

Section 348 Local Government Act 1974 Approval – Right of way



NAPIER
CITY COUNCIL
Te Kaunihera o Ahuriri

1. Application description

Application number(s): RMS230069
Applicant: Martin Hussey
Site address: 12 Brewster Street
Legal description: Lot 1 DP 4533
Site area: 672m²

Napier Operative District Plan

Zoning: Napier Hill Character
Overlays, controls, special features, designations, etc: N/A

Napier Proposed District Plan

Zoning: General Residential Zone
Overlays, controls, special features, designations, etc: Napier Hill – Mataruahou Amenity Precinct.

2. Locality Plan



Image 1: Site Plan (Source: Napier City Council Maps)

3. Reasons for the application

Proposal

Approval is sought to provide legal right of way access as illustrated on the Easement Plan submitted as part of this proposal. 12 Brewster Street currently has a 3.05-metre-wide pedestrian access to the site via steps. It has been proposed to widen the accessway to allow for vehicle access to the site. The right of way that has been proposed will allow 12 Brewster Street (Lot 1 DP 4533) and 16 Brewster Street (Lot 1 DP 26169) reciprocal rights over the areas outlined on the Easement Plan. Area C has also been proposed to allow 12 Brewster Street right of access for construction of retaining wall and vehicle access.

It has also been proposed to allow the property located behind 12 Brewster Street, 3 Onslow Road (Lot 2 DP 3239) right of way and right of access for construction of retaining wall and vehicle access. This is because 12 Brewster Street and 3 Onslow Road are currently owned by the same person and once the vehicle crossing is constructed, the owner may want to provide access to 3 Onslow Road from that accessway. Currently 3 Onslow Road has access from Onslow Road however, this access is pedestrian access only. Obtaining legal access rights to 3 Onslow Road over 12 Brewster Street will be determined later as part of a different proposal.

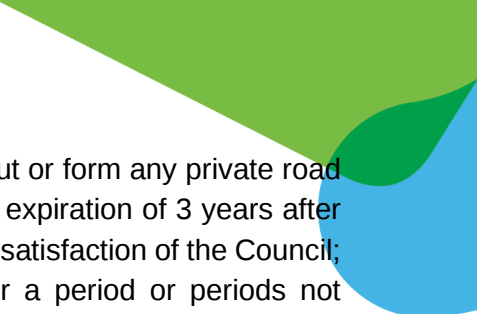
Site and surrounding environment description

Pages 3-4 of the Applicants AEE submitted with the application provides a comprehensive description of the proposal and subject site. Having undertaken a site visit on 17 October 2023, I concur with the description of the proposal and the site and have no further comment.

4. Statutory Requirements

Section 348 – Local Government Act – Powers of Council with respect to private roads and private ways

- (1) Except with the prior permission of the Council, no person shall lay out or form any private road or private way or grant or reserve a right of way over any private way, in the district.
- (2) Subject to Section 347, in granting any such permission the Council may –
 - (a) Impose such conditions as to widths, levels, entrances, courses, formation, cost of formation, maximum number of buildings to be erected fronting any such private road or private way, minimum distances between any 2 buildings, position of building line, and otherwise in all respects whatsoever as the Council thinks fit; and
 - (b) require the owner or owners to whom permission is given to enter into a bond to comply with any conditions imposed by the Council. Every such bond shall be deemed –
 - (i) to be an instrument creating an interest in each parcel of land to which the conditions apply within the meaning of Section 51 of the Land Transfer Act 2017, and may be registered accordingly; and
 - (ii) to be a covenant running with each such parcel of land and shall bind subsequent owners.

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- (3) Any permissions of the Council under subsection (1) to lay out or form any private road or private way as aforesaid shall be deemed to lapse on the expiration of 3 years after the grant thereof, unless the work has been completed to the satisfaction of the Council; but may from time to time be extended by the Council for a period or periods not exceeding 1 year at any one time.
- (4) With respect to any private road, the Council –
- (a) may require any projection or obstruction in or over any part thereof to be removed at the expense of the person causing the same or to whom the same belongs:
 - (b) may by notice in writing require the owners of land or buildings abutting on the private road to construct or repair the road, with the footways, kerbing, and channelling thereof, and every such owner shall be liable for the construction and repair of so much of the private road as the Council thinks fit:
 - (c) in case of default, may execute the said works, and recover the cost from the owners in the aforesaid proportions.
- (5) Subsection (4) shall apply to every private way which for the time being serves as an approach to 2 or more allotments that are separately owned or separately occupied or to any allotment on which there are 2 or more buildings that are separately occupied.
- (6) Nothing in this section applies to a private road or right of way lawfully created as part of a subdivision under the Resource Management Act 1991.

Napier City Council's District Plan & Code of Practice for Subdivision and Land Development

There is legal and physical access currently provided to the site through the pedestrian steps however, this access will be improved and upgraded to vehicle access at the completion of the construction of a driveway. Any consents required for the vehicle crossing can be sought prior to construction commencing.

In terms of the right of way, the driveway and vehicle crossing will meet the minimum required 3.0 metres. Manoeuvring on-site will be determined once development on 12 Brewster Street has been planned and building platform confirmed however, there is sufficient room on site for manoeuvring area to be achieved.

Napier City Council's Operative and Proposed District Plan

There will be no infringements to any rules in the Napier's Operative District Plan or to any rules under Napier's Proposed District Plan that have legal effect as a result of the application for a legal right of way. In terms of the physical works required for the driveway and potential future development, any consents required can be sought under a separate application(s).

5. Decision

I have read the application, and the supporting documents. I am satisfied that I have sufficient information to consider the matters required by Section 348 of the Local Government Act 1974 and can make a decision under delegated authority on the application.

That pursuant to Section 348 of the Local Government Act 1974 Napier City Council shall **approve** the private right of way over Lot 1 DP 26169 and Lot 1 DP 4533 as shown on the Easement Plan titled “Proposed rights of way over Lot 1 DP 4533 & Lot 1 DP 26169, 12 and 16 Brewster Street Bluff Hill, Napier”, dated May 2023 and submitted under RMS230069, subject to the following condition.

6. Conditions

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

1. This resource 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 number RMS230069.
 - Application Form, and Assessment of Environmental Effects prepared by Guy Pankhurst, dated 18 September 2023.

Report title and reference	Author	Rev	Dated
Proposed Rights of Way – 12 and 16 Brewster Street and 3 Onslow Road, Napier.	Guy Pankhurst – Surveying the Bay	N/A	18 September 2023

Drawing title and reference	Author	Rev	Dated
Easement Plan (Drawing No. 6033-1)	Guy Pankhurst – Surveying the Bay	B	May 2023

2. Under section 348(3) of the Local Government Act 1974, this consent lapses three 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. Council will undertake monitoring in accordance with the RMA. The consent holder shall pay the actual and reasonable costs incurred to ensure compliance with the conditions attached to this consent.

7. Advice notes

1. *The applicant shall submit to Council a final detailed engineering design, including construction drawings, detailing the stormwater and roading services at Building Consent stage. This shall be undertaken by a Chartered Professional Engineer experienced in stormwater and roading services design and construction. The design shall be generally in accordance with the NCC Code of Practice for Subdivision and Land Development, except where a specific dispensation has been granted by Executive Director of Infrastructure (or nominee).*
2. *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 Kōiwi, 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 Kōiwi 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 Kōiwi/skeletal remains only), Heritage New Zealand and
 - i. Ngāti Parau - Chad Tareha chadtareha24@gmail.com and/or
 - ii. Mana Ahuriri – Parris Greening parris@manaahuriri.org and/or
 - iii. Maungaharuru-Tangitū Trust – Liz Munroe liz@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 Kōiwi), 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 Kōiwi, 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.
3. For the purpose of compliance with the conditions of consent, “the council” refers to the council’s monitoring officer unless otherwise specified. Please email planning@napier.govt.nz to identify your allocated officer.
4. 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>
5. 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.

Decision prepared by:

TO'callaghan

Tegan O'Callaghan
Resource Consents Planner
City Strategy

Date: 19 October 2023

Delegated decision maker:

Name: Luke Johnson
Title: Manager Regulatory Solutions,
City Strategy

Signed:



Date: 19 October 2023

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

Site address:	
Resource consent number:	Associated building consent:
Expected start date of work:	Expected duration of work:

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

Signature: Owner / Project Manager (indicate which)	Date:
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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.