinge Road and no other person is considered to be affected by the proposal. The infringements in relation to the side yards are minor in scale with adverse effects largely indiscernible to those associated with a fully complying development.
  - d. Any adverse effect associated with the HIRB infringements affecting the east and west side boundaries will be less than minor, specifically upon 158 Waghorne Street. The proposal does not result in any infringements in relation to this common boundary with the infringing portions of the dwelling being located 10m and 16m, respectively from the common boundary. The two level portion of the dwelling is contained within the northern half of the site and remote from 158 Waghorne Street and thus this separation serving to further mitigate any adverse effects in this respect.
  - e. Although the property is included in the Draft District Plan Ahuriri Spit Special Character Precinct, the loss of the neighbouring dwelling, and the introduction of the NPS-UD has meant we Council will be re-assessing what areas it seeks to protect. It is likely that there will be limited justification to protect any properties along Hardinge Road in the near future.
  - f. In terms of positive effects, the proposal will allow the consent holder to develop an existing residential property in a manner which will allow the construction of a contemporary dwelling which is not inconsistent with the design, scale and location of recent development in the immediate area. The proposal will result in all vehicle parking being located to the rear of the site with associated benefits for streetscape amenity. The activity can be serviced from existing service connections and any impact upon Council's infrastructural assets will be negligible.
  - g. With reference to Section 104(1) (ab), there are no specific offsetting or environmental compensation measures proposed or agreed to by the applicant to ensure positive effects on the environment.
2. In accordance with an assessment under Section 104 (1) (b) of the RMA, the proposal is consistent with the relevant statutory documents. In particular the following policies and objectives are considered relevant:

- Objective 4.2 and policy 4.2.1 (Residential) seeks to enable the diverse housing needs and preferences of the City's residents to be met while ensuring that the adverse effects on the environment of residential land use, development and subdivision are avoided, remedied or mitigated and enable the development of a range of housing types within the urban area and where appropriate, more intensive forms of housing such as papakainga housing and multi-unit development.

Comment: The proposal allows the construction of a new dwelling within an established residential zone which is compatible with that zone in terms of design and scale. The design and location of the dwelling assists in the mitigation of adverse effects associated with infringements of building bulk and location.

- Objective 4.4 (Residential) seeks to ensure that all developments and structures within the City's residential character areas maintain, enhance and are sympathetic to the dominant natural and physical features which contribute to the amenity and character of those areas via policy 4.4.6 which develops land use controls over development along Hardinge Road and Waghorne Street that are less restrictive while recognising the area's diverse building development, the smaller site sizes and the close proximity of many buildings to roads and adjacent sites and to restrict land use and development to maintain and enhance the scale and design of the built environment that contributes to the area's character.

Comment: The proposal is in keeping with the contemporary built form of the Hardinge Road area and also does not compromise the heritage values of nearby pre-1900 era building resources.

- Objective 4.5 (Residential) and policies 4.5.4, 4.5.5 and 4.5.7 which seeks to maintain and enhance those qualities and characteristics that contribute to the wellbeing of the City's residents and the amenity of the residential zones by controlling building bulk and location to ensure it is compatible with that of the surrounding area, maintains adequate levels of sunlight to adjacent properties and provides the occupants of the site with adequate and functional open space.

Comment: The design and location of the dwelling will maintain adequate levels of sunlight to adjacent properties and in particular to that of 158 Waghorne Street which is well separated from infringing portions of the proposed dwelling. Efficient site layout will result in a high level of on-site amenity for the occupants of the subject site with a complying mix of ground and first floor level living.

- Objective 4.8 (Noise) seeks to ensure that all new noise sensitive activities and the addition of a habitable space to existing noise sensitive activities within noise control boundaries are appropriately mitigated against the effects of non-residential activities located outside of the residential environment and is achieved via policy 4.8.3 which require acoustic insulation of new noise sensitive activities and the addition of a habitable space to existing noise sensitive activities where they are located within a noise control boundary such as those surrounding the Port, Airport and Hawke's Bay Expressway.

Comment: The site is located within the (outer) Port Noise Boundary and will be required to comply with District Plan Rule 8.22 (2) which requires acoustic insulation for all new noise sensitive activities within the Port Noise Boundary.

- Objectives 56.2 and 56.3 (Heritage) which seek to identify, conserve and enhance heritage features to ensure that the heritage of the City be reflected in the future and to maintain and enhance the areas of the City that have a recognised special character.

Comment: The removal of the existing dwelling is not expected to compromise the inherent heritage values of the Hardinge Road Character Area as the dwelling is not considered representative of the style or era of heritage buildings in the area. This view is supported by Council and reinforced in the Port Ahuriri Heritage Study (Salmond Reed Architects). Shorter strategic planning advice indicates that although the property is included in the Draft District Plan Ahuriri Spit Special Character Precinct, the loss of the neighbouring dwelling, and the introduction of the NPS-UD has meant that Council will be re-assessing what areas it will consider to protect. It is likely that there will be limited justification to protect any properties along Hardinge Road and therefore, it is not considered that there is sufficient justification to prevent the demolition of the existing dwelling.

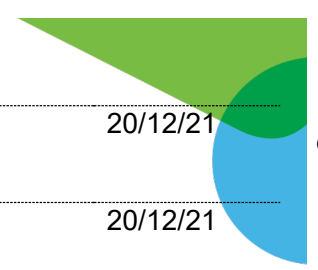
- In accordance with an assessment under Section 104(1) (c) of the RMA, no other matters are considered relevant in the assessment of this application.
- In the context of this discretionary activity application for land use, where the objectives and policies of the relevant statutory documents were prepared having regard to Part 2 of the RMA, they capture all relevant planning considerations and contain a coherent set of policies designed to achieve clear environmental outcomes. They also provide a clear framework for assessing all relevant potential effects and there is no need to go beyond these provisions and look to Part 2 in making this decision as an assessment against Part 2 would not add anything to the evaluative exercise.
- Overall, the proposal is considered to be deserving of approval on a non-notified basis given that any adverse effects will be less than minor, consent has been received from all potentially affected parties and no special circumstance exists that would warrant the notification of the application. The proposal will not undermine objectives and policies in relation to the residential or heritage environments, takes account Part 2 matters and is deserving of approval under Section 104 and 104B of the RMA. Conditions are imposed pursuant to Section 108 RMA.

## Conditions

Under sections 108 and 108AA of the RMA, this consent is subject to the following conditions:

- This consent shall be carried out in accordance with the documents and drawings and all supporting additional information submitted with the application, detailed below, and all referenced by the council as resource consent RM220006.
  - Application Form and Assessment of Environmental Effects prepared by Strategy Planning Limited dated 26 January 2022.

Drawing title and reference	Author	Rev	Dated
Existing and Proposed Site Plans	Studio 26 Architecture	N/A	07/12/21
Proposed Site and Floor Plans RC-1	Studio 26 Architecture	N/A	20/12/21



Elevations-North, East and South RC-2	Studio 26 Architecture	N/A	20/12/21
West Elevation and Sections A and B RC-3	Studio 26 Architecture	N/A	20/12/21
Sections C, D, E and F RC-4	Studio 26 Architecture	N/A	20/12/21
Building Envelopes RC-5	Studio 26 Architecture	N/A	20/12/21

2. Under section 125 of the RMA, this consent shall lapse five years after the date it is granted unless:
  - a. The consent is given effect to; or
  - b. The council extends the period after which the consent lapses.
3. The consent holder shall pay the council an initial consent compliance monitoring charge of \$166.00 (hourly rate) inclusive of GST, plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to this/these consent/s.

#### Advice note:

*The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent(s). In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge. Only after all conditions of the resource consent(s) have been met, will the council issue a letter confirming compliance on request of the consent holder.*

4. All works within the road corridor shall be managed by a contractor operating under a current corridor access request (CAR), made through the [www.beforeudig.co.nz](http://www.beforeudig.co.nz) website and appropriate traffic management. The CAR shall be approved by the Road Controlling Authority prior to the construction works commencing on the site.
5. All engineering works and designs shall be in accordance with the Councils Code of Practice for Subdivision and Land Development or to the satisfaction of the Councils Director of Infrastructure or (nominee).
6. Any service relocations and extensions of Council mains shall be at the expense of the consent holder.
7. That the two existing vehicle crossings shall be closed and removed with the kerb, channel and footpath to be reinstated in accordance with Councils Code of Practice for Subdivision and Land Development.
8. That any new vehicle crossing is to be designed, constructed and inspected in accordance with the Code of Practice for Subdivision and Land Development. The new crossing must



maintain and at-grade (level) pedestrian footpath across the length of the crossing, using the same materials, kerbing, paving, patterns and finish as per the footpath on either side of the new crossing.

9. If the existing kerb and channel or footpaths are damaged during construction then these are to be reinstated in accordance with Councils Code of Practice for Subdivision and Land Development.
10. The best possible means shall be employed to ensure that windblown dust and soil and associated wind erosion is minimised, and that adequate drainage and silt control is in place during and following any movement of earth to avoid, remedy or mitigate any adverse environmental effects.
11. Sediment laden water should not be allowed to leave the site.
12. Any earthworks/storm water works shall meet the requirements of the 'Erosion and Sediment Control Guide for Land Disturbing Activities the Auckland Region' (GD 005) for construction, and 'Water Sensitive Design for Storm Water' (GD004) for operations.
13. All new roof surfaces shall be constructed from inert materials or painted with non-metal based paint and thereafter maintained.
14. All storm water is to be controlled in terms of Councils Code of Practice for Subdivision and Land Development and E1 of the Building Code.
15. Storm water from the proposed development shall drain to the kerb and channel in Hardinge Road in accordance with Councils Code of Practice for Subdivision and Land Development.
16. Waste water discharge and water supply connections to the site shall be re-assessed prior to their re-use.
17. That prior to the issue of Building Consent in relation to the approved dwelling, a landscape plan prepared by a suitably qualified person shall be submitted to Council which details the following:
  - Details of landscape planting that is proposed within the front yard of the site (i.e. the area between the front of the dwelling and the front boundary).
  - The plan shall identify the location, species, numbers and planter bag size of each landscape element proposed.
  - The landscape plan shall be submitted to Council and shall be approved by Councils Principal Planner Resource Consents (or nominee) prior to Building Consent approval
18. The landscaping required by condition 17 shall be implemented prior to the occupation of the dwelling (or within the next planting season) and shall thereafter be maintained and irrigated in perpetuity with any dead or dying plants removed and replaced.
19. The proposed dwelling shall comply fully with District Plan Rule 8.22 (2)-Port Noise.

## Advice notes

1. *That the following procedures (Accidental Discovery Protocol) shall be followed in the event that Koiwi, archaeological features or Taonga are discovered or are suspected to have been unearthed during earthworks or construction phase of site development:*
  - a. *Earthworks should cease immediately in the vicinity of the discovery. It is important that any remains or artefacts are left undisturbed or in-situ once discovered. If it is unclear whether the find is Koiwi, archaeological features or Taonga, the consent holder shall consult a Heritage New Zealand Pouhere Taonga (HNZPT) archaeologist.*
  - b. *The site supervisor/consent holder/agent shall take steps immediately to secure the area so that Koiwi or Taonga remain untouched and site access is restricted.*
  - c. *The site supervisor/consent holder/agent shall ensure that consumption of food and/or drink and/or smoking in the immediate area of the discovery is restricted.*
  - d. *The site supervisor/consent holder/agent will notify the New Zealand Police (in the event of the discovery of Koiwi/skeletal remains only), Heritage New Zealand and*
    - i. *Ngāti Parau - Chad Tareha chadtareha24@gmail.com and/or*
    - ii. *Mana Ahuriri - Joinella Maihi-Carroll joinellamc@gmail.com and/or*
    - iii. *Maungaharuru-Tangitū Trust - Hayley Lawrence hayley@tangoio.maori.nz and/or*
    - iv. *Te Taiwhenua o Te Whanganui a Orutu - Tania Eden taniaeden@xtra.co.nz*
  - e. *Activities on the site will remain on-hold until the Police (in the case of Koiwi), the Kaumatua (or other representative advised by the relevant Māori organisation) and Heritage New Zealand have given approval for works to recommence.*
  - f. *In the case of discovering Koiwi, site access should be restricted to all parties until Police are satisfied the remains are not of forensic relevance.*
  - g. *The site supervisor/consent holder/agent shall ensure that Kaumatua (or other representative advised by the relevant Māori organisation) have the opportunity to undertake Karakia or other cultural ceremonies and activities at the site as may be considered appropriate.*
  - h. *The consent holder shall ensure that no information regarding discoveries of Māori origin is released to the media except as authorised by the relevant Māori organisation/s.*
2. *Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.*
3. *Any Building Consents issued in relation to this site may in future be subject to a notice issued under Section 73 of the Building Act as the property is located within the 1 in 50-year flood hazard area.*
4. *This property has, or is likely to have been occupied prior to 1900. Any disturbance of land, or damage or destruction of any building or structure associated with human activity prior to 1900, may require an archaeological authority from Heritage New Zealand under the Heritage New Zealand Pouhere Taonga Act 2014. Please contact Christine Barnett, Archaeologist at Heritage New Zealand for further information.*

5. *For the purpose of compliance with the conditions of consent, "the council" refers to the council's resource consents and compliance officers unless otherwise specified.*
6. *For more information on the resource consent process with Napier City Council see the council's website: <https://www.napier.govt.nz/> . General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment's website: <https://www.mfe.govt.nz/rma> .*
7. *If you disagree with any of the above conditions, and/or disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).*
8. *The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.*

**Delegated decision maker:**

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

Signed:



Date: 7 March 2022

## Resource Consent Notice of Works Starting

Please email this form to **planning@napier.govt.nz** at least 5 days prior to work starting on your development.

Alternatively deliver to:

**Customer Services** Dunvegan House Ground Floor 215 Hastings Street Napier South  
**Or**

Mail to:

**Attention: Resource Consent Team**

Private Bag 6010

Napier 4142

New Zealand

<b>Site address:</b>	
<b>Resource consent number:</b>	<b>Associated building consent:</b>
<b>Expected start date of work:</b>	<b>Expected duration of work:</b>

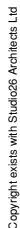
Primary contact	Name	Ph No.	Address	Email address
Owner				
Project manager				
Builder				
Earthmover				
Arborist				
Other (specify)				

<b>Signature:</b> Owner / Project Manager (indicate which)	<b>Date:</b>
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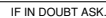
Once you have been contacted by the Resource Consent/Compliance Officer, all correspondence should be sent directly to them.

The council will review your property for start of works every three months from the date of issue of the resource consent and charge for the time spent. You can contact your Resource Consent/Compliance Officer on 06 835 7579 or via <https://www.napier.govt.nz/> to discuss a likely timetable of works before the inspection is carried out and to avoid incurring this cost.



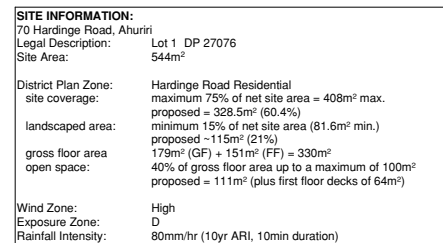


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NOTE: ALL DIMENSIONS MUST BE CHECKED AND CONFIRMED ON SITE





## Scale 1:100



Planner: \_\_\_\_\_  
Date Approved: 07/03/2022

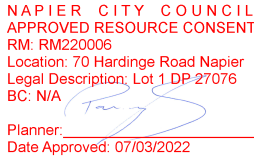


Studio26 Architects Ltd.  
p.(06) 844 0223 f.(06) 844 0580  
26 Guppy Road | PO Box 5058  
Greenmeadows, NAPIER

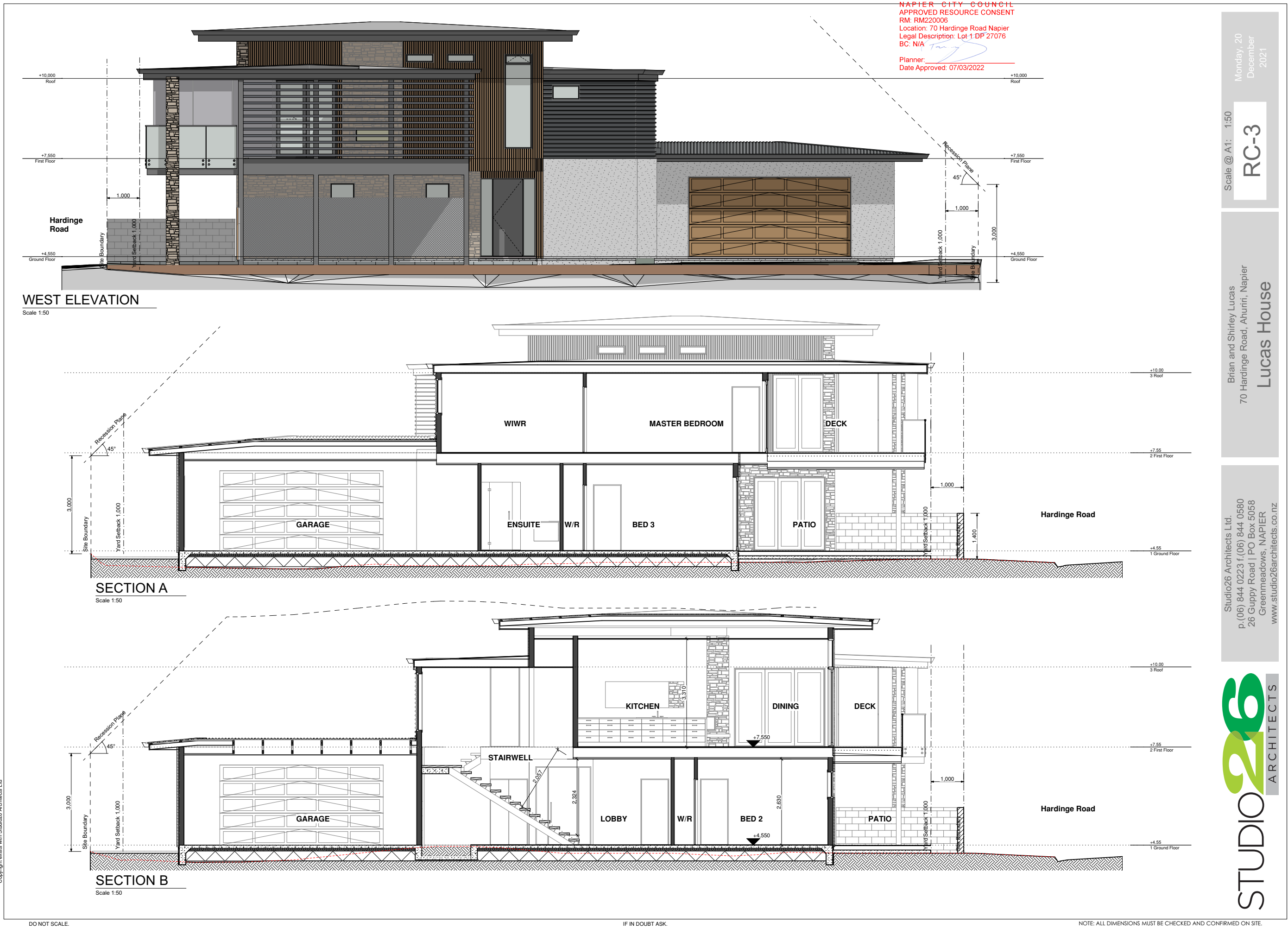
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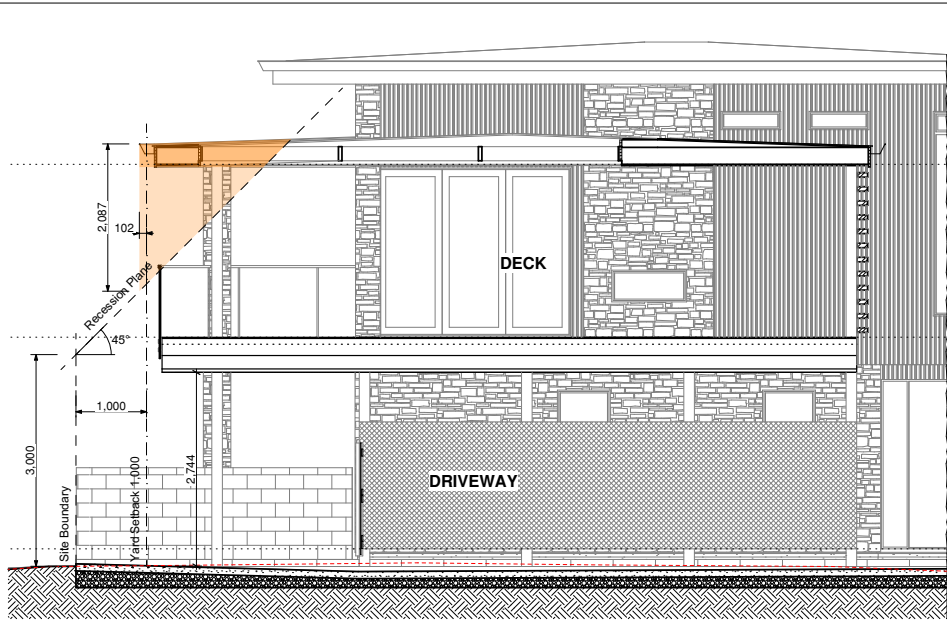




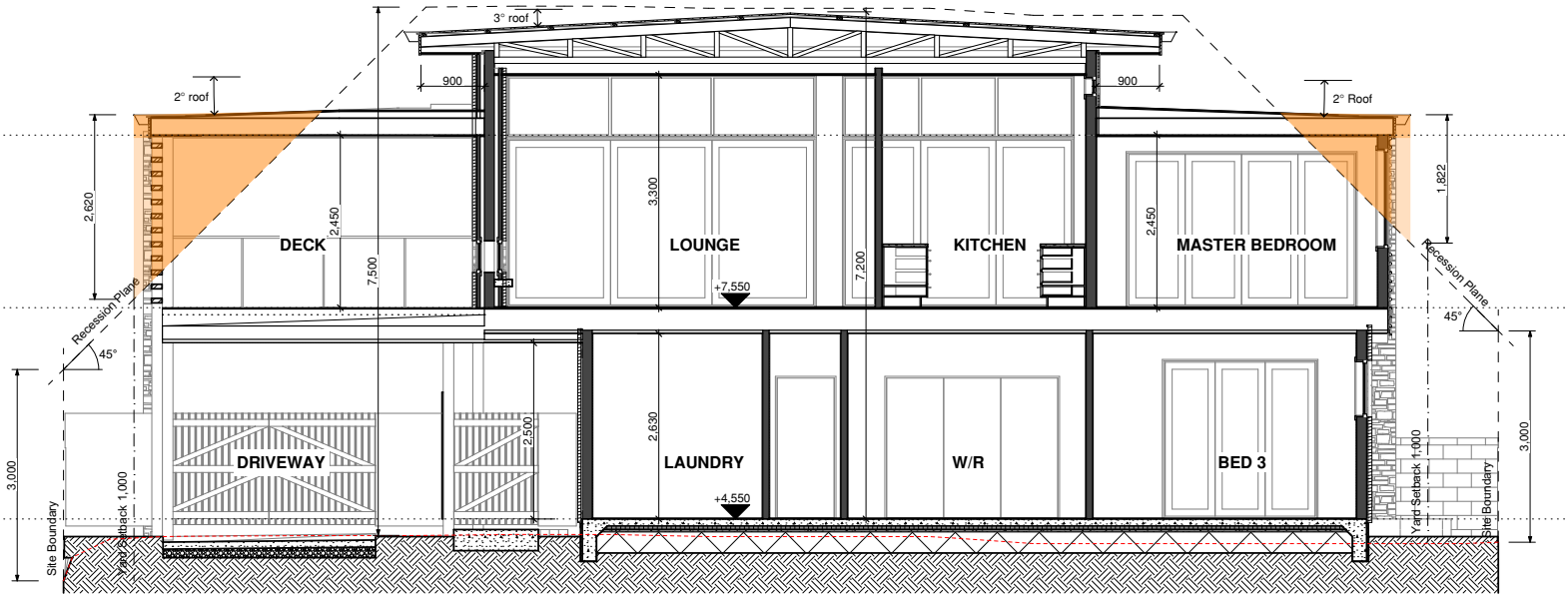




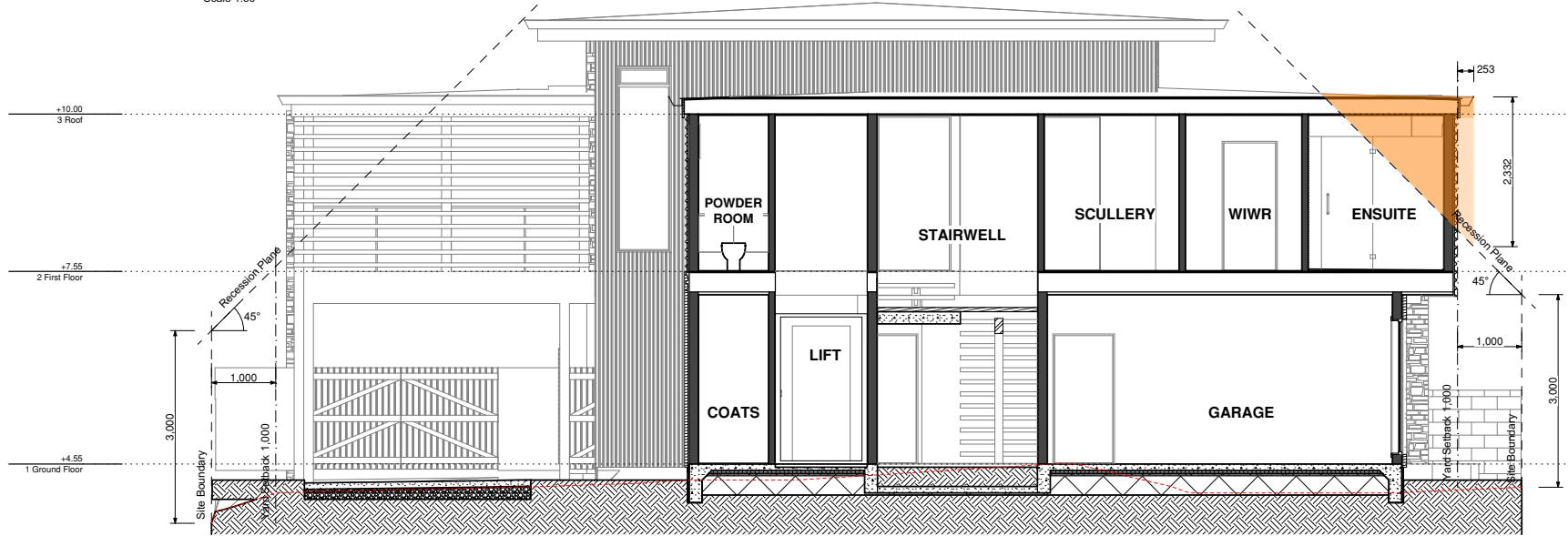




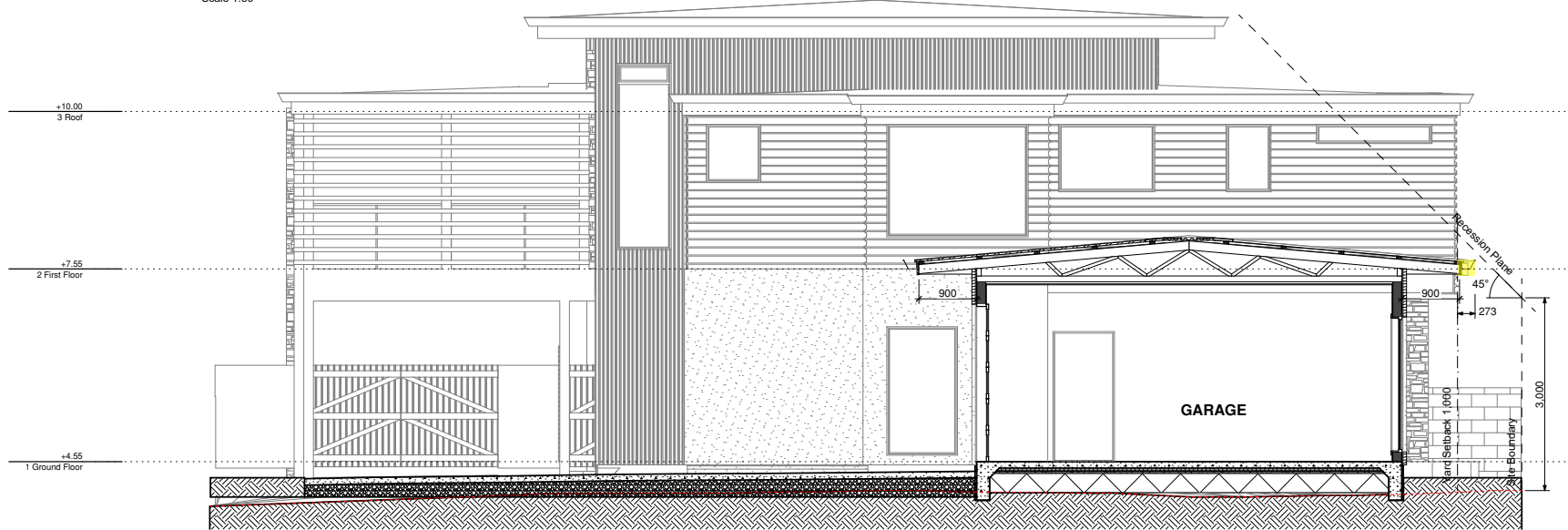
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SECTION D  
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SECTION E  
Scale 1:50



SECTION F  
Scale 1:50

NAPIER CITY COUNCIL  
APPROVED RESOURCE CONSENT  
RM: RM220006  
Location: 70 Hardinge Road Napier  
Legal Description: Lot 1 DP 27076  
BC: N/A  
Planner: [Signature]  
Date Approved: 07/03/2022

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IF IN DOUBT ASK.

NOTE: ALL DIMENSIONS MUST BE CHECKED AND CONFIRMED ON SITE.

STUDIO26  
ARCHITECTS

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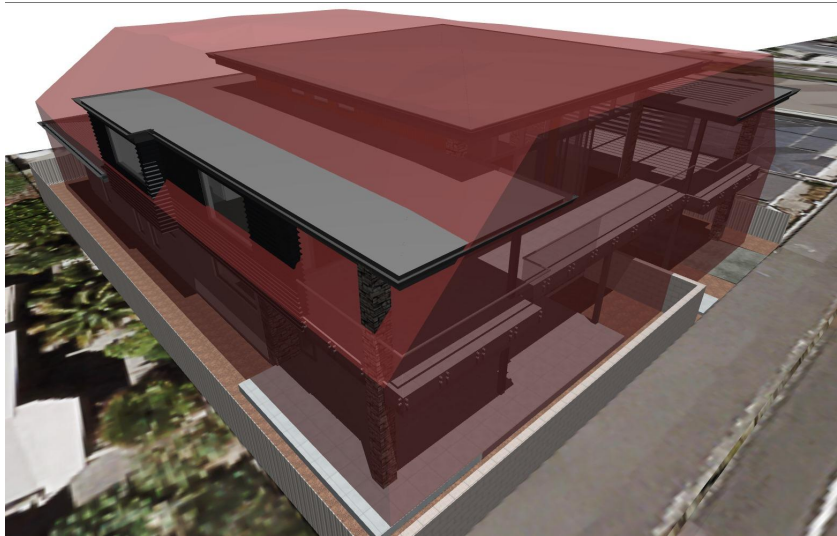
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70 Hardinge Road, Ahuriri, Napier  
Lucas House

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RC-4

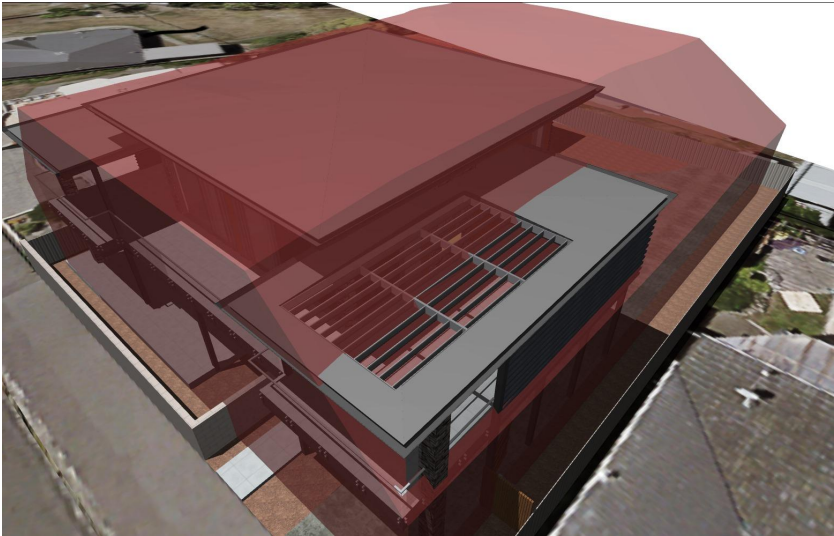
Monday, 20  
December  
2021



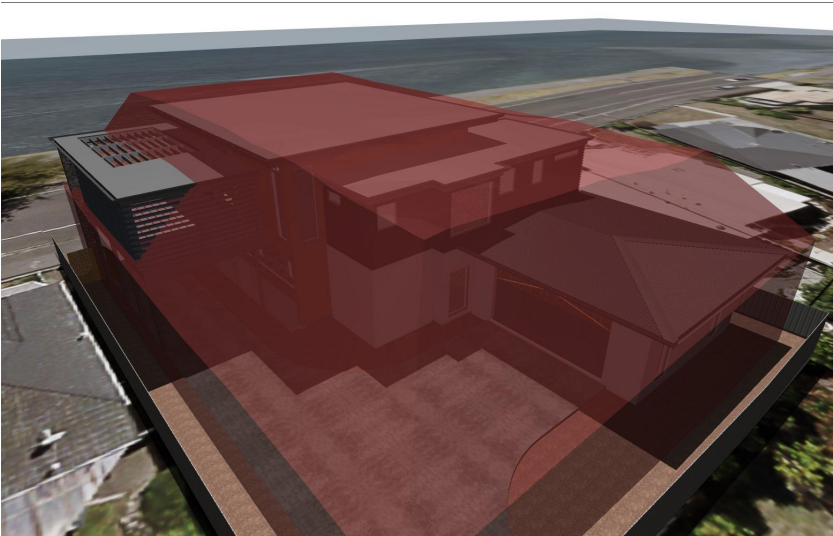




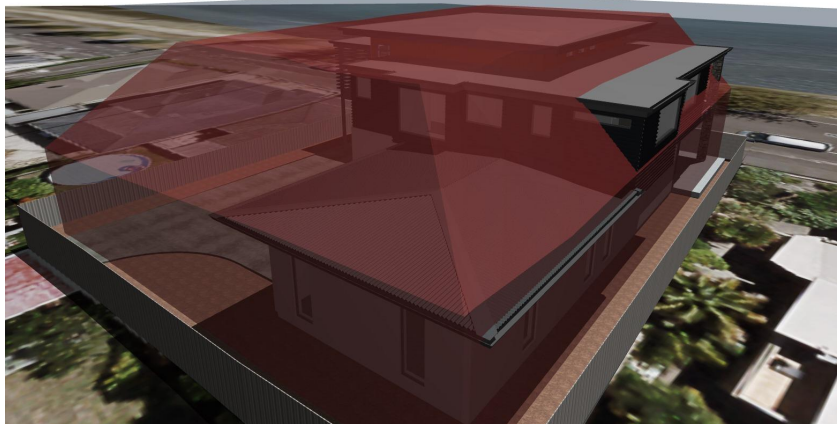
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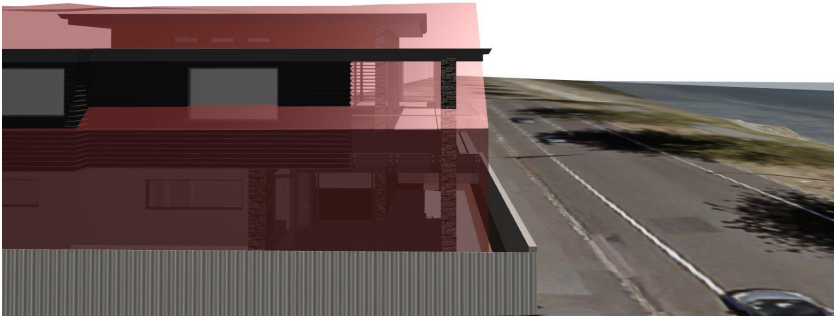
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SW Building Envelope 3  
not to scale



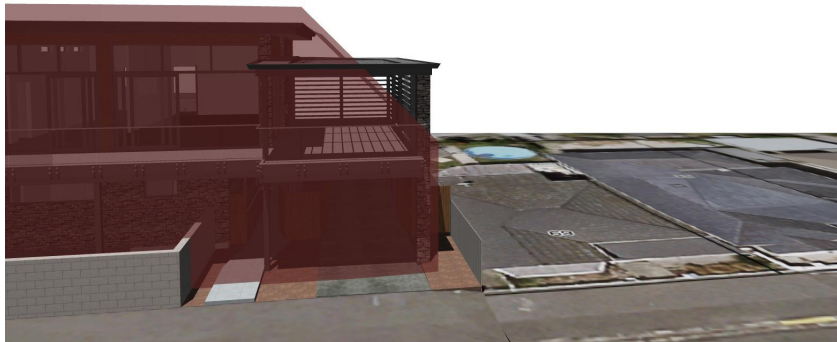
SE Building Envelope 4  
not to scale



E Building Envelope 5  
not to scale



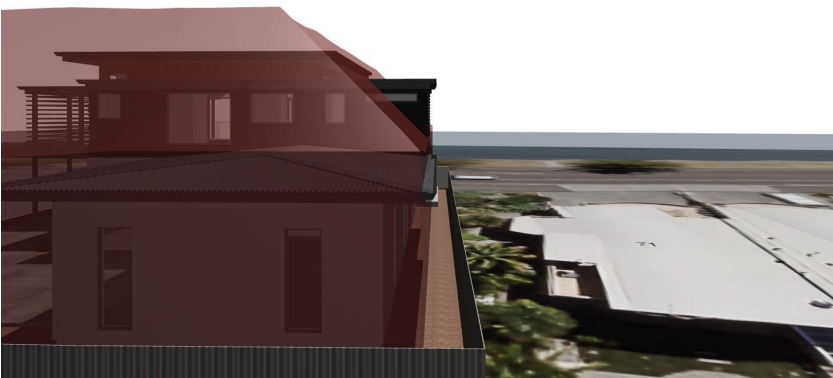
N1 Building Envelope 6  
not to scale



N2 Building Envelope 7  
not to scale



W Building Envelope 8  
not to scale



S Building Envelope 9  
not to scale

NAPIER CITY COUNCIL  
APPROVED RESOURCE CONSENT  
RM: RM220006  
Location: 70 Hardinge Road Napier  
Legal Description: Lot 1 DP 27076  
BC: N/A  
Planner:   
Date Approved: 07/03/2022

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Scale @ A1: 1:232.5581

RC-5

Monday, 20  
December  
2021

Brian and Shirley Lucas

70 Hardinge Road, Ahuriri, Napier

Lucas House

Studio26 Architects Ltd.

p.(06) 844 0223 f.(06) 844 0580

26 Guppy Road | PO Box 5058

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NAPIER CITY COUNCIL  
APPROVED RESOURCE CONSENT  
RM 220006  
Location: 70 Hardinge Road Napier  
Legal Description: Lot 1 DP 27076  
BCA No.  
Planner: \_\_\_\_\_  
Date Approved: 07/03/2022





**Before the Hearing Commissioners appointed by Napier City Council**

**IN THE MATTER**

of the Resource Management Act  
1991

**AND**

**IN THE MATTER OF**

removal of the existing dwelling  
and construction of a new  
dwelling at 69 Hardinge Road,  
Ahuriri

**BY**

**Janine and Sing Cheng**

**Applicant**

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**Right of Reply by Cameron James Drury**

26 July 2022

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**INTRODUCTION**

1. My name is Cameron Drury.
2. I am a Principal Planner and Director of Strategy Planning Limited.
3. I graduated from Massey University with a bachelor's degree in Environmental and Resource Planning in 2003 with a Second Specialization in Water and Wastewater Technologies and have 18 years professional planning experience.
4. During this time, I have worked with the Hawke's Bay Regional Council and Napier City Council as a Consents Planner and a number of private consultants as a Senior Planner.
5. I am a Full Member of the New Zealand Planning Institute and hold a current RMA Hearing Commissioner certification.
6. I have assisted Ms Beachen in the management of this application.
7. I attended the Hearing and provided an introduction of the proposal and witnesses, answered questions of the Panel and provided a verbal right of reply ahead of this written version.
8. I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses.
9. In the Right of Reply that follows I:
  - 1) Address the question put to all Planning witnesses as to whether there is hierarchy in regard to how the District Plan treats Heritage Items,
  - 2) Address the situation of the policy framework seemingly presenting different directions,
  - 3) Demonstrate how application of the Permitted Baseline is not only appropriate but useful, if not necessary,
  - 4) Consider the issue of cumulative effects,
  - 5) Address the remaining issue of dominance effects on the submitter arising from bulk at the rear of the site.



## IS THERE IS A HIERARCHY IN REGARD TO HOW THE DISTRICT PLAN TREATS HERITAGE ITEMS

10. Through questioning, the Panel asked each Planning witness if there was a hierarchy in regard to how the District Plan treats Heritage Items. Mr Lundy was of the view that there wasn't, Ms Bunny was of the view there was.
11. The answer is quite clear and lies in the first paragraph of 56.6 of the District Plan where it is stated:

The heritage features of the City have been grouped according to either their type or the level of significance for the heritage values of the City. Groups 1-3 are in the order of importance and Groups 4 and 5 are special heritage sites and are not in any order of priority.

12. It is very clear that the District Plan considers Group 1 Items to be more important than Group 2, and Group 1 and 2 Items more important than Group 3, noting that this matter concerns itself with a Group 3 'A' Heritage Item.
13. So yes, there is a hierarchy.
14. This is further evident in the description of each Item, where it is stated that Group 1 Items '*must be protected*', Group 2 Items protected where '*reasonably able to be achieved*' and in regard to Group 3 Heritage Items, which are buildings that contribute as a group, or by a recognised style to character, that '*Council will encourage the protection of this Character*'.

**Group 1** Identifies individual buildings and streetscapes which are of prime importance to the heritage of the City and must be protected. It includes:

Those buildings and structures identified as Group 1 in Appendix 13. All buildings within the West Quay Waterfront Zone.

**Group 2** Identifies buildings that individually are of primary importance to the heritage of the City and the protection of which is seen as reasonably able to be achieved. It includes:

Those buildings and structures identified as Group 2 in Appendix 13. Buildings included in the Marewa Art Deco, Marewa State Housing, and Te Awa Bungalow character zones. The Eilison Duncan Facade.

**Group 3A** Identifies buildings which contribute as a group, or by a recognised style, to the character of Ahuriri. The Council will encourage the protection of this character. It includes:

Buildings within the Ahuriri Advocacy Areas (Iron Pot, Hardinge Road, Battery Road and Coronation Street Character Areas) shown on the planning maps and in Appendix 13A.

15. Another matter to realise is that it isn't the building itself within an Advocacy Area, being the Group 3A Heritage Item that is to be protected, rather the character of the area concerned.

#### POLICY FRAMEWORK

16. The submitter has placed focus on Policy 56.2.2 which is to '*avoid the loss of heritage value associated with heritage resources listed in the Plan*'.
17. While it is necessary to pay attention to the wording of provisions, it is equally necessary to apply the correct policy context to a proposal.
18. The heritage resources listed in the Plan are those items referenced in Groups 1-5 referred to above, of which it has been established that Groups 1-3 are in the order of importance. It therefore follows that Policies along the lines of 'must protect' may not be the policies to be applied to heritage items where the Plan speaks of 'encouraging protection'. Indeed, these are two very different approaches and outcomes.
19. In this respect, it is clear that Objective 56.3<sup>1</sup> is the most applicable Objective pertaining to Group 3 and 3A Heritage Items. Indeed, this relates to '*the areas of the City that have a recognised special character*' – being the very areas that the Group 3 and 3A Heritage Items are identified in 56.6 to comprise.
20. To achieve Objective 56.3, Policy 56.3.1 is to '*identify areas of the City that have a particular character within a clearly defined area*'. This has been achieved as part of the Plan development process which has gone on to categorise these areas as Group 3A Heritage Items.
21. Policy 56.3.2 and 56.3.3 then set out how to 'maintain and enhance' these areas as set out in Objective 56.3.

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<sup>1</sup> Objective 56.3 - To maintain and enhance the areas of the City that have a recognised special character.

22. Policy 56.3.2<sup>2</sup> relates to future development and use within the identified character areas and 'encourages' this to be sympathetic with the elements that make the areas special. A few points here:
- 1) The Policy relates to the future development proposal – not the management of an existing building,
  - 2) It 'encourages' this to be sympathetic with the elements that make the areas special, but does not require it to be,
  - 3) It is the 'elements' that make the area special that a future development proposal is to be 'sympathetic' too. It does not call for outright preservation or the avoidance of change.
23. Turning to Policy 56.3.3<sup>3</sup>, this is '*to maintain and enhance where appropriate the character of the Hardinge Road character area*' identified in the Port Ahuriri Heritage Study. Again, a few points here:
- 1) The Port Ahuriri Heritage Study is referenced as identifying the Hardinge Road Character Area. The Policy does not state that the area is to be managed in accordance with it. Indeed, it is the District Plan that manages the area.
  - 2) The Policy speaks of '*maintaining and enhancing*' the '*character*' of the area. This is very different to preserving specific buildings.
  - 3) The Policy provides a great deal of discretion – noting that its ambition of maintaining and enhancing only applies '*where appropriate*'.
24. In applying Policies 56.3.2 and 56.3.3, there are two questions:
- 1) Is the future development and use sympathetic with the elements that make the area special?
  - 2) Is the character of the Hardinge Road Character Area being maintained and enhanced?

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<sup>2</sup> Policy 56.3.2 - Encourage any future development and use within the identified character areas to be sympathetic with the elements that make the areas special.

<sup>3</sup> Policy 56.3.3 - To maintain and enhance where appropriate the character of the Hardinge Road, Battery Road, Iron Pot and Coronation Street character areas identified in the Port Ahuriri Heritage Study (Refer to Appendix 13A for maps of character areas).

25. The characteristics of the Hardinge Road Character Zone are outlined in Chapter 4.9 of the District Plan – Zone Descriptions. In this regard, and in terms of (1) above and Policy 56.3.2, the proposed dwelling is characterised by a simple form, is still relatively low rise (when considered in regard to the adjoining sites [refer **Figure 1** below] and permitted height control pertaining to the Zone – with which the proposal complies) with spaces between buildings being comparatively small and has a strong gable roof form – all of which are elements of the character referred to in the description of the Zone in 4.9.8 of the District Plan<sup>4</sup>.

**Figure 1**



26. The proposal is therefore not inconsistent with Policy 56.3.2.
27. Likewise, in adopting these design and layout features it follows that the character associated or arising from them is maintained. The proposal is therefore not inconsistent with Policy 56.3.3.
28. Although arrived to via alternative considerations, this is essentially the view reached by Ms Bunny in paragraphs 8.5.2.15 and 8.5.2.20 of her Section 42A report.
29. The key findings here are:
- 1) The most applicable Objectives and Policies are Objective 56.3 and Policies 56.3.2 and 56.3.3,

---

<sup>4</sup> The Hardinge Road Residential Zone applies to those properties fronting Hardinge Road and Waghorne Street. Some of the oldest buildings in the Ahuriri area lie on Hardinge Road, tightly grouped and close to the road. The early cottages are small in scale and simple in form. The traditional character of the Hardinge Road area is low rise, with spaces between small buildings being comparatively small. Many original buildings sit right on the road edge or have very narrow front yards. Traditionally, roof forms were simple gables or hips with lean-to verandas facing the road. In recent times, very intensive new development has begun to replace the historic cottages, resulting in a mix of old and new styles. The Council considers that provision for intensive development should be maintained to enable development to take advantage of the waterfront location while recognising the historic character of the area.



- 2) The proposed future development and use, being the subject of Policy 56.3.2, is consistent with Policy 56.3.2,
- 3) The character of the Hardinge Road character area will be maintained as sought by Policy 56.3.3.

#### PERMITTED BASELINE

30. The submitter has reminded the Panel that application of the Permitted Baseline is not mandatory. While this is correct, recognition of the Permitted Baseline in this case:
  - 1) confirms the hierarchical approach outlined above, and
  - 2) demonstrates the correct application of the Policy framework in respect of allowing change and focusing on the areas broader character rather than individual buildings.
31. It is also very clear that the Permitted Baseline would allow significant change, and more specifically, alteration and demolition of some parts of the building concerned. It certainly clears up any ambiguity around what wording or what Policies should be applied to the proposal.
32. Application of the Permitted Baseline is not only helpful to confirm what the Policy framework is setting down, but is also helpful to consider outcomes against i.e. the proposed future development and use compared to one involving substantial alteration and partial demolition.
33. I submit that the Permitted Baseline is not only absolutely relevant, but perhaps the most useful planning tool in deciding upon the application. Simply put, you cannot avoid the removal of heritage features when a rule permits it<sup>5</sup>. While this may not be an outcome supported by the submitter, it is nevertheless an outcome enabled under the District Plan, and it is against the District Plan that this application is to be assessed.
34. It is also this Rule that clearly differentiates the different approach that the District Plan takes to Group 3A Heritage Items compared to Group 1 and 2 Items – in that there is no Permitted Activity Rule pertaining to the external alterations of Group 1 and 2 Items. This adds weight to the view that Objective 56.3 and Policies 56.3.2 and 56.3.3 are more applicable over Policy 56.2.2 which refers to

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<sup>5</sup> Rule 56.11

'avoid'. This Policy (Policy 56.2.2) is clearly more applicable to matters concerning Group 1 and 2 Heritage Items compared Group 3A Heritage Items.

### CUMULATIVE EFFECTS

35. The issue of cumulative effects was investigated by the Panel through questioning of the experts. This was considered in the context of the removal of the specific building concerned, but following the above analysis, it should be the implications of activities and approvals on *character values* that are considered in relation to cumulative effects. Here I would note;

- 1) The Permitted Baseline allows substantial change to existing structures,
- 2) The area itself is characterised by various styles of architecture. This is clear to see from the streetscape,
- 3) The dwelling itself would be an example of the more modern spectrum of architecture already characterising the area,
- 4) The design of the proposed dwelling adopts elements referred to in the description of the Zone in 4.9.8 of the District Plan in respect to maintaining the areas character.
- 5) The nature of bulk along the side boundaries is not dissimilar to existing situations – owing to either the form of older existing buildings, or what has arisen from the approvals of adjoining neighbours – **Figures 2 and 3** below illustrate pertinent examples of this, with the existing dwelling on 68 Hardinge Road (the submitters dwelling) providing an example of bulk beyond the permitted building envelope arising from older existing dwellings (with the proposed dwelling also shown), and the recently approved dwelling on 70 Hardinge Road providing an example of bulk beyond the permitted building envelope arising from affected party approvals.

Figure 2:

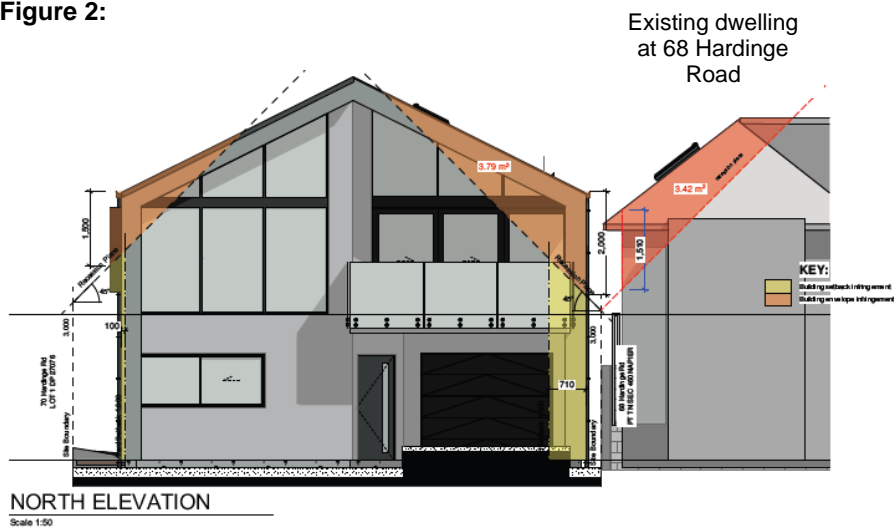


Figure 3:



36. With reference to Figure 2, the extent of bulk beyond the permitted building envelope is actually very similar for both the proposed dwelling and the existing dwelling on 68 Hardinge Road (the submitters property).
37. Overall:
- 1) Cumulative effects arise from Permitted Activity development and the approval of resource consents, which may involve yard and height in relation to boundary infringements arising from affected party approvals.
  - 2) Given the permissive nature of the rule framework in relation to alterations and partial demolition, it is difficult to differentiate the cumulative effects of Permitted Activity development versus outcomes associated with the approval of resource consents.

- 3) Nevertheless, having reviewed the characteristics of the area as identified and referred to in various sections of the District Plan, particularly the Zone Descriptions in Section 4.9, the proposal is considered to be sympathetic to the elements identified – being the primary outcome of the Policy framework pertaining to Group 3A Heritage Items.
- 38.** On this basis, granting of the application is not considered to give rise to any cumulative effects that are not readily anticipated or enabled by the District Plan, or out of character with the existing environment.

### **DOMINANCE**

- 39.** The other primary matter of contention is the scale of bulk at the rear of the proposed dwelling and the issue of potential dominance effects on the submitter.
- 40.** As outlined in Supplementary Evidence at the Hearing, the rear portion of the dwellings alongside the submitter's boundary has been altered to comply with the yard setback control. With the yard setback control complied with over this length of the building, it is only the remaining height in relation to boundary infringement that remains.
- 41.** If we were to take guidance from the matters that the height in relation to boundary control would otherwise be considered in regard to i.e. those listed in second column of the Hardgine Road Residential Zone – Condition Table alongside Condition 8.18 pertaining to Height in Relation to Boundary, we would consider:
- 1) The availability of daylight to adjacent properties.
  - 2) The effects on the privacy of adjacent properties and occupiers.
  - 3) The effects on amenity values
- 42.** In regard to (1) and the availability of daylight to adjacent properties, computer modelling undertaken by Mr Pidd demonstrates that the proposal will not result in any additional shading compared a structure built within the permitted building envelope.
- 43.** In regard to (2) and effects on the privacy of adjacent properties and occupiers, windows on the first floor are high level and do not enable any overlooking of the adjoining property. Further, there are no decks that would otherwise enable overlooking. Effects in relation to the privacy of adjacent properties and occupiers can therefore be considered less than minor.



44. In regard to (3) and effects on amenity values, 'amenity values' is defined in the District Plan as meaning:

those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes

45. This is extremely broad, but I would note:

- 1) The proposal complies with the yard setback distance where the adjoining dwelling has windows close to the boundary,
- 2) The proposal will not result in any additional shading compared a structure bult within the permitted building envelope,
- 3) The design is such to avoid overlooking and effects in relation to the privacy of adjacent properties and occupiers can therefore be considered less than minor,
- 4) The rear of the building had also already been located so as to not protrude beyond the rear of the submitters deck. This was to avoid the potential or perception of the structure dominating the submitters area of open space to the rear of their dwelling – noting that building work comprising two storeys can occur provided it is within the permitted building envelope,
- 5) Bulk and location controls pertaining to the Marine Parade Character Zone – another residentially zoned environment, set a height in relation boundary recession plane commencing 7.5m above the boundary – which the proposal would comply with. The outcome proposed is therefore not foreign to a residential environment.

46. Notwithstanding the above however, and to (1), completely remove this matter, and (2), respond to the matters raised by the submitter, which without a prehearing meeting were only truly explored during the Hearing, the applicant has amended the proposal to remove the bulk concerned. Updated Plans are provided in **Attachment A**.

47. The amendments see:

- 1) the pool room removed from the ground floor,
- 2) the Study/Bed 4 removed from the first floor,

- 3) the Master Bedroom reconfigured.
48. This has the effect of pulling the building back some 4.5m - well back from the rear of the submitters dwelling and well back from a position that may give the perception of built dominance.
49. All windows along the rear façade will be within the permitted building envelope.
50. Updated Affected Party Approvals are provided in **Attachment B**.
51. As a result of these amendments, approval of the application is not considered to compromise the amenity values of adjoining properties.
52. I also make the point that providing for a notional garage and vehicle standing space between the garage and road was a requirement of the District Plan at the time of lodgement and would be appropriate in any case given the high use of Hardinge Road for on-street car parking associated with amenities in this particular area of the City.

#### CONCLUDING COMMENTS

53. The District Plan applies a hierarchy to the management of Heritage Items, with the direction around Group 3A Heritage Items being to '*encourage*' the protection of the '*character*' that groups of buildings contribute to rather than focusing on specific buildings. This is different to how Group 1 and 2 Heritage Items are managed.
54. Objective 56.3 and Policies 56.3.2 and 56.3.3 are the most applicable. In applying these provisions, there are two questions:
  - 1) Is the future development and use sympathetic with the elements that make the area special?
  - 2) Is the character of the Hardinge Road Character Area being maintained and enhanced?
55. In adopting elements referred to in the Description of the Zone in 4.9.8 of the District Plan, the proposal is not inconsistent with Policy 56.3.2, and it follows that the character of the Hardinge Road Character Zone will be maintained – being the policy 'tests'.
56. The Permitted Baseline would allow significant change, and more specifically, alteration and demolition of some parts of the building concerned

57. The Permitted Baseline is not only absolutely relevant, but perhaps the most useful planning tool in deciding upon the application and should not be disregarded.
58. Given the permissive nature of the rule framework in relation to alterations and partial demolition, it is difficult to differentiate the cumulative effects of permitted activity development versus outcomes associated with the approval of resource consents. Nevertheless, having reviewed the characteristics of the area as identified and referred to in the District Plan, the proposal is considered to be sympathetic to the elements identified and granting of the application is not considered to give rise to any cumulative effects that are not readily anticipated or enabled by the District Plan, or out of character with the existing environment.
59. A three-bedroom dwelling with a single living area and single garage with room for storage at the end in response to the narrow width of the garage (which could also be used for a small vehicle [the applicant owns a Mini which this space is intended to be used for], motor bike or mobility scooter) need not be considered excessive to achieve modern comfortable use (whether the area of open space is used by an owner to accommodate lawn, garden or a pool is not relevant).
60. The design of the building has given regard to the characteristics of the submitters dwelling and location of open space and has been altered to avoid amenity values being compromised.
61. Approving this application (refer amended plans in **Attachment A**) will not be inconsistent with the Policy framework of the District Plan, nor will it result in adverse streetscape effects, or the amenity values of adjoining properties being compromised.

**Cameron Drury**

26 July 2022

## **Attachment A – Amended Plans**



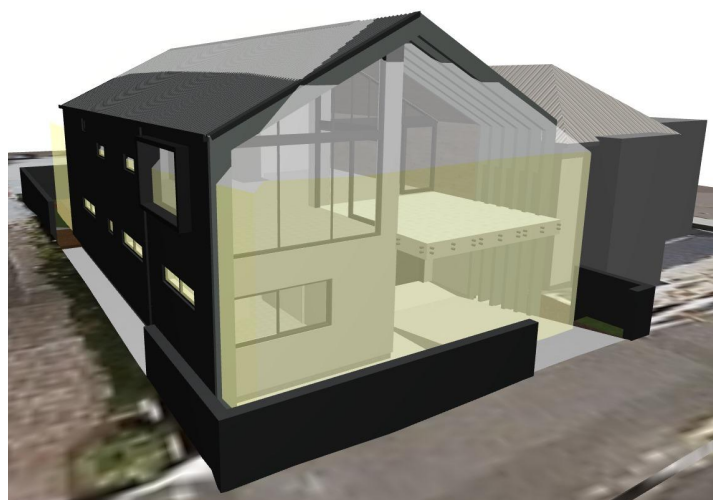








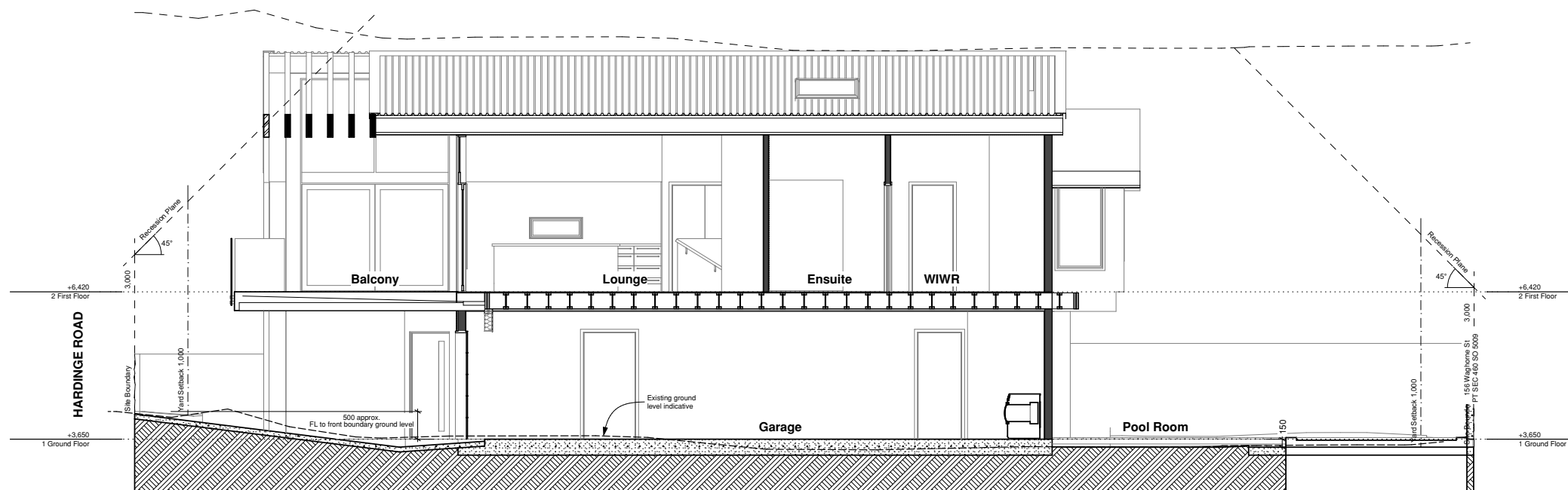




## SECTION A

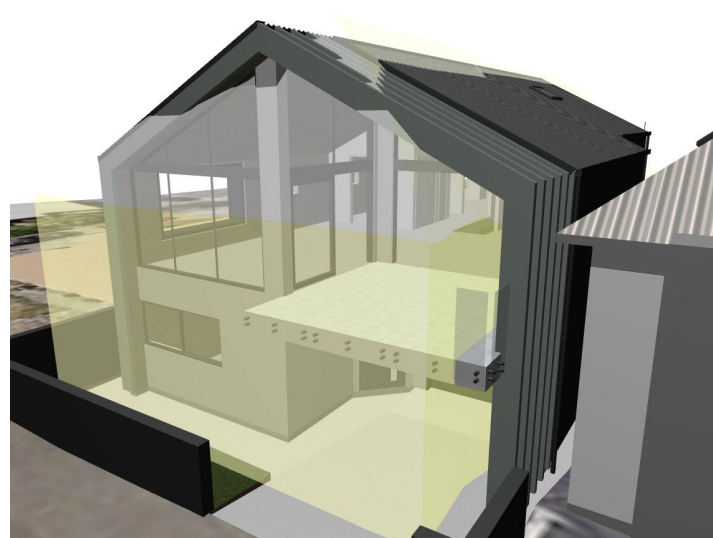
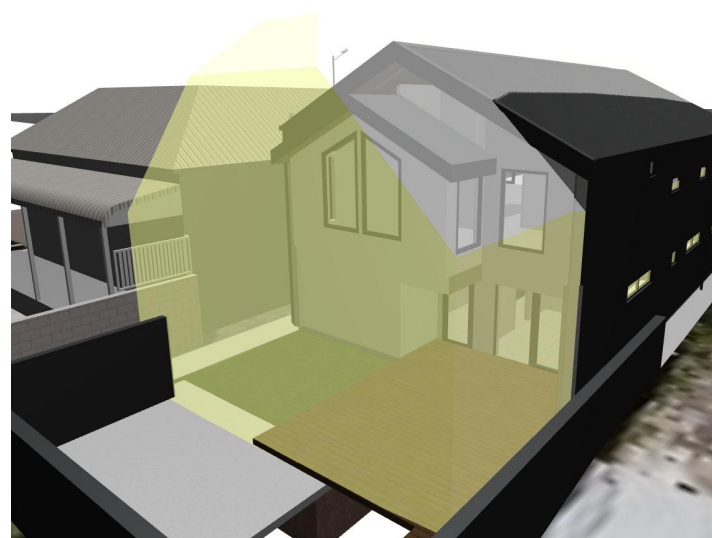
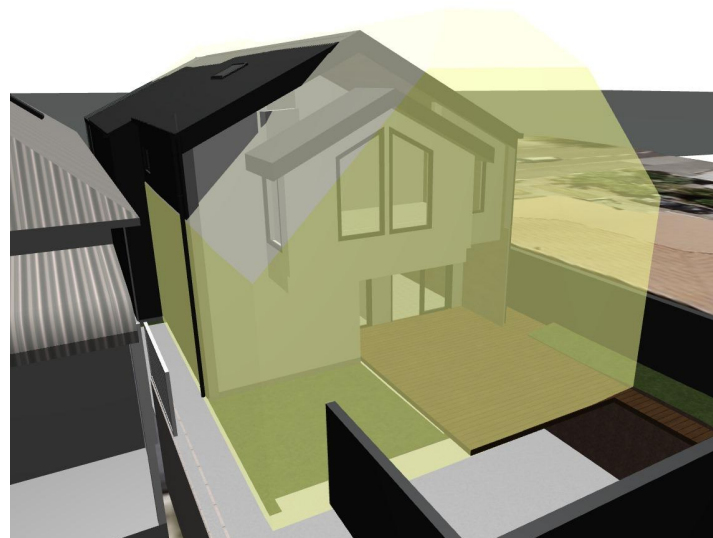
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Scale 1:50



## SECTION B

Scale 1:50



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NOTE: ALL DIMENSIONS MUST BE CHECKED AND CONFIRMED ON SITE.

Scale @ A1: 1:50, 1:200

RC-3R4

Janine and Sing Cheng  
69 Hardinge Road, Ahuriri, Napier  
**Cheng House**

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 t. (06) 844 0223 f. (06) 844 0580  
 26 Guppy Road | PO Box 5058  
 Greenmeadows, NAPIER  
[www.studio26architects.co.nz](http://www.studio26architects.co.nz)

STUDIO 215 ARCHITECTS



## **Attachment B – Updated Affected Party Approvals**

**Item 1 Attachment 8**

## WRITTEN APPROVAL OF AFFECTED PERSONS



**NAPIER**  
CITY COUNCIL  
Te Kaunihara o Ahuriri

### PART A (completed by applicant)

#### Part A - APPLICATION

Applicants Name (in full)	Janine and Sing Chen
Address of proposed activity	69 Hardinge Road, Ahuriri
Consent Number (if known)	RM210183

Brief description of proposed activity:

Demolition of the existing dwelling, associated site works and the construction of a new dwelling and swimming pool.

Plan references (including title, author and date):

Plans titled Cheng House, Janine and Sing Cheng, 69 Hardinge Road, Ahuriri, plan references RC-R4, RC-2R4 and RC-3R4 dated Thursday 21st July 2022.

Resource consent(s) being sought for (describe area(s) of non-compliance):

The proposal infringes the height in relation to boundary plane and yard setbacks along both the eastern and western side boundaries (with 68 and 70 Hardinge Road). The proposal also does not meet the minimum open space requirement of 40% and requires consent to remove the existing dwelling.

### PART B (completed by person/s and/or organisations providing written approval)

#### Part B - AFFECTED PERSON(S)

Full Name	ROBERT THOMAS JONES
Full Name	
Full Name	
Address of affected property	156 Waghorn Street, Ahuriri
Phone:	0275 078 999



**Part B - AFFECTED PERSON(S) (continued)**

I have authority to sign on behalf of all the other:

☐ OWNER(S)      ☐ OCCUPIER(S)

of the property. Please provide documentation proving this authority.

Please note: the approval of all the legal owners and the occupiers of the affected property may be necessary.

### PART C (to be completed by persons and/or organisations providing written approval)

**Part C - DECLARATION**

☐ I/We have been given details of the proposal and plans to which I/we are giving written approval.

☐ I/We have signed each page of the plans in respect of this proposal. These need to accompany this form.

☐ I/We understand that by giving my/our written approval, the Council when considering the application cannot take account of any actual or potential effects of the activity on my/our property.

☐ Further, I/we understand that at any time before the determination of the application, I/we may give notice in writing to the Council that this approval is withdrawn.

*Note: You should only sign below if you fully understand the proposal. If you require the resource consent process to be explained you can contact the Duty Planner at the Council who can provide you with information phone: 06 835 7579*

Signature(s):



Signature(s):

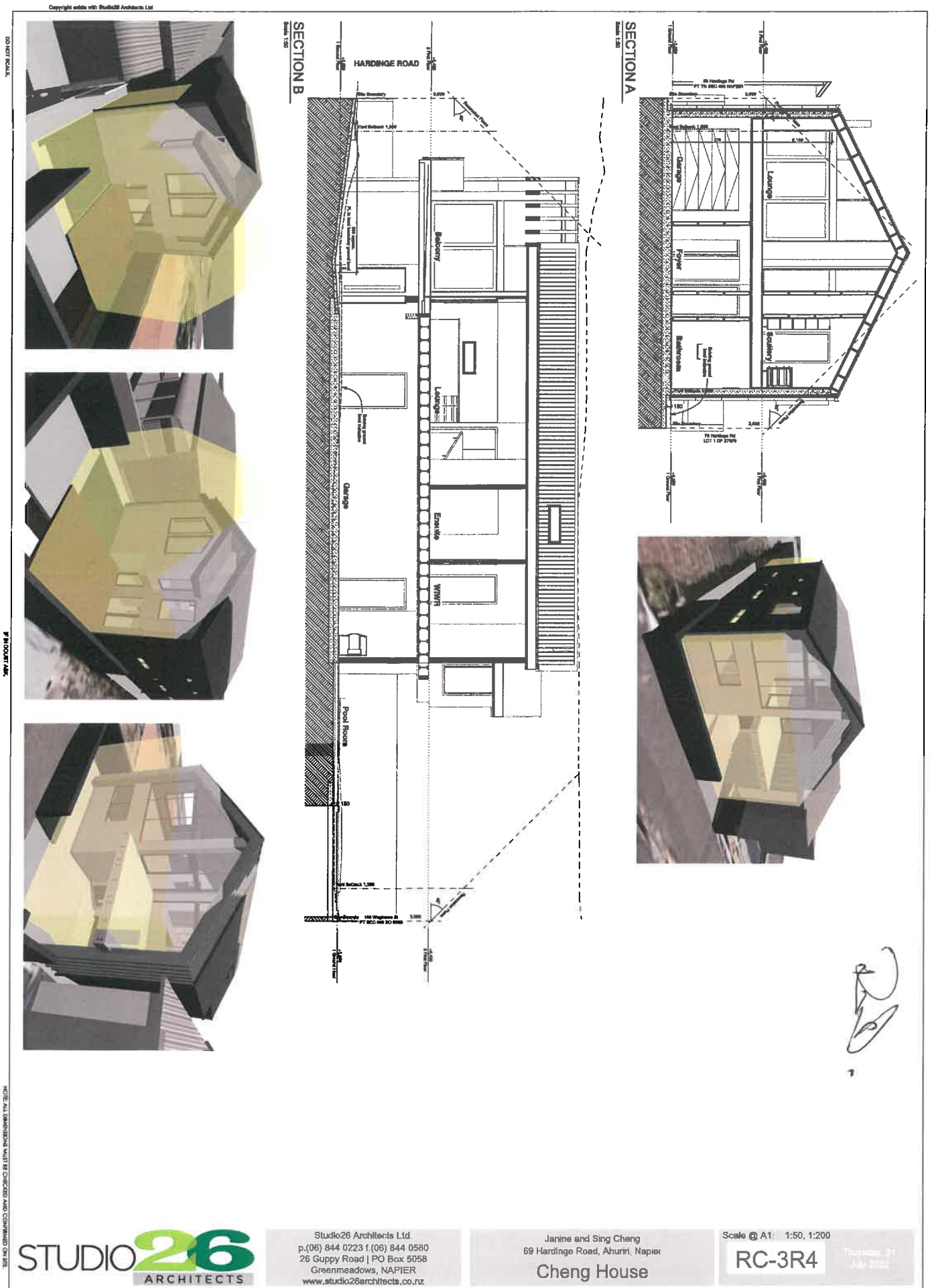
Signature(s):

**PRIVACY INFORMATION**

The council requires the information you have provided on this form to process your application under the RMA and to collect statistics. The council will hold and store the information, including all associated reports and attachments, on a public register. The details may also be made **available to the public on the council's website. These details are collected to inform the general public and community groups about all consents which have been processed or issued through the council.** If you would like to request access to, or correction of any details, please contact the council.









## WRITTEN APPROVAL OF AFFECTED PERSONS



**NAPIER**  
CITY COUNCIL  
*Te Kaunihera o Ahuriri*

### PART A (completed by applicant)

#### Part A - APPLICATION

Applicants Name (in full)	Janine and Sing Chen
Address of proposed activity	69 Hardinge Road, Ahuriri
Consent Number (if known)	RM210183

Brief description of proposed activity:

Demolition of the existing dwelling, associated site works and the construction of a new dwelling and swimming pool.

Plan references (including title, author and date):

Plans titled Cheng House, Janine and Sing Cheng, 69 Hardinge Road, Ahuriri, plan references RC-R4, RC-2R4 and RC-3R4 dated Thursday 21st July 2022.

Resource consent(s) being sought for (describe area(s) of non-compliance):

The proposal infringes the height in relation to boundary plane and yard setbacks along both the eastern and western side boundaries (with 68 and 70 Hardinge Road). The proposal also does not meet the minimum open space requirement of 40% and requires consent to remove the existing dwelling.

### PART B (completed by person/s and/or organisations providing written approval)

#### Part B - AFFECTED PERSON(S)

Full Name	Brian and Shirley Lucas and Heretaunga Trustees 2012 Ltd
Full Name	
Full Name	
Address of affected property	70 Hardinge Road, Ahuriri
Phone:	021 582 272

**Part B - AFFECTED PERSON(S) (continued)**

I have authority to sign on behalf of all the other:

☒ OWNER(S)      ☐ OCCUPIER(S)

of the property. Please provide documentation proving this authority.

Please note: the approval of all the legal owners and the occupiers of the affected property may be necessary.

### PART C (to be completed by persons and/or organisations providing written approval)

**Part C - DECLARATION**

☒ I/We have been given details of the proposal and plans to which I/we are giving written approval.

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☒ I/We understand that by giving my/our written approval, the Council when considering the application cannot take account of any actual or potential effects of the activity on my/our property.

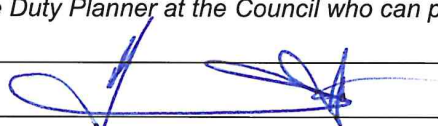
☒ Further, I/we understand that at any time before the determination of the application, I/we may give notice in writing to the Council that this approval is withdrawn.

*Note: You should only sign below if you fully understand the proposal. If you require the resource consent process to be explained you can contact the Duty Planner at the Council who can provide you with information phone: 06 835 7579*

Signature(s):

Signature(s):

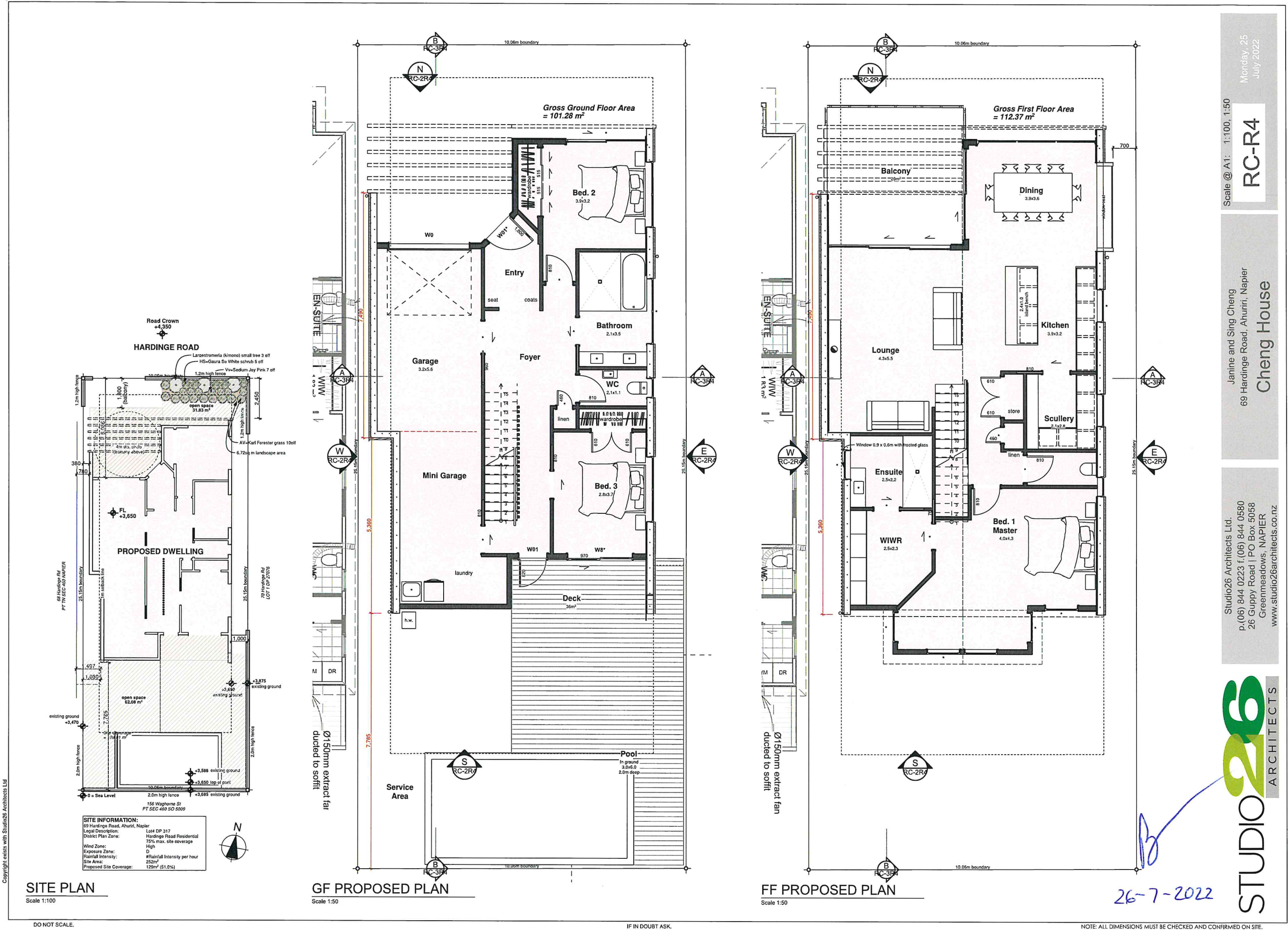
Signature(s):

 26-7-2022

**PRIVACY INFORMATION**

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26-7-2022





## Item 1 Attachment 8



RC-3R4

Janine and Sing Cheng  
69 Hardinge Road, Ahuriri, Napier  
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STUDIO 26 ARCHITECTS

26-7-2022





**From:** Local Governance  
**Sent:** Tuesday, 26 July 2022 07:55  
**To:** Deputy Mayor Annette Brosnan; Councillor Nigel Simpson  
**Subject:** Info from Martin Williams - re 70 Hardinge Road  
**Attachments:** RM220006-decision report.pdf

Good morning

Please see the email below and photo received from Martin Williams (for the submitter) regarding the original window at 70 Hardinge Road. Mr Williams has also forwarded the planning report undertaken on 70 Hardinge Road – this report was also circulated at the hearing on 18 July 2022.

Kind regards

**GOVERNANCE TEAM**

*On behalf of the Privacy Officer*

Napier City Council, Private Bag 6010, Napier 4110

t +64 6 835 7579 [www.napier.govt.nz](http://www.napier.govt.nz)



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**From:** Martin Williams <[martin@shakespearechambers.co.nz](mailto:martin@shakespearechambers.co.nz)>  
**Sent:** Friday, July 22, 2022 5:34:38 PM  
**To:** Kathryn Hunt <[kathrynh@napier.govt.nz](mailto:kathrynh@napier.govt.nz)>  
**Cc:** Pip Beachen <[Pip@stradegy.co.nz](mailto:Pip@stradegy.co.nz)>  
**Subject:** 69 Hardinge road

Caution: This email originated from outside Napier City Council. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Cathryn.

At the hearing on Monday I undertook to send through to the Hearings Committee the photograph referred to by Mr Christie of the original windows in the bedroom as replaced in the renovation, and the report regarding 70 Hardinge road I referred to in submissions (noting the paragraph on page 8 under the heading "Heritage Values").

These references are below and attached.

Regards

**From:** Martin Williams <[martin@shakespearechambers.co.nz](mailto:martin@shakespearechambers.co.nz)>  
**Sent:** Wednesday, 20 July 2022 3:38 PM  
**To:** Martin Williams <[martin@shakespearechambers.co.nz](mailto:martin@shakespearechambers.co.nz)>  
**Subject:**



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



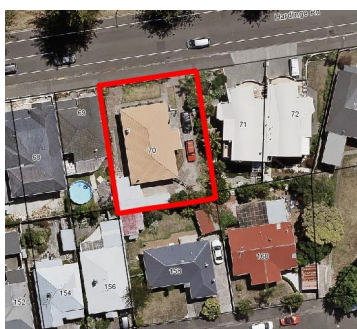
**NAPIER**  
CITY COUNCIL  
Te Kaunihera o Ahuriri

Discretionary Activity Dwelling - Internal Yards, Height in Relation to Boundary, Removal of a Group 3A Heritage Item

## 1. Application description

Application number:	RM220006
Applicant:	Brian Lucas
Site address:	70 Hardinge Road Napier
Legal description:	Lot 1 DP 27076
Site area:	528m <sup>2</sup>
<b>Napier Operative District Plan</b>	
Zoning:	Hardinge Road Residential
Overlays, controls, special features, designations, etc:	Hardinge Road Character Area Port Noise Boundary Group 3A Heritage Item Very High Relative Earthquake Amplification Medium Liquefaction Vulnerability. Sea Spray.

## 2. Locality Plan



Source: Napier City Council IntraMaps

## 3. The proposal, site and locality description

### Proposal

The proposal entails the two-stage redevelopment of the subject site entailing the removal of an existing dwelling, preparatory site works (stage 1) and the subsequent construction of one new dwelling (stage 2).

The proposed two level dwelling will encompass a gross floor area (GFA) of 330m<sup>2</sup>, which includes ground floor (GFA 175m<sup>2</sup>) accommodating double garaging, laundry/storage and three bedrooms, whilst the upper level (GFA 147m<sup>2</sup>) will contain kitchen, living, one bedroom and a 53m<sup>2</sup> deck extending across the northern/front and western/side. An additional 64m<sup>2</sup> area of north facing outdoor living is also at ground floor level adjacent bedrooms 1 and 2.

Vehicle access to the site which is partially overhung by the first floor western deck, is provided adjacent the western side boundary with parking provided to the rear, south east corner of the site which is unusual for this area where most parking is provided adjacent to the front boundary due to constraints created by site configuration. The single level garage, which is attached to the dwelling, is located to the rear of the site whilst the two level portion of the dwelling is set back approximately 8m from the rear boundary

It is proposed to service the site with three waters connections that serve the existing dwelling and this approach is supported by Councils Development and Standards Team.

The application acknowledges that due to the site's likely occupation prior to 1900, an Archaeological Authority may be required to be obtained from Heritage New Zealand prior to any site or building works commencing.

### Site and surrounding environment description

Matthew Morley of Strategy Planning Limited has provided a description of the proposal and subject site on pages 3-5 of the Assessment of Environmental Effects (AEE) entitled, 'Resource Consent Application for Land Use-70 Hardinge Road Ahuriri, Napier'.

Having undertaken a site visit on 18 February 2022, I concur with that description of the proposal and the site and have no further comment.

## 4. Background

### Specialist Input

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

- Councils Development and Standards Team have assessed the proposal and have provided their support as it is considered that the proposed development can be serviced from Councils existing infrastructure and adequate provision has been made for safe ingress and egress of vehicle to and from the site. Appropriate conditions have been provided.
- Councils Urban Design Lead has assessed the application in terms of its urban design response and states that the proposed house design is considered relatively positive in terms of urban design outcomes, with architectural relief provided by way of stepped rooflines, façade modulation, and a good proportion of windows / doors overlooking the street along the northern façade providing much important streetscape activation from the second storey, all of which enhance the overall amenity of the building and contribute positively to the streetscape. It is also a positive outcome to have the garage located to the rear of the s, ensuring that the street interface is not dominated by a garage door. The only criticism is the largely inactive frontage at ground level, due to the high windows on the facade in combination with the block wall/fence along the boundary. To mitigate the impact of this from Hardinge Road it is recommended that landscape planting be incorporated under the windows and/or along the inside of the boundary



fence to soften the overall appearance of the house at ground level. A condition is to imposed to this effect.

- Councils Strategic Planning Lead has assessed the proposal in terms of heritage matters and although this property lies within the Hardinge Road Character Area, the dwelling has not been identified in the original Salmond Reed report as being one of representational value. Additionally, although the property is included in the Draft District Plan Ahuriri Spit Special Character Precinct, the loss of the neighbouring dwelling, and the introduction of the NPS-UD has meant that Council will be re-assessing what areas it will look to protect. It is likely that there will be limited justification to protect any properties along Hardinge Road. Therefore, it is not considered that there is sufficient justification to prevent the demolition of the existing dwelling on-site.

## 5. Reasons for the application

### The operative plan provisions

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

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

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

In this instance the proposal entails the following components:

- The removal of a dwelling which is identified as a Group 3A heritage item by virtue of its location within the Hardinge Road Character Area requires Resource Consent approval as a Discretionary Activity pursuant to District Plan Rules 8.8 and 56.17.
- The proposed replacement dwelling has eaves located 0.972m and 0.74 respectively, from its western and eastern side boundaries rather than 1m as required by Rule 8.16 and this aspect requires Resource Consent as a Restricted Discretionary Activity under Rule 8.12.
- The dwelling also infringes the height in relation to boundary control at the two side boundaries and at the Hardinge Road frontage (Rule 8.18) and this aspect requires Resource Consent as a Restricted Discretionary Activity under Rule 8.12.
- The dwelling complies in all other respects with specified District Plan conditions in relation to front yard, site coverage, maximum height, open space, parking and access, landscapes area and earthworks.

### Resource consent is required for the following reasons:

- Rule 8.16 (1) (b)-Internal Yards
- Rule 8.18-Height in Relation to Boundary
- Rule 8.8-Heritage

### Land use consent (s9) RM220006

#### Napier Operative District Plan

##### *Hardinge Road Residential Zone 8.16 Yards*

1. The following yard conditions shall apply to all land uses:

a. Front Yards

i. Any part of a building must not be erected closer than 1 metre to the road boundary, except that:

- Eaves, fascias, gutters, down pipes, chimneys and flues may encroach on the front yard by a distance of up to 1 metre measured horizontally.
- Any part of a garage/carport must not be erected closer than 5m to the road boundary, in order to provide a vehicle standing bay. (Refer to Rule 61.16).

b. Other Yards

i. Any part of a building (including eaves and guttering) must not be erected closer than 1 metre to a side or rear site boundary.

- Provided that where this is the only condition infringement and the written approval of the adjacent landowner(s) is provided at building consent stage, a resource consent application will not be necessary.

ii. Any part of a building, fence or permanently fixed structure must not be erected closer than 6 metres from the top of the bank of any watercourse or open drain.

##### *Hardinge Road Residential Zone 8.18 Height in Relation to Boundary*

1. The following height in relation to boundary conditions shall apply to all land uses:

a. Any part of a building or structure must not project beyond a building envelope constructed by drawing planes along all parts of all site boundaries. The planes must commence 3.0 metres above ground level at the site boundary and must be inclined to the horizontal at an angle of 45 degrees.

b. Provided that:

i. In relation to multi-unit development, the building envelope must be constructed by drawing planes along all parts of all building site boundaries and must commence at the building site boundary.

ii. The height in relation to boundary control does not apply to the length of common wall between two or more attached buildings.

iii. Where the site abuts an entrance strip or access lot, the furthest boundary of the entrance strip or access lot may be deemed to be the site boundary for the purpose of applying the height in relation to boundary control.

iv. No account must be taken of aerials, lines, support structures, solar heating devices, air conditioning units and similar structures housing electronic or mechanical equipment or chimneys no more than 1 metre wide in any horizontal direction and less than 2.5 metres in height beyond the building envelope.

#### *Hardinge Road Residential Zone 8.28 Heritage*

1. The relevant provisions of Chapter 56 (Heritage) of this Plan must be complied with.

#### *Hardinge Road Residential Zone 8.12 Land Uses Not Complying With Conditions*

1. Any subdivision, use or development of land referred to in Rules 8.2 to 8.11 that does not comply with all of the relevant conditions in the Hardinge Road Residential Zone activity table and condition table, is a restricted discretionary activity, unless stated by a rule elsewhere in this Chapter.

#### *Heritage 56.17 Discretionary Activities*

1. The following land uses are discretionary activities. A resource consent application must be made and consent may be declined or granted with or without conditions. The Council will have regard to the objectives and policies of this Plan and the relevant assessment criteria elsewhere in this Plan. The Council's discretion is unrestricted.

- a. The internal and/or external alteration (excluding safety alterations), relocation and/or demolition of any Group 1 heritage item.
- b. The demolition, including partial demolition, or relocation of any Group 2 heritage item.
- c. The demolition, excluding partial demolition, or relocation of a Group 3A heritage item.

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

The AEE includes an assessment under the provisions of the NES-CS which concludes that there is no evidence available to suggest that a HAIL activity has or is likely to have occurred upon the site, with this assertion made after reviewing Council property files and historic aerial photography. Council concurs with this assessment given that the site has also been used for residential purposes since the early 1900's and thus the proposal does not require any additional consents under the NES-CS.

The reasons for consent are considered together as a Discretionary Activity overall.

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

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

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

No mandatory notification is required as:

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

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

The application is not precluded from public notification as:

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

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

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

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

Only those effects that relate to matters that are within the council's discretion under the rules [are considered in this assessment. These matters are:

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

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

The applicants consultant has provided, in accordance with schedule 4 of the RMA, an assessment of adverse environmental effects in such detail as corresponds with the scale and significance of the effects that the activities may have on the environment. This can be found on pages 15-22 of the AEE. The AEE also includes a notification assessment contained on pages 22-23.

I concur with this assessment.

The AEE concludes that overall the actual and potential effects of the proposal on the receiving environment are considered to be less than minor, with this conclusion based around an assessment of the proposal in relation to relevant District Plan assessment criteria for the heritage and residential environments and in relation to the specific matters identified for non-compliance with District Plan conditions (i.e. yards and height in relation to boundary). The AEE specifies that the existing dwelling is not representative in style of the pre-1900 era typical of the area and its retention is not warranted, whilst the design and character of the proposed dwelling is sympathetic



with the existing form of development in the area. The dwelling will not dominate the streetscape and its design and layout will reduce impacts upon properties located to immediately to the south. The notification assessment concludes that for these reasons, public notification is not warranted under Section 95A RMA.

### Effects that must be disregarded

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

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

Address
69 Hardinge Road
70 Hardinge Road
156 Waghorne Street
158 Waghorne Street
160 Waghorne Street

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

The following persons have provided their written approval and any adverse effects on them have been disregarded:

Address	Legal Description	Owner
69 Hardinge Road	Lot 4 DDP 317	S & J Cheng
71 Hardinge Road	Lot 1 DP 26915	B & S Lucas

### Effects that may be disregarded

#### Permitted baseline

The permitted baseline refers to the effects of permitted activities on the subject site. The permitted baseline may be taken into account and Council has the discretion to disregard those effects where an activity is not fanciful. In this case the permitted baseline is not considered relevant and has not been applied, given the removal or a Group 3A heritage item is not permitted. However, the permitted baseline has been used as a tool more generally to help provide context to the assessment, particularly regarding permitted bulk and location relating to the establishment of a new dwelling on the site.

## Assessment

### Receiving environment

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

The site is located within the Hardinge Road Residential zone where residential activities are permitted subject to compliance with performance standards/conditions. The zone description for the Hardinge Road Residential Zone states:

*The Hardinge Road Residential Zone applies to those properties fronting Hardinge Road and Waghorne Street. Some of the oldest buildings in the Ahuriri area lie on Hardinge Road, tightly grouped and close to the road. The early cottages are small in scale and simple in form. The traditional character of the Hardinge Road area is low rise, with spaces between small buildings being comparatively small. Many original buildings sit right on the road edge or have very narrow front yards. Traditionally, roof forms were simple gables or hips with lean-to verandas facing the road.*

*In recent times, very intensive new development has begun to replace the historic cottages, resulting in a mix of old and new styles. The Council considers that provision for intensive development should be maintained to enable development to take advantage of the waterfront location while recognising the historic character of the area.*

The site is located within the Hardinge Road Character Overlay, and thus the existing dwelling is considered a Group 3A Heritage Item. Group 3A Heritage items are those buildings which contribute as a group, or by a recognised style, to the character of Ahuriri. The Council will encourage the protection of this character. It includes the Hardinge Road Character overlay.

There are no unimplemented resources consents that require consideration within the existing environment. A Resource is currently being processed by Council in relation to a new dwelling at 69 Hardinge Road, though this application is subject to notification and no decision has yet been issued.

### Heritage Values

The existing dwelling is located within the Hardinge Road Character Area but is not individually protected nor included within Appendix 13 of the District Plan (Protected Heritage Items). The dwelling has not been identified in the original Salmond Reed heritage report as being one of representational value, in terms of it being of a particular style or type identified in the Port Ahuriri Heritage Study (Salmond Reed Architects). The site was likely occupied pre-1900 and thus it is likely that an archaeological authority will be need to be obtained from Heritage New Zealand.

The overall Hardinge Road streetscape perspective has changed significantly over the years, with many original dwellings having been removed and replaced with modern contemporary dwellings which maximise their sites potential and location and provide significantly higher levels of amenity

for their occupants in terms of functional and private recreational areas, car parking provision and superior building design and durability. Additionally, although the property is included in the Draft District Plan Ahuriri Spit Special Character Precinct, the loss of the neighbouring dwelling, and the introduction of the NPS-UD has meant Council will be re-assessing what areas will be protected in the short term and it is likely that there will be limited justification to protect any properties along Hardinge Road.

In light of the above, it is not considered that the removal of this dwelling will result in adverse effects that are more than minor on the wider area and does not warrant public notification. Remedial works and associated financial cost to bring the existing dwelling up to a standard that meets the applicants aspirations would be significant.

### Character and Amenity

The proposal will introduce a new building into the Hardinge Road streetscape with potential for adverse impacts upon the wider streetscape and visual amenity, privacy, outlook, shading and loss of heritage values. It is considered that the proposal will result in less than minor effects in this respect upon the wider environment for the following reasons:

- Any adverse impact in terms of loss of sunlight/shading will not extend beyond the subject site and upon those persons who have provided written approval. The applicant has obtained written approval from the owners of 69 and 71 Hardinge Road and as such any adverse effects of the proposal on these adjacent landowners has been disregarded. The height infringement affecting the Hardinge Road frontage is minor in extent and any adverse effects less than minor. Any adverse impact upon other boundaries are also minor but will be canvassed further under Section the 95E assessment.
- There are no adverse impacts in terms of privacy and outlook upon the wider environment associated with the proposal.
- The proposed dwelling is of a contemporary style and is compatible with the design and scale of development occurring on Hardinge Road. The dwelling maximises the northern portion of the site in order to take advantage of its coastal setting and to maximise solar gains. The new dwelling will provide improved levels of privacy for its occupants with primary living located at first floor level, whilst the location of all vehicle parking to the rear of the site will provide positive benefits for streetscape amenity with the exclusion of a garage door fronting the street.

### Reverse Sensitivity

The property is located within the (outer) Port Noise Boundary and will thus be required to comply with specified District Plan controls in relation to acoustic insulation in order to avoid and mitigate any adverse noise impacts associated with the operations of the Port of Napier.

### Infrastructure

The activity can utilise existing service connections which is supported by Council and thus any adverse impact upon the wider infrastructural network as a result of this new dwelling will be less than minor.

### Step 4: Public notification in special circumstances

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

Special circumstances are those that are:

- Exceptional, abnormal or unusual, but something less than extraordinary or unique;
- outside of the common run of applications of this nature; or
- circumstances which make notification desirable, notwithstanding the conclusion that the activities will not have adverse effects on the environment that are more than minor.

In this instance I have turned my mind specifically to the existence of any special circumstances and conclude that there is nothing exceptional or unusual about the application, and that the proposal has nothing out of the ordinary realm to suggest that public notification should occur.

### Public notification conclusion

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

- Under step 1, public notification is not mandatory.
- Under step 2, there is no rule or NES that specifically precludes public notification of the activities, and the application is for activities other than those specified in s95A(5)(b).
- Under step 3, public notification is not required as the application is for activities that are not subject to a rule that specifically requires it, and it is considered that the activities will not have adverse effects on the environment that are more than minor.
- Under step 4, there are no special circumstances that warrant the application being publicly notified.

It is therefore recommended that this application be processed without public notification.

## 7. Limited notification assessment (sections 95B, 95E-95G)

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

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

There are no protected customary rights groups or customary marine title groups affected by the proposed activities (s95B(2)).

In addition, the council must determine whether the proposed activities are on or adjacent to, or may affect, land that is subject of a statutory acknowledgement under schedule 11, and whether the person to whom the statutory acknowledgement is made is an affected person (s95B(3)). Within the Napier region the following statutory acknowledgements are relevant:



In this instance, the proposal is not on or adjacent to and will not affect land that is subject to a statutory acknowledgement (when applicable), and will not result in adversely affected persons in this regard.

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

The application is not precluded from limited notification as:

- the application is not for one or more activities that are exclusively subject to a rule or NES which preclude limited notification (s95B(6)(a)); and
- the application is not exclusively for a controlled activity, other than a subdivision, that requires consent under a district plan (s95B(6)(b)).

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

As this application is not for a boundary activity, there are no affected persons related to that type of activity (s95B(7)).

The following assessment addresses whether there are any affected persons that the application is required to be limited notified to (s95B(8)).

In determining whether a person is an affected person:

- a person is affected if adverse effects on that person are minor or more than minor (but not less than minor);
- adverse effects permitted by a rule in a plan or NES (the permitted baseline) may be disregarded;
- the adverse effects on those persons who have provided their written approval must be disregarded; and

### Adversely affected persons assessment (sections 95B(8) and 95E)

The applicants consultant has provided in accordance with schedule 4 of the RMA, an assessment of adversely affected persons in such detail as corresponds with the scale and significance of the effects that the activities may have on persons in the surrounding environment.

The AEE concludes that overall the actual and potential effects of the proposal on the receiving environment are considered to be less than minor, with this conclusion based around an assessment of the proposal in relation to relevant District Plan assessment criteria for the heritage and residential environments and in relation to the specific matters identified for non-compliance with District Plan conditions (i.e. yards and height in relation to boundary). The AEE specifies that the existing dwelling is not representative in style of the pre-1900 era typical of the area and its retention is not warranted, whilst the design and character of the proposed dwelling is sympathetic with the existing form of development in the area. The dwelling will not dominate the streetscape and its design and layout will reduce impacts upon properties located to the south. The notification assessment concludes that public notification is not warranted under Section 95A RMA.

Overall, I agree with the AEE and conclude that limited notification of the application is not warranted given adverse effects on the adjacent land will be less than minor for the following reasons:

- Written consent has been obtained from the owners of 69 and 71 Waghorne Street and thus any potential adverse effects on these properties is now disregarded
- With regards to potential adverse effects on remaining adjacent land, these properties are located to the south (rear) of the subject site and encompass 156, 158 and 160 Waghorne Street. It is considered that any adverse effect upon these properties associated with infringements in relation to internal yards and height in relation to boundary (HIRB) will be less than minor.
- 156 Waghorne Street-this site is located to the south-west of the subject site. The HIRB and internal yard infringement affecting the western boundary of the subject site will have no impact upon 156 Waghorne Street in terms of loss of sunlight/shading, outlook, privacy, and amenity values. A portion of the eave of the dwelling is located 972mm the west side boundary (an infringement of 28mm), whilst the upper story deck enclosure has a vertical HIRB infringement of 2.65m over a length of 10m. Given the minor scale of the yard infringement and the separation of the infringing portions of the dwelling from 156 Waghorne Street, any adverse impact will be negligible. The two level portion of the proposed dwelling is located in the northern portion of the site and its height reduces to a single level structure approximately 10m from the rear boundary thus further reducing its visual bulk and any associated effects in relation to shading, privacy.
- 160 Waghorne Street-this site is located to the south-east of the subject site. The HIRB and internal yard infringement affecting the eastern boundary of the subject site will have no impact upon 160 Waghorne Street in terms of loss of sunlight/shading, outlook, privacy, and amenity values. A portion of the eave of the dwelling is located 740mm from the east side boundary, an infringement of 260mm, whilst a 15m length of the dwelling has a vertical HIRB infringement of 2.15m over a length of 15m. Given the minor scale of the yard infringement and the separation of the infringing portions of the dwelling from 160 Waghorne Street, any adverse impact will be negligible. The two level portion of the proposed dwelling is located in the northern portion of the site and its height reduces to a single structure approximately 10m from the rear boundary thus further reducing its visual bulk.
- 158 Waghorne Street-this site is located immediately to the rear of the subject site and with a common boundary of 20m in length. The eave of the proposed garage is located 1.5m from this rear boundary, whilst the dwelling itself is located approximately 10m from this common boundary. There is no infringement of yard or HIRB controls on this southern boundary. The HIRB and internal yard infringements along the eastern and western boundaries will be visible to the landowner at 158 Waghorne Street. The adverse effect of additional bulk within the two side yards will be less than minor given the west side boundary is infringed by 28mm by a portion of first level eave over a length of 10m and the western side boundary has a 260mm infringement created by an eave over a distance of 14m. These portions of the building are located 16m and 1.5m from the southern boundary, respectively and any adverse effect in this respect will be largely indiscernible when compared to that of a fully complying development. Any adverse effect associated with the HIRB infringements affecting the two side boundaries will also be less than minor. The HIRB infringements are confined to the upper level portion of the dwelling which is located in the northern half of the site, with nearest portion of the upper level portion and associated HIRB infringements being located between 8-10m from the rear boundary. Any loss of

morning sunlight will be negligible and indiscernible from that created by the complying bulk of the building. Any adverse effect is further mitigated by the nature of the HIRB infringement on the west boundary, which is characterised by a portion of eave and a screen which provides privacy and shelter to the west facing, upper level deck and presents as a more lightweight, diffuse structure where daylight is still able to penetrate.

- Any adverse impact upon adjacent land as a result of the removal of a Group 3A heritage item will be less than minor upon adjacent land, given approval has been obtained from the owners of 69 and 71 Hardinge Road.

#### Step 4: further notification in special circumstances

In addition to the findings of the previous steps, the council is also required to determine whether special circumstances exist in relation to the application that warrants it being notified to any other persons not already determined as eligible for limited notification (excluding persons assessed under section 95E as not being affected persons).

Special circumstances are those that are:

- Exceptional, abnormal or unusual, but something less than extraordinary or unique;
- outside of the common run of applications of this nature; or
- circumstances which make limited notification to any other person desirable, notwithstanding the conclusion that no other person has been considered eligible.

In this instance I have turned my mind specifically to the existence of any special circumstances under s95B(10) and conclude that there is nothing exceptional or unusual about the application, and that the proposal has nothing out of the ordinary run of things to suggest that notification to any other persons should occur.

#### Limited notification conclusion

Having undertaken the s95B limited notification tests, the following conclusions are reached:

- Under step 1, limited notification is not mandatory.
- Under step 2, there is no rule or NES that specifically precludes limited notification of the activities, and the application is for activities other than those specified in s95B(6)(b).
- Under step 3, limited notification is not required as it is considered that the activities will not result in any adversely affected persons.
- Under step 4, there are no special circumstances that warrant the application being limited notified to any other persons.

It is therefore recommended that this application be processed without limited notification.

## 8. Notification determination

Acting under delegated authority, and for the reasons set out in the above assessment and recommendation, under sections 95A and 95C to 95D, and 95B and 95E to 95G of the RMA this application shall be processed non-notified.



Paul O'Shaughnessy  
Principal Resource Consent Planner  
City Strategy

Date: 7 March 2022



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

### Discretionary Activity Dwelling - Internal Yards, Height in Relation to Boundary, Removal of a Group 3A Heritage Item

**Application number:** RM220006  
**Applicant:** Brian Lucas  
**Site address:** 70 Hardinge Road Napier  
**Legal description:** Lot 1 DP 27076

**Proposal:** The proposal entails the two stage redevelopment of the subject site entailing the removal of an existing dwelling, preparatory site works and the subsequent construction of one new dwelling.

The proposed two level dwelling will encompass a gross floor area (GFA) of 330m<sup>2</sup>, which includes ground floor (GFA 175m<sup>2</sup>) accommodating double garaging, laundry/storage and three bedrooms, whilst the upper level (GFA 147m<sup>2</sup>) will contain kitchen, living, one bedroom and a 53m<sup>2</sup> deck extending across the northern/front and western/side. An additional 64m<sup>2</sup> area of north facing outdoor living is also at ground floor level adjacent bedrooms 1 and 2.

Vehicle access to the site which is partially overhung by the first floor western deck, is provided adjacent the western side boundary with parking provided to the rear, south east corner of the site which is unusual for this area where most parking is provided adjacent to the front boundary due to constraints created by site configuration.

It is proposed to service the site with three waters connections that serve the existing dwelling and this approach is supported by Councils Development and Standards Team.

The application acknowledges that due to the site's likely occupation prior to 1900, an Archaeological Authority may be required to be obtained from Heritage New Zealand prior to any site or building works commencing.

#### Resource consent is required for the following reasons:

- Rule 8.16 (1) (b)-Internal Yards
- Rule 8.18-Height in Relation to Boundary
- Rule 8.8-Heritage

## Land use consent (s9) RM220006

### Napier Operative District Plan

#### *Hardinge Road Residential Zone 8.16 Yards*

1. The following yard conditions shall apply to all land uses:

a. Front Yards

i. Any part of a building must not be erected closer than 1 metre to the road boundary, except that:

- Eaves, fascias, gutters, down pipes, chimneys and flues may encroach on the front yard by a distance of up to 1 metre measured horizontally.
- Any part of a garage/carport must not be erected closer than 5m to the road boundary, so as to provide a vehicle standing bay. (Refer to Rule 61.16).

b. Other Yards

i. Any part of a building (including eaves and guttering) must not be erected closer than 1 metre to a side or rear site boundary.

- Provided that where this is the only condition infringement and the written approval of the adjacent landowner(s) is provided at building consent stage, a resource consent application will not be necessary.

ii. Any part of a building, fence or permanently fixed structure must not be erected closer than 6 metres from the top of the bank of any watercourse or open drain.

#### *Hardinge Road Residential Zone 8.18 Height in Relation to Boundary*

1. The following height in relation to boundary conditions shall apply to all land uses:

a. Any part of a building or structure must not project beyond a building envelope constructed by drawing planes along all parts of all site boundaries. The planes must commence 3.0 metres above ground level at the site boundary and must be inclined to the horizontal at an angle of 45 degrees.

b. Provided that:

i. In relation to multi-unit development, the building envelope must be constructed by drawing planes along all parts of all building site boundaries and must commence at the building site boundary.

ii. The height in relation to boundary control does not apply to the length of common wall between two or more attached buildings.

iii. Where the site abuts an entrance strip or access lot, the furthest boundary of the entrance strip or access lot may be deemed to be the site boundary for the purpose of applying the height in relation to boundary control.

iv. No account must be taken of aerials, lines, support structures, solar heating devices, air conditioning units and similar structures housing electronic or mechanical

equipment or chimneys no more than 1 metre wide in any horizontal direction and less than 2.5 metres in height beyond the building envelope.

#### *Hardinge Road Residential Zone 8.12 Land Uses Not Complying With Conditions*

1. Any subdivision, use or development of land referred to in Rules 8.2 to 8.11 that does not comply with all of the relevant conditions in the Hardinge Road Residential Zone activity table and condition table, is a restricted discretionary activity, unless stated by a rule elsewhere in this Chapter.

#### *Hardinge Road Residential Zone 8.28-Heritage*

1. The relevant provisions of Chapter 56 (Heritage) of this Plan must be complied with.

#### *Heritage 56.17 Discretionary Activities*

1. The following land uses are discretionary activities. A resource consent application must be made and consent may be declined or granted with or without conditions. The Council will have regard to the objectives and policies of this Plan and the relevant assessment criteria elsewhere in this Plan. The Council's discretion is unrestricted.

- a. The internal and/or external alteration (excluding safety alterations), relocation and/or demolition of any Group 1 heritage item.
- b. The demolition, including partial demolition, or relocation of any Group 2 heritage item.
- c. The demolition, excluding partial demolition, or relocation of a Group 3A heritage item.

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

The AEE includes an assessment under the provisions of the NES-CS which concludes that there is no evidence available to suggest that a HAIL activity has or is likely to have occurred upon the site, with this assertion made after reviewing Council property files and historic aerial photography. Council concurs with this assessment given that the site has also been used for residential purposes since the early 1900's and thus the proposal does not require any additional consents under the NES-CS.

#### **Decision**

I have read the application, supporting documents, and the report and recommendations on the application for resource consent. I am satisfied that I have adequate information to consider the matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on the application.

Acting under delegated authority, under Sections 104, 104B and Part 2 of the RMA, the resource consent is **GRANTED**.

#### **Reasons**

The reasons for this decision are:

1. In accordance with an assessment under Section 104(1)(a) and (ab) of the RMA, the actual and potential effects from the proposal will be acceptable as:
  - a. The existing dwelling is not individually protected as a heritage item, whilst its design and associated era has not been recognised in the District Plan or the Port Ahuriri Heritage Study (Salmond Reed Architects) as being a dwelling which displays qualities making it of representational value to the area as other pre-1900 dwellings in the area do.
  - b. The proposed dwelling is of a design and scale which is commensurate with the pattern of contemporary residential development that is occurring in the area. The proposed house design is considered relatively positive in terms of urban design outcomes, with architectural relief provided by way of stepped rooflines, façade modulation, and a good proportion of windows and doors overlooking the street along the northern façade providing much important streetscape activation from the second storey, all of which enhance the overall amenity of the building and contribute positively to the streetscape.
  - c. Approval has been obtained from the owners of 69 and 71 Hardinge Road and no other person is considered to be affected by the proposal. The infringements in relation to the side yards are minor in scale with adverse effects largely indiscernible to those associated with a fully complying development.
  - d. Any adverse effect associated with the HIRB infringements affecting the east and west side boundaries will be less than minor, specifically upon 158 Waghorne Street. The proposal does not result in any infringements in relation to this common boundary with the infringing portions of the dwelling being located 10m and 16m, respectively from the common boundary. The two level portion of the dwelling is contained within the northern half of the site and remote from 158 Waghorne Street and thus this separation serving to further mitigate any adverse effects in this respect.
  - e. Although the property is included in the Draft District Plan Ahuriri Spit Special Character Precinct, the loss of the neighbouring dwelling, and the introduction of the NPS-UD has meant we Council will be re-assessing what areas it seeks to protect. It is likely that there will be limited justification to protect any properties along Hardinge Road in the near future.
  - f. In terms of positive effects, the proposal will allow the consent holder to develop an existing residential property in a manner which will allow the construction of a contemporary dwelling which is not inconsistent with the design, scale and location of recent development in the immediate area. The proposal will result in all vehicle parking being located to the rear of the site with associated benefits for streetscape amenity. The activity can be serviced from existing service connections and any impact upon Councils infrastructural assets will be negligible.
  - g. With reference to Section 104(1) (ab), there are no specific offsetting or environmental compensation measures proposed or agreed to by the applicant to ensure positive effects on the environment.
2. In accordance with an assessment under Section 104 (1) (b) of the RMA, the proposal is consistent with the relevant statutory documents. In particular the following policies and objectives are considered relevant:



- Objective 4.2 and policy 4.2.1 (Residential) seeks to enable the diverse housing needs and preferences of the City's residents to be met while ensuring that the adverse effects on the environment of residential land use, development and subdivision are avoided, remedied or mitigated and enable the development of a range of housing types within the urban area and where appropriate, more intensive forms of housing such as papakainga housing and multi-unit development.

Comment: The proposal allows the construction of a new dwelling within an established residential zone which is compatible with that zone in terms of design and scale. The design and location of the dwelling assists in the mitigation of adverse effects associated with infringements of building bulk and location.

- Objective 4.4 (Residential) seeks to ensure that all developments and structures within the City's residential character areas maintain, enhance and are sympathetic to the dominant natural and physical features which contribute to the amenity and character of those areas via policy 4.4.6 which develops land use controls over development along Hardinge Road and Waghorne Street that are less restrictive while recognising the area's diverse building development, the smaller site sizes and the close proximity of many buildings to roads and adjacent sites and to restrict land use and development to maintain and enhance the scale and design of the built environment that contributes to the area's character.

Comment: The proposal is in keeping with the contemporary built form of the Hardinge Road area and also does not compromise the heritage values of nearby pre-1900 era building resources.

- Objective 4.5 (Residential) and policies 4.5.4, 4.5.5 and 4.5.7 which seeks to maintain and enhance those qualities and characteristics that contribute to the wellbeing of the City's residents and the amenity of the residential zones by controlling building bulk and location to ensure it is compatible with that of the surrounding area, maintains adequate levels of sunlight to adjacent properties and provides the occupants of the site with adequate and functional open space.

Comment: The design and location of the dwelling will maintain adequate levels of sunlight to adjacent properties and in particular to that of 158 Waghorne Street which is well separated from infringing portions of the proposed dwelling. Efficient site layout will result in a high level of on-site amenity for the occupants of the subject site with a complying mix of ground and first floor level living.

- Objective 4.8 (Noise) seeks to ensure that all new noise sensitive activities and the addition of a habitable space to existing noise sensitive activities within noise control boundaries are appropriately mitigated against the effects of non-residential activities located outside of the residential environment and is achieved via policy 4.8.3 which require acoustic insulation of new noise sensitive activities and the addition of a habitable space to existing noise sensitive activities where they are located within a noise control boundary such as those surrounding the Port, Airport and Hawke's Bay Expressway.

Comment: The site is located within the (outer) Port Noise Boundary and will be required to comply with District Plan Rule 8.22 (2) which requires acoustic insulation for all new noise sensitive activities within the Port Noise Boundary.

- Objectives 56.2 and 56.3 (Heritage) which seek to identify, conserve and enhance heritage features to ensure that the heritage of the City be reflected in the future and to maintain and enhance the areas of the City that have a recognised special character.

Comment: The removal of the existing dwelling is not expected to compromise the inherent heritage values of the Hardinge Road Character Area as the dwelling is not considered representative of the style or era of heritage buildings in the area. This view is supported by Council and reinforced in the Port Ahuriri Heritage Study (Salmond Reed Architects). Shorter strategic planning advice indicates that although the property is included in the Draft District Plan Ahuriri Spit Special Character Precinct, the loss of the neighbouring dwelling, and the introduction of the NPS-UD has meant that Council will be re-assessing what areas it will consider to protect. It is likely that there will be limited justification to protect any properties along Hardinge Road and therefore, it is not considered that there is sufficient justification to prevent the demolition of the existing dwelling.

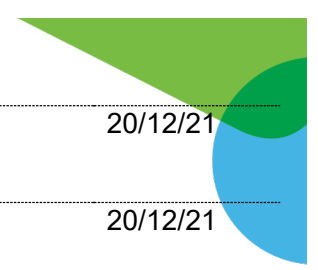
- In accordance with an assessment under Section 104(1) (c) of the RMA, no other matters are considered relevant in the assessment of this application.
- In the context of this discretionary activity application for land use, where the objectives and policies of the relevant statutory documents were prepared having regard to Part 2 of the RMA, they capture all relevant planning considerations and contain a coherent set of policies designed to achieve clear environmental outcomes. They also provide a clear framework for assessing all relevant potential effects and there is no need to go beyond these provisions and look to Part 2 in making this decision as an assessment against Part 2 would not add anything to the evaluative exercise.
- Overall, the proposal is considered to be deserving of approval on a non-notified basis given that any adverse effects will be less than minor, consent has been received from all potentially affected parties and no special circumstance exists that would warrant the notification of the application. The proposal will not undermine objectives and policies in relation to the residential or heritage environments, takes account Part 2 matters and is deserving of approval under Section 104 and 104B of the RMA. Conditions are imposed pursuant to Section 108 RMA.

## Conditions

Under sections 108 and 108AA of the RMA, this consent is subject to the following conditions:

- This consent shall be carried out in accordance with the documents and drawings and all supporting additional information submitted with the application, detailed below, and all referenced by the council as resource consent RM220006.
  - Application Form and Assessment of Environmental Effects prepared by Strategy Planning Limited dated 26 January 2022.

Drawing title and reference	Author	Rev	Dated
Existing and Proposed Site Plans	Studio 26 Architecture	N/A	07/12/21
Proposed Site and Floor Plans RC-1	Studio 26 Architecture	N/A	20/12/21



Elevations-North, East and South RC-2	Studio 26 Architecture	N/A	20/12/21
West Elevation and Sections A and B RC-3	Studio 26 Architecture	N/A	20/12/21
Sections C, D, E and F RC-4	Studio 26 Architecture	N/A	20/12/21
Building Envelopes RC-5	Studio 26 Architecture	N/A	20/12/21

2. Under section 125 of the RMA, this consent shall lapse five years after the date it is granted unless:
  - a. The consent is given effect to; or
  - b. The council extends the period after which the consent lapses.
3. The consent holder shall pay the council an initial consent compliance monitoring charge of \$166.00 (hourly rate) inclusive of GST, plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to this/these consent/s.

#### Advice note:

*The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent(s). In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge. Only after all conditions of the resource consent(s) have been met, will the council issue a letter confirming compliance on request of the consent holder.*

4. All works within the road corridor shall be managed by a contractor operating under a current corridor access request (CAR), made through the [www.beforeudig.co.nz](http://www.beforeudig.co.nz) website and appropriate traffic management. The CAR shall be approved by the Road Controlling Authority prior to the construction works commencing on the site.
5. All engineering works and designs shall be in accordance with the Councils Code of Practice for Subdivision and Land Development or to the satisfaction of the Councils Director of Infrastructure or (nominee).
6. Any service relocations and extensions of Council mains shall be at the expense of the consent holder.
7. That the two existing vehicle crossings shall be closed and removed with the kerb, channel and footpath to be reinstated in accordance with Councils Code of Practice for Subdivision and Land Development.
8. That any new vehicle crossing is to be designed, constructed and inspected in accordance with the Code of Practice for Subdivision and Land Development. The new crossing must

maintain and at-grade (level) pedestrian footpath across the length of the crossing, using the same materials, kerbing, paving, patterns and finish as per the footpath on either side of the new crossing.

9. If the existing kerb and channel or footpaths are damaged during construction then these are to be reinstated in accordance with Councils Code of Practice for Subdivision and Land Development.
10. The best possible means shall be employed to ensure that windblown dust and soil and associated wind erosion is minimised, and that adequate drainage and silt control is in place during and following any movement of earth to avoid, remedy or mitigate any adverse environmental effects.
11. Sediment laden water should not be allowed to leave the site.
12. Any earthworks/storm water works shall meet the requirements of the 'Erosion and Sediment Control Guide for Land Disturbing Activities the Auckland Region' (GD 005) for construction, and 'Water Sensitive Design for Storm Water' (GD004) for operations.
13. All new roof surfaces shall be constructed from inert materials or painted with non-metal based paint and thereafter maintained.
14. All storm water is to be controlled in terms of Councils Code of Practice for Subdivision and Land Development and E1 of the Building Code.
15. Storm water from the proposed development shall drain to the kerb and channel in Hardinge Road in accordance with Councils Code of Practice for Subdivision and Land Development.
16. Waste water discharge and water supply connections to the site shall be re-assessed prior to their re-use.
17. That prior to the issue of Building Consent in relation to the approved dwelling, a landscape plan prepared by a suitably qualified person shall be submitted to Council which details the following:
  - Details of landscape planting that is proposed within the front yard of the site (i.e. the area between the front of the dwelling and the front boundary).
  - The plan shall identify the location, species, numbers and planter bag size of each landscape element proposed.
  - The landscape plan shall be submitted to Council and shall be approved by Councils Principal Planner Resource Consents (or nominee) prior to Building Consent approval
18. The landscaping required by condition 17 shall be implemented prior to the occupation of the dwelling (or within the next planting season) and shall thereafter be maintained and irrigated in perpetuity with any dead or dying plants removed and replaced.
19. The proposed dwelling shall comply fully with District Plan Rule 8.22 (2)-Port Noise.



## Advice notes

1. *That the following procedures (Accidental Discovery Protocol) shall be followed in the event that Koiwi, archaeological features or Taonga are discovered or are suspected to have been unearthed during earthworks or construction phase of site development:*
  - a. *Earthworks should cease immediately in the vicinity of the discovery. It is important that any remains or artefacts are left undisturbed or in-situ once discovered. If it is unclear whether the find is Koiwi, archaeological features or Taonga, the consent holder shall consult a Heritage New Zealand Pouhere Taonga (HNZPT) archaeologist.*
  - b. *The site supervisor/consent holder/agent shall take steps immediately to secure the area so that Koiwi or Taonga remain untouched and site access is restricted.*
  - c. *The site supervisor/consent holder/agent shall ensure that consumption of food and/or drink and/or smoking in the immediate area of the discovery is restricted.*
  - d. *The site supervisor/consent holder/agent will notify the New Zealand Police (in the event of the discovery of Koiwi/skeletal remains only), Heritage New Zealand and*
    - i. *Ngāti Parau - Chad Tareha chadtareha24@gmail.com and/or*
    - ii. *Mana Ahuriri - Joinella Maihi-Carroll joinellamc@gmail.com and/or*
    - iii. *Maungaharuru-Tangitū Trust - Hayley Lawrence hayley@tangoio.maori.nz and/or*
    - iv. *Te Taiwhenua o Te Whanganui a Orutu - Tania Eden taniaeden@xtra.co.nz*
  - e. *Activities on the site will remain on-hold until the Police (in the case of Koiwi), the Kaumatua (or other representative advised by the relevant Māori organisation) and Heritage New Zealand have given approval for works to recommence.*
  - f. *In the case of discovering Koiwi, site access should be restricted to all parties until Police are satisfied the remains are not of forensic relevance.*
  - g. *The site supervisor/consent holder/agent shall ensure that Kaumatua (or other representative advised by the relevant Māori organisation) have the opportunity to undertake Karakia or other cultural ceremonies and activities at the site as may be considered appropriate.*
  - h. *The consent holder shall ensure that no information regarding discoveries of Māori origin is released to the media except as authorised by the relevant Māori organisation/s.*
2. *Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.*
3. *Any Building Consents issued in relation to this site may in future be subject to a notice issued under Section 73 of the Building Act as the property is located within the 1 in 50-year flood hazard area.*
4. *This property has, or is likely to have been occupied prior to 1900. Any disturbance of land, or damage or destruction of any building or structure associated with human activity prior to 1900, may require an archaeological authority from Heritage New Zealand under the Heritage New Zealand Pouhere Taonga Act 2014. Please contact Christine Barnett, Archaeologist at Heritage New Zealand for further information.*

5. *For the purpose of compliance with the conditions of consent, "the council" refers to the council's resource consents and compliance officers unless otherwise specified.*
6. *For more information on the resource consent process with Napier City Council see the council's website: <https://www.napier.govt.nz/> . General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment's website: <https://www.mfe.govt.nz/rma> .*
7. *If you disagree with any of the above conditions, and/or disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).*
8. *The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.*

**Delegated decision maker:**

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

Signed:



Date: 7 March 2022

## Resource Consent Notice of Works Starting

Please email this form to **planning@napier.govt.nz** at least 5 days prior to work starting on your development.

Alternatively deliver to:

**Customer Services** Dunvegan House Ground Floor 215 Hastings Street Napier South  
**Or**

Mail to:

**Attention: Resource Consent Team**

Private Bag 6010

Napier 4142

New Zealand

<b>Site address:</b>	
<b>Resource consent number:</b>	<b>Associated building consent:</b>
<b>Expected start date of work:</b>	<b>Expected duration of work:</b>

Primary contact	Name	Ph No.	Address	Email address
Owner				
Project manager				
Builder				
Earthmover				
Arborist				
Other (specify)				

<b>Signature:</b> Owner / Project Manager (indicate which)	<b>Date:</b>
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Once you have been contacted by the Resource Consent/Compliance Officer, all correspondence should be sent directly to them.

The council will review your property for start of works every three months from the date of issue of the resource consent and charge for the time spent. You can contact your Resource Consent/Compliance Officer on 06 835 7579 or via <https://www.napier.govt.nz/> to discuss a likely timetable of works before the inspection is carried out and to avoid incurring this cost.



## RM210183 – Reporting Officers S42A Report Updated Section 104(1)(b) Assessment – Statutory Provisions

### 1.1 Objectives and Policies of the City of Napier Operative District Plan 2011

1.1.1 The relevant objectives and policies for the current application are included in the following chapters:

- Chapter 56- Heritage
- Chapter 4- Residential

#### 1.1.2 Chapter 56- Heritage

The assessment within Chapter 56 is guided by those definitions of heritage resources in Section 56.6 which outlines an introduction of the rule framework for which heritage resources in the District Plan are managed.

As a Planner, we are tasked with considering not only the specific wording in the Plan, but the 'intent' of the Plan. It is clear that the policy framework is guiding the Planner toward considering a hierarchy of protection for heritage. It is considered that an advocacy area clearly has a lower hierarchy than a Group 1 Heritage Item.

1.1.2.1 **Objective 56.2** and associated policies seek to *identify, conserve and enhance heritage features to ensure that the heritage of the City be reflected in the future.*

1.1.2.2 To achieve objective 56.2, the following relevant policies are applicable to the proposal.

1.1.2.3 **Policy 56.2.2** *Avoid the loss of heritage value associated with heritage resources listed in the Plan.*

In this instance, I consider the heritage value associated with heritage resources listed in the Plan, to include Group 3A Heritage Items that collectively create the character overlay (Hardinge Road Character overlay). There will be a loss in heritage value, so the proposal being to remove the building is not avoiding the loss of heritage value. Having regard to the character overlay, and the remaining features within the overlay there has been a loss of heritage value that has occurred to date.



- 1.1.2.4 **Policy 56.2.3** *Ensure that the adverse effects of land uses on heritage items listed in the Plan are avoided, remedied or mitigated.*

Following additional review, it is not considered that the character area or advocacy overlay is a heritage item in the District Plan. Heritage Items are those items within Appendix 13 – titled Heritage Items. Advocacy Areas are listed in Appendix 13A of the District Plan – titled Ahuriri Advocacy Area.

Therefore, it is not considered policy 56.2.3 is relevant.

- 1.1.2.5 Reporting Office Comment: Group 3A are heritage resources listed in the Plan. The heritage value attributed to Group 3A buildings relate to the contribution such buildings make to the character as a group of buildings rather than individual buildings. The above policies seek to avoid the loss of this heritage value. Any removal of an older building within the overlay will have an inevitable effect on heritage values of the character overlay that has not been avoided.

- 1.1.2.6 **Policy 56.2.4** *Manage heritage on a basis of partnership involving property owners, tangata whenua, heritage agencies, communities and individuals.*

Policy 56.2.4 seeks to manage heritage on a basis of partnerships.

- 1.1.2.7 **Policy 56.2.5** *Encourage public participation in the identification and protection of heritage values through education and increased public awareness.*

Policy 56.2.5 seeks to encourage public participation when identifying and protecting heritage values through education and public awareness. The Group 3A item has been identified as part of the creation of the Napier District Plan.

- 1.1.2.8 **Policy 56.2.7** *Ensure that, through the implementations of appropriate procedures within the Council's administration, all development and building proposals in the vicinity of an archaeological site are notified to Heritage New Zealand, in accordance with the Heritage New Zealand Pouhere Taonga Act 2014, in order to enable the implementation of the archaeological authority provisions of the Heritage New Zealand Pouhere Taonga Act 2014.*

The site is not listed with Heritage New Zealand, and an archaeological authority will be required directly from Heritage New Zealand prior to any earthworks commencing on site. The applicant has acknowledged this.

- 1.1.2.9 **Policy 56.2.9** *To facilitate and encourage alterations to heritage items to improve structural performance, fire safety and physical access while minimising the significant loss of associated heritage values.*

The proposal does not involve any structural performance, fire safety or changes to physical access, therefore, Policy 56.2.9 is not applicable to the proposal.

1.1.2.10 Reporting Officer Comment: The building is not individually listed, therefore, an overarching view of the above objectives and policies is the proposal is consistent with these. An archaeological authority in accordance with the Heritage New Zealand Pouhere Taonga Act 2014 will be sought.

1.1.2.11 Objective 56.2 and associated policies above, seek to protect heritage values associated with heritage resources that have been identified as part of the District Plan process. Group 3A are those buildings that contribute as a group, or by a recognised style, to the character of Ahuriri. Council will encourage the protection of this character, which is why this is included within the Heritage Chapter of the Napier District Plan.

There is an acknowledged loss of heritage character that has occurred over time, throughout the Hardinge Road Advocacy Area, that includes Hardinge Road and Waghorne Street, with a more prevalent character of the advocacy area located on Waghorne Street.

Upon reflection of Objective 56.2 I consider the proposal to be contrary to this.

1.1.2.12 **Objective 56.3** and associated policies seeks to *maintain and enhance the areas of the City that have a recognised special character*.

The recognised special character in this instance is that identified as part of the Port Ahuriri Heritage Study, with the special character being considered to be the Hardinge Road Character overlay. The existing character, particularly along Hardinge Road, has evolved over time, leading to a prevalence of larger scaled buildings with a small number of remaining smaller cottages along Hardinge Road.

1.1.2.13 **Policy 56.3.1** *Seeks to identify areas of the City that have a particular character within a clearly defined area.*

The area is within an identified area.

1.1.2.14 **Policy 56.3.2** *Encourage any future development and use within the identified character areas to be sympathetic with the elements that make the areas special.*

The proposal includes a new dwelling that is larger in scale to the existing dwelling and departs from the height recession plane along the road façade. The applicant has included elements that are sympathetic to the character overlay, which includes a mixture of smaller cottages and larger and bulkier buildings with a prevalent departure from height in relation to boundary permitted within the District Plan.

The Policy seeks to encourage developers within character areas to be sympathetic to these key elements. The proposal is not contrary to this policy,

as the direction here has been encouragement rather than regulatory where there is no assessment criteria in the plan to assess new development and its consistency with elements within the character overlay.

Therefore, I consider should the proposal be consistent with those provisions in the Residential Chapters (such as bulk and location provisions), the proposal would be consistent with this policy.

1.1.2.15 **Policy 56.3.3** *To maintain and enhance where appropriate the character of the Hardinge Road, Battery Road, Iron Pot and Coronation Street character areas identified in the Port Ahuriri Heritage Study (Refer to Appendix 13A for maps of character areas).*

1.1.2.16 The plan also makes the following statements underneath the above-mentioned policies.

1.1.2.17 *In the character areas development can have a negative impact on the existing streetscape. The Council's aim is to draw the community's attention to the importance of retaining the scale of existing buildings and in some instances to the importance of the positioning of buildings on the site.*

In this case, there are two original villas to one side (west), and a consented new building located to the other side (east), set within a predominantly modern streetscape.

The proposed scale is not consistent with Chapter 8 for residential activities within the Hardinge Road Residential Zone. Therefore, there is an evident departure from this Chapter, particularly along Hardinge Road with height in relation to boundary infringements visible from the streetscape, set alongside smaller cottages and villas, and dwellings that are more conservatively scaled.

1.1.2.18 *Outside the Character Zones, advocacy areas have been identified. These recognise that there are some excellent examples of the character that is to be preserved in the zones that fall outside the boundary of the character zones. Advocacy areas immediately surround the character areas and an education approach is adopted within these areas to preserve the heritage values. They are something of a transitional area between the character area and the normal zone. Within the advocacy areas preservation of the character is encouraged by means of education and the architectural and landscape design characteristics is recognised in the assessment criteria for discretionary activities.*

The site is not within a Character zone of Napier City, however is listed as an identified advocacy area.

The assessment criteria in the plan for discretionary activities include those listed in 56.17.1 (i), (ii), and (iii).

The assessment criteria's for new development are light, with a method listed in Chapter 56, stating (3) the provision of Design Guides to provide design information based on heritage characteristics. To the best of my knowledge, there has been no work undertaken regarding this.

- 1.1.2.19 *The Port Ahuriri Heritage Study identifies a number of precincts of distinctive character and states that those features which are critical to that character should be preserved and protected. The Ahuriri Advocacy Area identified on the planning maps comprise four specific character areas; Iron Pot, Hardinge Road, Battery Road and Coronation Street. The heritage study identified these four areas as being of distinctive character. While individually all buildings in the character areas may not warrant protection as heritage items, and they do not all share common features, the Council wishes to recognise those features which contribute to the overall character of Ahuriri and the linkages to the past. Buildings which are considered to contribute to the essential character of the area are originally in the Port Ahuriri Heritage Study and these are now shown on the maps in Appendix 13A.*

The building is identified in Appendix 13A and is considered to contribute to the essential character. Of note is the words in Appendix 13A which state that no buildings within the overlay (shaded or not) are attributed a greater level of protection.

- 1.1.2.20 The plan is clear this is not an individual listing, and it is rather a grouping that contributes to the character of the Hardinge Road Character overlay.

Therefore, although the removal of the individual building will generate potential adverse effects on heritage values due to the loss in value attributed to a building that currently contributes to the character of Hardinge Road and Ahuriri, the removal is not inconsistent with the evolving surrounding character of the area, particularly along Hardinge Road.

- 1.1.2.21 In summary, Objective 56.3 and associated policies seek to maintain and enhance the Ahuriri Advocacy Area, with architectural features that are sympathetic to the proposal being encouraged, and the character of the Ahuriri Advocacy Area enhanced or maintained where appropriate.

- 1.1.2.22 The Advocacy Area and the heritage value attributed to this area as a whole has been diminished over time, particularly along Hardinge Road. Where considering the loss of the villa, in context of the Advocacy Area as a whole, where there has been a visible degradation of the heritage value to date, the removal of the one item will not enhance the character overlay features, however, the loss of one building in an evolving streetscape that has occurred over time, I believe this will not prevent the character of the overlay being maintained.



### 1.1.3 Chapter 4- Residential Environments:

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

#### 1.1.3.2 Reporting Officers Comment:

The proposal involves site redevelopment to allow for residential use. Therefore, should potential adverse effects be sufficiently mitigated, the proposal is considered to be consistent with this.

1.1.3.3 **Objective 4.3** and associated policies seek to *accommodate growth through residential intensification in appropriate areas and via planned development of identified residential greenfield growth area; and to create a City-wide settlement pattern that maintains the vitality of the City's commercial and community nodes, supports public transport and reduces private vehicle use in accordance with OBJ UD1 of the Hawke's Bay Regional Policy Statement as well as the 2020 National Policy Statement on Urban Design.*

1.1.3.4 *Policy 4.3.2 Restrict residential intensification in areas of special character.*

1.1.3.5 *Policy 4.3.3 Manage the intensity of residential settlement in all parts of the City to ensure that any adverse effects on the environment are avoided, remedied or mitigated.*

#### 1.1.3.6 Reporting Officers Comment:

The proposal will not enable residential intensification or growth, but does enable the continued occupation and use of a site into the future. It is considered the proposal is consistent with Objective 4.3 and associated policies.

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

1.1.3.8 In particularly, Policy 4.4.6

#### 1.1.3.8.1 Along Hardinge Road and Waghorne Street:

- a. *Develop land use controls over development that are less restrictive while recognising the area's diverse building development, the smaller site sizes and the close proximity of many buildings to roads and adjacent sites.*

- b. *Restrict land use and development to maintain and enhance the scale and design of the built environment that contributes to the area's character.*

1.1.3.8.2 *As the City of Napier has developed over time, a number of areas featuring distinctive architectural styles and streetscapes have emerged. Careful management, including the restriction of some land uses is required to ensure that the special character of these areas is maintained. In some instances, this character can be destroyed through modern redevelopment, while in other character areas, the blend of historical and modern architectural forms contributes to the area's special character.*

1.1.3.8.3 *The Council wishes to recognise both the historical styles of development as well as modern demands for the Hardinge Road and Waghorne Street residential area. The Hardinge Road area has experienced significant change over the last decade. Remaining historic buildings tend to be concentrated along Waghorne Street, but pressure for redevelopment and opportunities exist which may threaten the character of the area. The demand for waterfront locations has tended towards intensive modern developments on the small sites. This has created close-knit buildings with very small setbacks from the road and adjacent properties. Future development should recognise the scale and historic styles of buildings in the Hardinge Road and Waghorne Street area.*

1.1.3.9 Reporting Officer's Comment:

- The above objective and policies, and descriptions in the District Plan quoted above, outline the desired environment for the Hardinge Road Residential zone, and acknowledges the loss in character Hardinge Road has experienced over the last 10 years, and the increasing pressure for development along Hardinge Road. The plan states this has created close-knit buildings with small setbacks from the road and adjacent properties.
- The plan allows for less development controls in Chapter 8, such as site coverage, open space requirements and front yard requirements, than other residential environments across Napier, where the plan signals more intensive development on small sites can occur as a permitted activity. This is to promote more intensive development alongside smaller more traditional cottages and to maximise the location of Hardinge Road, being afforded views orientated towards the ocean.
- There is a presence of larger scaled buildings along Hardinge Road that depart from the permitted performance standards. Therefore the established character is mixed, and the presence of a building of the proposed scale is not inconsistent with those present along Hardinge

Road and the wider streetscape. Given the buildings evolving around the site, the streetscape will not be dominated by the inclusion of the proposed building.

- This includes height recession plane allowances as per condition 8.18 of the District Plan. The revised proposal, being the movement of the building to meet the 1m setback is not in keeping with the permitted building envelope of the District Plan.
- The policy refers to the dominant natural and physical features which contribute to the amenity and character of those areas. I do not consider the dominant features to be a presence along Hardinge Road of smaller cottages and villas, where over time, as acknowledged in the District Plan, this has evolved. On balance, I consider the proposal to be consistent with Objective 4.4 and associated policies.

1.1.3.10 **Objective 4.5** and associated policies seek to maintain and enhance those qualities and characteristics that contribute to the wellbeing of the City's residents and the amenity of the residential zones.

1.1.3.11 **Policy 4.5.4-** control building height and bulk to ensure it is compatible with the height and bulk of the surrounding residential area.

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

1.1.3.13 Reporting Officers Comment:

- Characteristics that contribute to the wellbeing of the City's residents include the framework for which development can occur as a permitted activity, whereby Plan provisions allow for a certain scale of development. Key development control measures include yard setback, height, height recession plane and site coverage requirements.
- It is noted that it is prevalent along Hardinge Road to see larger buildings on small sites, close together with small setbacks from the road and adjacent properties, with evident departures from these District Plan standards.
- As above there is a presence of larger scale buildings along Hardinge Road. The surrounding residential area in this instance also includes those smaller, traditional cottages in the immediate vicinity, that this proposed building would sit amongst. As assessed above, the surrounding environment is a mix of building design and sizes.

- Height recession plane infringements also have the potential to adversely affect the amenity of City residents where this occurs directly adjacent to their sites. The height recession plane infringement contributes to adverse shading, availability of sunlight, and dominance effects.
- The revised proposal has reduced adverse shading effects and improved availability of sunlight. However, there is still a dominance effect generated by the infringement in comparison to a building constructed within the permitted building envelope. Should the building be the height permitted at 1m setback, more availability of sunlight would be afforded to the submitter.
- I consider a building more conservative in scale would uphold such amenity values for the submitter, and thus the wellbeing of the City's residents. Height recession planes have been included in the District Plan to uphold a certain level of amenity for zones, which is not only restricted to shading and availability of sunlight, but also the effect on amenity values due to buildings that result in adverse dominance effects, and the proposal does depart from this.
- There are other buildings of a similar scale in relation to their sites nearby, therefore the proposal is not inconsistent with Policy 4.5.4, however allowing a height in relation to boundary departure of the proposed scale, along a shared boundary, whilst considering the effects of amenity values attributed to the adjacent landowner, the result is a proposal that is not considered to be consistent with the Policy in Chapter 4.5.5.

## Minute of the Hearings Panel

RM210183

Demolition of the existing and construction of a new dwelling at 69 Hardinge Road, Ahuriri

Issued 28 July 2022

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The Hearings Commissioners issue the following minute (number 2):

1. The Hearing commenced on Monday 18 July 2022 and evidence was heard from the Applicant, Submitter and Council Reporting Officer.
2. Following the hearing of evidence, the Hearing Panel adjourned the hearing to receive the Applicant's Right of Reply and for the Reporting Officer to provide an updated Section 104(1)(b) assessment.
3. Counsel for the Submitter offered to arrange a site visit to the submitters property for the Hearing Panel, to allow viewing of the backyard. This offer was taken up and extended to a representative for each the Applicant and Reporting Officer to attend.
4. The Site Visit was completed on Thursday 21 July 2022.

### Adjournment of Hearing

5. The Hearing was **adjourned** on Monday 18 July 2022 following evidence being heard.
6. The Hearing Panel determined that the following process and timetable will apply:
  - a. Mr Drury, for the Applicant, will provide the Applicant's Right of Reply to Napier City Council's Hearing Administrator by **5pm Tuesday 26 July 2022**.
  - b. Council's Reporting Officer will provide an updated Section 104(1)(b) assessment against the Statutory Provisions to Napier City Council's Hearing Administrator by **5pm Tuesday 26 July 2022**.
  - c. Napier City Council's Hearing Administrator will circulate all information to all parties to the Hearing as soon as practical following receipt.

### Closure of Hearing

7. The Applicant's Right of Reply and the Reporting Officer's updated Section 104(1)(b) assessment were received on Tuesday 26 July 2022 and were circulated to all parties on Wednesday 27 July 2022.
8. Following receipt of the above the Hearing Panel have confirmed the information received satisfies their requests and closed the Hearing on **Thursday 28 July 2022**.
9. The Hearing Decision is required to be issued to all parties of the Hearing no more than 15 working days after the hearing closes, thus being **Thursday 18 August 2022**.



Annette Brosnan  
Chair



Nigel Simpson  
Member Commissioner