

## Report / decision to determine notification of a resource consent application

(Sections 95A / 95B)

<b>Application number:</b>	<b>RMA/2020/2000</b>
<b>Applicant:</b>	Simon Jay and Josie Martin
<b>Site address:</b>	70 and 74 Rue Balguerie, Akaroa
<b>Legal description:</b>	Lot 1 Deposited Plan 310720 held in Register of Title 42103 and Lot 2 Deposited Plan 53338 and Lot 1 Deposited Plan 39628 held in Register of Title CB32B/457
<b>Zone:</b>	Residential Banks Peninsula Transport Zone
<b>Overlays and map notations:</b>	Remainder of Port Hills and Banks Peninsula Slope Instability Management Area Heritage Item (667) and Heritage Setting (123) Ngā Tūranga Tūpuna
<b>Activity status:</b>	Discretionary
<b>Application:</b>	Construction and operation of an entrance building, café and expansion of the sculptural gardens tourist activity

### Proposed activity

The proposal is described in detail in Section 3 – Description of proposal, pages 8-16 of the application. The three key aspects are:

- It is proposed to construct an entrance building for the existing 'Giants House' - sculptural gardens at 74 Rue Balguerie;
- It is also proposed to construct a café in association with the 'Giants House' – sculptural gardens at 74 Rue Balguerie; and
- It is proposed to expand the 'Giants House' sculptural garden at 70 Rue Balguerie to include 74 Rue Balguerie.

In summary the following is proposed:

#### Entrance building/road reserve –

- The proposed entrance building would be located at the northern end of 74 Rue Balguerie, where it has a road boundary with Rue Balguerie;
- It would have an area of 124m<sup>2</sup> and has been designed to feature an oval "egg" shape with spiral roof;
- It would be setback 1.1m from the road boundary;
- Visitors will enter the building via a newly formed ramp and stairs, which are partly located in the road berm with the ramp extending to the line of the kerb (the applicant acknowledges that works in the road berm form a separate Council approval process and access will be via the existing access way until this is obtained);
- The building will contain ticketing, bathroom facilities, lobby and storage; and
- An area of 5m<sup>2</sup> will be designated for the purchase of souvenirs and gifts.

#### Café –

- The café would be located towards the south boundary of 74 Rue Balguerie near to where it adjoins 70 Rue Balguerie and would replace an existing café currently operated out of the 'Giants House'.
- The café would be 95m<sup>2</sup> with indoor seating provided and with a 30m<sup>2</sup> deck orientated to northeast and a ramp linking to the existing landing providing wider access to the site;
- The ground floor will contain a storage and a display area;
- A detached lift will provide additional access to the café from ground level;

- The café would be an integral part of the garden experience and only available to those who pay the entry fee to the 'Giants House';
- The café would be open 1<sup>st</sup> October – 30<sup>th</sup> April, 11:00am to 4:00pm (the same as the 'Giants House'); and
- The café would employ up to three full time equivalent staff during the peak summer months and not be open in the winter months (May to September). The café currently employs one full time staff member with two on weekends/when the cruise ships are in the harbour.

#### **Expansion of 'Giants House'/sculptural gardens –**

- The 'Giants House' and sculptural garden would cover both 70 and 74 Rue Balguerrie and there would be no residential activity on the site at 74 Rue Balguerrie with the existing dwelling at 70 Rue Balguerrie to be removed;
- An informal path will be constructed from the entrance building towards the 'Giants House' utilising the natural contours of the site and would be framed by plantings and sculpture;
- A pathway meandering through the cherry trees will be informal;
- The site at 74 Rue Balguerrie would be landscaped with planting along the internal boundaries;
- The existing signage will be relocated to 74 Rue Balguerrie;
- The 'Giants House' and garden would be open to visitors as follows
  - 1<sup>st</sup> May – 30<sup>th</sup> September 11:00am to 2:00pm;
  - 1<sup>st</sup> October – 30<sup>th</sup> April 11:00am to 4:00pm
- The 'Giants House' and sculptural garden will employ up to four full time equivalent staff during the peak seasonal months (including reception staff and gardeners/ handyman). The 'Giants House' currently employs two full time gardeners and one staff member at the entrance, (two at the weekend/when cruise ships are in the harbour) and the owner is on site to assist when required;
- 74 Rue Balguerrie has an existing access point located adjacent the western boundary. This vehicle crossing will be closed off and a new crossing will be constructed adjacent the eastern boundary; and
- No changes are proposed to the access at 70 Rue Balguerrie;

#### **Associated works -**

- Earthworks are proposed in respect to the platform base of the stair/backfilling, the driveway and the paths.

#### **Volunteered conditions -**

- Resource consent RMA/2015/1157 for the establishment of a stand-alone café will be surrendered on the granting of RMA/2020/2000;
- There shall be a maximum of 125 visitors on site per hourly period except; on a maximum of 20 days per calendar year the maximum number shall be 150 visitors per hourly period;
- A booking system shall be established restricting bookings to no more than one scheduled bus arrival at any given time, with a 30 minute no booking buffer either side of bookings. I understand this will restrict bookings for those arriving by bus; and
- Scheduled buses shall not idle for more than 5 minutes after arrival or 5 minutes before departure;
- Any filling and excavation shall be subject to an erosion and sediment control plan in accordance with Environment Canterbury's Toolbox;
- An Accidental Discovery Protocol will be followed.

As these are volunteered conditions they form part of the application.

The purpose of this report is to determine whether the application must be processed on a non-notified, limited notified, or publicly notified basis, pursuant to Sections 95A and 95B of the Resource Management Act.

<h4><b>Description of site and existing environment</b></h4>
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70 and 74 Rue Balguerrie (the site) is located on the south side of Rue Balguerrie (Local Road), towards the middle of the residential block between Rue Cachalot (Local Road) to the west, and Langlois Lane (Private Lane) to the East. For ease of reference the site is shown below in Figure 1.

The 'Giants House' (Giants House) is currently accessed from a 50m driveway which extends steeply from the road to the site. The site is located approximately 600m east of Rue Lavaud, the mainstreet and commercial area in Akaroa.

Residential properties adjoin and surround the site as shown below in Figure 2. I note the Giants House is listed on its webpage as having been awarded 6 Stars by the New Zealand Gardens Trust<sup>1</sup> in recognition of its endorsement as a Garden of International Significance.

Rue Balguerrie is a Local Road which does provide access through to Stony Bay, however, it is a low volume thoroughfare and other than providing access to the Giants House would mainly function to provide access for residents of Rue Balguerrie and their visitors.



Figure 1. Site location Source: CCC Smartmap 2016 Aerial

<sup>1</sup> <https://www.gardens.org.nz/about-us/> "Established as a Trust of the Royal New Zealand Institute of Horticulture in March 2004 to promote the best in New Zealand gardens and horticulture, The New Zealand Gardens Trust has set up a system to assess all gardens and provide visitors with information that truly reflects the garden experiences. The Trust is governed by a group of eight dedicated Trustees supported by a part-time Manager". Six star gardens "provide New Zealand's top garden experiences. These gardens achieve and maintain the highest levels of presentation, design and plant interest throughout the year. They are the complete package which inspire garden lovers and deliver an experience above all other gardens".



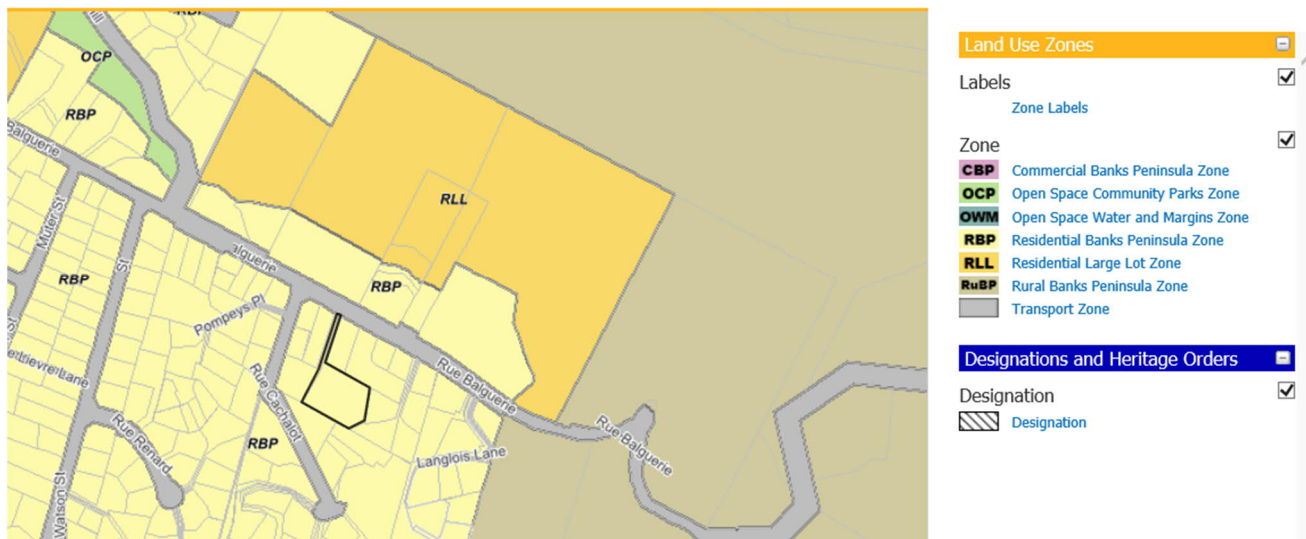


Figure 2. Existing site within Residential Banks Peninsula Zone (Source: District Plan Property Search)

## The Akaroa Township Public Realm Design Guidelines (2010)

These guidelines were prepared by Boffa Miskell as a result of the Akaroa Township Character Project (Boffa Miskell Ltd, 2009)' and Akaroa Heritage Conservation Study (Harrison Grierson, 2009) commissioned by the Christchurch City Council in order to identify and examine the protection of the existing township character and its associated heritage, and offer guidance to enhance these values.

They provide guidance in terms of understanding the existing character of the surrounding environment, although they deal with the public realm, in my opinion of particular relevance is the descriptions of both the streetscape character and built form and architecture, which I consider applies to Rue Balguerie.

### Streetscape character:

These guidelines note that *"Residential streets are predominantly narrow with some single linkages between streets, such as Le Lievre Lane. This scale combined with the close proximity of well-vegetated semi-public/private front gardens creates a streetscape quality that is intimate, attractive and reminiscent of a village environment. A number of streets are also very informal in character with soft grassed verges and no kerbs reflecting characteristics of a rural context"*<sup>2</sup>

### Built form and architecture:

These guidelines note that *"Akaroa has a range of building typologies. These present a range of sizes, shapes, styles, setbacks, roof forms and materials. The predominant factors are small to intimately scaled, detached timber clad dwellings orientated towards the street with steeply pitched gable ended roof set within a landscaped setting of moderate scale"*.<sup>3</sup>

## Existing environment - relevant consented activity

### RMA/2000/103

The Giants House activity at 70 Rue Balguerie was approved by RMA/2000/103 (RES95101059) on 4 September 2001.

This consent allowed the establishment of a bed and breakfast, gallery, garden tours, artist's workshop, and café and concert activities at the dwelling at the property known as 'Linton'.

<sup>2</sup> Page 12 Akaroa Township Public Realm Design Guidelines (2010)

<sup>3</sup> Page 13 Akaroa Township Public Realm Design Guidelines (2010)

The following provides some guidance in terms of the nature and scale of the consented activity, which is important with respect to the assessment of effects as the effects of the consent activity form part of the existing environment.

The garden visits activity was described by the applicant in the application as – “*mainly in spring and summer, individuals, small groups, occasional bus group visits – 20 minutes to 2 hours maximum*”.

The café component was described by the applicant in the application as “*Small scale with refreshments, morning and afternoon teas and light lunches in the house and around the garden. Small groups of people*”.

The applicant also noted that “*Parking is provided at the top of the drive for approximately six cars, and can accommodate vans, small and medium buses. Large buses park on the street and people walk up the drive, but usually the buses are only occasional and are there for a maximum of ¾ hrs to 1 hr. The majority of visitors walk up from the town apart from the older generation who drive up*”

The sign which also formed part of the application noted the open hours were “1.30pm – 4.30pm”.

With respect to the art gallery, garden tours and café, the Council Planning Officer, Mr Kent Wilson stated (my emphasis):

*“I do not anticipate these uses intensifying any adverse effects arising on the property to any more than a minor degree. Visitors to the property for the garden or gallery are likely to be in small groups and in modest numbers, and during daytime hours. The café activity is, therefore, also likely to be limited in scale. Given the daytime nature of these activities, it is unlikely conflicts will arise in respect of on-site parking and access, as residential guests are likely to arrive and depart both earlier and later than when the above activities are occurring. It is also likely that many visitors will arrive on foot, particularly those coming to view the garden”.*

With respect to on-site parking, Mr Wilson stated:

*“On-site parking is available for around six vehicles with garaging available for one car, and parking space for the remaining vehicles in an open area at the head of the drive”*

I note the applicant has advised that there are 3 parks at the top of the driveway, all only for people with mobility issues and 1 park below the entrance wall.

The above consent was issued with the following conditions which provide the parameters around the consented activity.

- “1. That the sign be finished in white lettering on a blue background and the maximum height above ground level be 1.980 metres.
2. The any music associated with the concerts be non-amplified.
3. That the maximum number of concerts per year not exceed 6.
4. That in all other respects the proposal proceed in accordance with the plans and details lodged with the application.
5. Pursuant to Section 128 of the Resource Management Act the Banks Peninsula District Council may annually, serve notice of its intention to review the conditions of this consent for the purposes of:
  - (a) Dealing with any adverse effects on the environment which may arise from the exercise of the consent and which is appropriate to deal with at a later stage; or
  - (b) Complying with the requirements of a relevant rule in the operative Banks Peninsula District Plan.
6. Charges...”

Written approval for the activity was provided by the owners/occupiers of 72 Rue Balguerie, 66 Rue Balguerie, 68A Rue Balguerie and 3 Rue Cachalot.

#### RMA/2015/1157

Resource consent RMA/2015/1157 was granted on 4 July 2016 for the establishment of a 48m<sup>2</sup> café building on the north eastern corner of the site at 70 Rue Balguerie. This consent has not been given effect. I note that the

applicant has volunteered a condition of consent that RMA/2015/1157 be surrendered should this consent be granted.

## Site visits

I am familiar with the site having carried out site visits in respect to previous applications lodged. I also carried out a visit of the site and surrounds on 15 January 2020 (from 12 – 2.20pm approximately) at which time there were two cruise ships in the Akaroa Harbour – Golden Princess and Regatta with a combined total of 3284 passengers (Akaroa Cruise Ship Schedule).

### Activity status

## Christchurch District Plan

The site is zoned Residential Banks Peninsula. Table 14.2.1.1a of Policy 14.2.1.1 notes that:

*This zone includes the settlements of Lyttelton and Akaroa which each have a distinctive urban character. Lyttelton has a more urban atmosphere and a distinct urban-rural boundary. The residential areas are characterised by small lot sizes and narrow streets. Akaroa is a smaller settlement characterised by its historic colonial form and architecture, relatively narrow streets, distinctive residential buildings and well-treed properties. Akaroa is a focal point for visitors to the region and the district. The character of these two settlements is highly valued and the District Plan provisions seek to retain that character. Non-residential activities that are not compatible with the character of the Residential Banks Peninsula Zone are controlled in order to mitigate adverse effects on the character and amenity of the area.*

The proposal requires resource consent for a **discretionary activity** under the following rules:

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
Rule 14.8.1.4 D1 Any activity not provided for as a permitted, controlled, restricted discretionary, non-complying or prohibited activity	N/A	<p>Although it meets the definition of Place of assembly<sup>4</sup> it does not meet Rule 14.8.1.4 D5 Place of Assembly standard a.i the minimum site area is not less than 30m<sup>2</sup> per person.</p> <p>The total site area is approximately 3,904m<sup>2</sup> which would permit up to 130 visitors at one time.</p> <p>The proposal seeks up to 150 visitors on an hourly basis on a maximum of 20 days per year.</p> <p>Does not meet Rule 14.8.1.4 D6 Retail activity<sup>5</sup> standard iii. the maximum floor area used for retail activities on any site does not exceed 50m<sup>2</sup>.</p> <p>For these reasons the activity including the retail activity which includes the proposed retail in the entrance building and the café (food and beverage) which triggers the catch all rather than rules D5 (Place of Assembly) and D6 (Retail activity).</p>	N/A	No

<sup>4</sup> means land and/or buildings used principally for the public or private assembly of people for recreation activities, cultural activities or entertainment activities. It includes community centres and halls.

<sup>5</sup> means the use of land and/or buildings for displaying or offering goods for sale or hire to the public. It includes food and beverage outlets, second-hand goods outlets, food courts and commercial mail order or internet-based transactions. It excludes trade suppliers, yard-based suppliers and service stations.

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
Rule 7.4.2.3 RD1	<p>Rule 7.4.3.1 Minimum number of car parks required.</p> <p>Table 7.5.1.1 food and beverage requires the following minimum car park spaces:</p> <p>Visitor: 9 spaces/100m<sup>2</sup> PFA (2 space minimum) Staff: 1 spaces/100m<sup>2</sup> PFA (2 space minimum)</p> <p>Table 7.5.1.1 Museums and galleries requires the following minimum car parking spaces:</p> <p>Visitor: 1 space/30m<sup>2</sup> PFA Staff: 1 space/300m<sup>2</sup> PFA</p>	<p>The proposed café will have a total Public Floor Area (PFA) of 81m<sup>2</sup> (51m<sup>2</sup> indoor+ 30m<sup>2</sup> outdoor).</p> <p>A total of 9 spaces are required in respect to the proposed café: being 7 visitor and 2 staff.</p> <p>In respect to the expansion of the sculptural gardens based on a PFA of 1,297m<sup>2</sup> a total of 47 spaces would be required. 43 Visitor spaces and 4 staff spaces.</p> <p>This means a total of 56 car park spaces is required to meet the minimum specified in the District Plan.</p> <p>The proposal does not provide any additional parking.</p>	Rule 7.4.4.1 Minimum number of car parking spaces required	No
Rule 7.4.2.3 RD1	<p>Rule 7.4.3.2 Minimum number of cycle parking facilities required</p> <p>Table 7.5.3.2 food and beverage require the following minimum car park spaces Visitor: 1 space/300m<sup>2</sup> PFA Staff: 1 space/100m<sup>2</sup> PFA (2 spaces minimum)</p> <p>Table 7.5.3.2 Museums and galleries Visitor: 1 space/200 m<sup>2</sup> PFA Staff: 1 space/1000m<sup>2</sup></p>	<p>As noted above the proposed café will have a total PFA of 81m<sup>2</sup>.</p> <p>A total of 2 cycle spaces are required in respect to food and beverage. Zero visitor and 2 staff.</p> <p>A total of 7 cycle spaces are required in respect to the expansion of the sculptural gardens. 6 visitor and 1 staff.</p> <p>This means a shortfall of 6 visitor cycle parks and 3 staff cycle parks.</p> <p>The proposal does not seek to provide any additional cycle parking.</p>	Rule 7.4.4.4 Minimum number of cycle parking facilities required.	No
Rule 7.4.2.4 D1 Any activity in the Transport Zone not provided for as a permitted, controlled, restricted		The proposed steps located within the berm are not provided for as any other activity status within the Transport zone (noting they are for an activity that is Discretionary, not permitted,	N/A	No

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
discretionary, non-complying or prohibited activity.		controlled or RD in the adjacent zone).		
Rule 8.9.2.3 RD1	Rule 8.9.2.1 P1 Earthworks a. Earthworks shall not exceed 20m <sup>3</sup> over any 12 month time period. b. Earthworks shall not exceed a maximum depth of 0.6m other than in relation to farming activities, quarrying activities or permitted education activities.	A total of 84m <sup>3</sup> of earthworks are proposed. In respect to the platform base of stair and backfilling (53m <sup>3</sup> ) as well as the driveway (10m <sup>3</sup> ) and paths (21m <sup>3</sup> ). The cut for the new retaining wall is approximately 2.2m.	Rule 8.9.4.1 Nuisance Rule 8.9.4.3 Land stability Rule 8.9.4.6 Amenity Rule 8.9.4.9 Sites of Ngāi Tahu Cultural Significance	May be limited but not publicly notified.

- I note the applicant has triggered the built form standards in respect to the road boundary setback for the entrance building and the height of the café building, but as the built form standards only apply to activities permitted in the zone<sup>6</sup> they are not applicable but are useful as a guide in terms of assessing effects;
- The applicant has advised that they will not commence earthworks until a building consent has been approved so that the earthworks within the footprint of the building meet the exemption under Rule 8.9.3a.iv.
- A ramp and steps are proposed within the road berm. The applicant has advised that they will retain the existing access adjacent the western boundary of 74 Rue Balguerrie for access to the entrance building until such time that consultation has been undertaken with Council's Transport Unit regarding authorisation works within the road berm under the Structures on Streets policy.

#### Written approvals [Sections 95D, 95E(3)(a)]

No written approvals have been provided with the application.

#### PUBLIC NOTIFICATION TESTS [Section 95A]

Section 95A sets out the steps that must be followed to determine whether public notification is required:

<b>Step 1: Mandatory notification – section 95A(3)</b>	
<i>Has the applicant requested that the application be publicly notified?</i>	<b>No</b>
<i>Is public notification required under s95C (following a request for further information or commissioning of report)?</i>	<b>No</b>
<i>Is the application made jointly with an application to exchange reserve land?</i>	<b>No</b>

Public notification is not mandatory under this section.

<b>Step 2: If not required by Step 1, notification is precluded if any of the following apply – section 95A(5)</b>	
<i>A rule or NES precludes public notification for all aspects of the application</i>	<b>No</b>
<i>The application is a controlled activity</i>	<b>No</b>
<i>The application is a restricted discretionary or discretionary activity for a subdivision of land</i>	<b>No</b>
<i>The application is a restricted discretionary or discretionary activity for residential activity on land that, under the District Plan, is intended to be used solely or principally for residential purposes?</i>	<b>No</b>
<i>The application is a boundary activity</i>	<b>No</b>

Public notification is not precluded under this section as the application is a discretionary activity for a non-residential activity on a site intended for residential purposes.

<sup>6</sup> Refer 14.8.1.1a compared to 14.8.1.4a



<b>Step 3: Notification required in certain circumstances if not precluded by Step 2 – section 95A(8)</b>	
Does a rule or NES require public notification?	<b>No</b>
Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor? (discussed below)	<b>No</b>

### **Assessment of effects on the environment**

When assessing whether the adverse effects on the environment will be, or are likely to be, more than minor, any effects on the owners and occupiers of the application site and adjacent properties must be disregarded pursuant to section 95D(a). Accordingly, this part of my assessment focuses on the wider environment beyond the application site and adjacent properties.

I note that the Quality Planning website<sup>7</sup> provides the following advice in order to understand the distinction between localised effects and effects on the wider environment.

*“There is now a clearer distinction in the RMA between localised effects and effects on the wider environment. Section 95D(1)(a) requires that when deciding if the effects will have or are likely to have adverse effects on the environment that are more than minor for the purposes of public notification, the adverse effects of an activity on the following persons must be disregarded:*

- *the owners and occupiers of the land on which the activity will occur; or*
- *the owners and occupiers of any land adjacent to that land.*

*This means that an assessment needs to be made by the council as to which properties are considered to be adjacent to the activity or land use. The term adjacent has a common meaning which is “close to, but not necessarily adjoining another site”. The term adjacent has also been defined by the Courts as lying near or close; adjoining; continuous; bordering; not necessarily touching”.*

As a discretionary activity the Council’s assessment of this proposal is unrestricted and all actual and potential effects must be considered. Guidance as to the effects that require consideration is contained in the relevant objectives and policies, and any associated matters of discretion or control.

### **Specialist input**

To inform the following assessment, I have sought specialist advice, which is referred to where relevant from the following Council staff with their full assessment attached as an appendix:

- Mr Bill Dray (Civil Engineer) in respect to the effects of earthworks in terms of nuisance/land stability; - **Appendix A**;
- Ms Josie Schroder (Principal Urban Designer) regarding urban design – **Appendix B**;
- Mr Nigel Grant (Team Leader Environmental Health) regarding noise effects – **Appendix C**; and
- Mr Mark Gregory (Transport Network Planner) regarding transport – **Appendix D**.

### **Correspondence from neighbours**

I am aware that a number of neighbours have written to the Council expressing concerns with the current and proposed activity and I have summarised these below:

- Volume of traffic which is now generated by the Giants House attraction with multiple large 50 seat bus and vans bringing tourists to the property causing a safety risk. It is a public road way and buses can travel on it, but there are no foot paths and people and children are walking on the road trying to navigate around the buses, vans, campervan and cars.
- Increase in air pollution from buses;
- Nowhere for the buses to be able to turn around, has which meant they are using private property.
- Invasion of privacy that will affect well-being and lifestyle with a constant stream of tourists in summer and intrusion by visitors into quiet places.
- Increase in noise disturbance from transport/buses, groups of tourists, display of music especially when concerts are scheduled in the evening, in a quiet residential neighbourhood.

<sup>7</sup> <https://qualityplanning.org.nz/index.php/node/847>

- Negative visual impact given the location of the proposed café and loss of view and shading of neighbouring properties.
- Commercialisation and intensification of business activities in a residential neighbourhood.

As I understand it from the letters received from neighbours summarised above their main concerns are in respect to traffic generation and safety, loss of privacy, noise disturbance, visual impact and the intensification of the commercial activity in the residential neighbourhood.

Neighbours have also raised concerns about the effect on the value of their properties, which is not something which can be taken into account through this process. Effects on property values are not environmental effects in and of themselves, but adverse environmental effects can have the flow on effects on property values.

The correspondence from neighbours is summarised for information purposes only, as the s95 determination is the subject of this report the opportunities for the involvement of these persons in the process is yet to be confirmed. The correspondence does not have the status of a submission, and does not form a basis for the assessment of the effects on these persons.

## Permitted baseline

I note that the applicant has provided an assessment of the permitted baseline in Section 5.1 of the AEE. The applicant states that various non-residential activities are permitted, subject to meeting the zone standards of the District Plan. The applicant also notes that in regards to permitted non-residential activity, the site could accommodate a community or spiritual activity and could operate seven days per week between 7:00am to 10:00pm.

I accept the effects of proposed non-residential activity which provides land and buildings for sculptures of artistic significance (with associated retail including food and beverage) may be comparable to those of permitted activities i.e. community and spiritual activities. However, I am mindful not to overlook the inherent social advantage associated with these types of non-residential activities that are permitted; and the clear policy framework that has guided the nature and scale of these activities. The activity is commercial in nature with an entry fee payable and is a popular tourist attraction as such whilst it contributes to the local economy its purpose is not to provide social advantage to the community.

For this reason, I consider it is not appropriate to apply a permitted baseline (not to be confused with an assessment of the existing environment) and exercise my discretion not to do so.

## Planning framework

The objectives and policies in the District Plan set the context for assessing the effects of the application.

*Objective 14.2.6 – Non-residential activities* is relevant:

### 14.2.6 Objective - Non-residential activities

- a. Residential activities remain the dominant activity in residential zones, whilst also recognising the need to:
  - i. provide for community facilities and home occupations which by their nature and character typically need to be located in residential zones; and
  - ii. restrict other non-residential activities, unless the activity has a strategic or operational need to locate within a residential zone or is existing guest accommodation on defined sites.

as is *Policy 14.2.6.3 Existing non-residential activities*:

- a. *Enable existing non-residential activities to continue and support their redevelopment and expansion provided they do not:*
  - i. *have a significant adverse effect on the character and amenity of residential zones; or*
  - ii. *undermine the potential for residential development consistent with the zone descriptions in Table 14.2.1.1a.*

In the context of this planning framework, I consider that the potential adverse effects of the activity relate to residential character, residential amenity, traffic generation and safety, parking, historic heritage and earthworks. The effects which could be experienced in the wider environment are addressed first.

## Residential character

The proposed entrance building and steps in the road berm, café building and expansion of the sculptural gardens, which are non-residential activities, have the potential to adversely affect the existing character of the residential area by detracting from the coherence of the existing character and streetscene. Noting in particular, the reduced setback of the entrance building from the road (1.1m setback proposed at its closest point to the road).

As referenced above, Akaroa has a range of building typologies. These present a range of sizes, shapes, styles, setbacks, roof forms and materials. The predominant factors are small to intimately scaled, detached timber clad dwellings orientated towards the street with steeply pitched gable ended roof set within a landscaped setting of moderate scale.

In addition, *Rule 14.15.1 Residential design principles i. Hillside and small settlement areas* provides useful guidance when considering the proposed development within the residential context.

Whilst I refer to specific comments from Ms Schroder in the following assessment, I note Ms Schroder has summarised her assessment with the following conclusion.

*“The proposal in itself provides interesting additions to what is already an eclectic and engaging activity. Impacts of the proposal, including landscape character, outlook for neighbours and the management of activity within the site itself, including the Café Building and surrounds, could potentially be mitigated through the application of an effective landscape strategy.*

*However, I believe that particularly in respect to the existing environment of the Rue Balguerie streetscape, the Entry Building will have an adverse visual impacts on the streetscape and residential amenity, that are more than minor, including the amenity and privacy of neighbours.”*

Noting the above comments and within the context of this part of the assessment focusing on the wider environment rather than adjacent neighbours / a localised area, of particular relevance at this point is Ms Schroders view that the entry building will have an adverse visual impact on the streetscape that is more than minor. Impacts on residential amenity, including the amenity and privacy of neighbours are assessed below under 95E.

### *Entrance building and steps/ramp in road berm*

With regard to the proposed entrance building, the applicant acknowledges that this building is not a quintessential residential design and therefore alters the residential character as it currently exists. The applicant considers that the design is relatively minimalist with expanses of glass and timber extending into the spiral roof. The applicant considers further that the simplicity of the design ensures the building does not dominate the site or streetscape. The overall intention of the applicant is that the uniqueness of the buildings are viewed as art in which one can observe and interact with.

Ms Schroder considers that the scale of the building is appropriate and addresses residential character in terms of pattern and grain of development. Ms Schroder notes further that the Entry Building is contemporary in nature and visually interesting in intent, form and materials. It is relatively low in height and set in part into the topography of the site, potentially reducing the overall visual scale of the building against the backdrop of the slope.

However, Ms Schroder advises:

*While visually interesting, the Entry Building is significant in its contrast to the neighbouring residential and rural buildings and I consider there are aspects of the Entry Building that compromise the residential nature of the street and the semi-rural and informal qualities of the streetscene. These are not a result of the Entry Building being simply of a different style and materials per se. Rather they include: the location of the building on the site, very close to the site front boundary and neighbouring sites, with limited vegetation to the sides of the building and a substantive area of hardscape and walls to the front and sides of the building; much of the grassed public berm utilised as hardscape to allow visitors access to the site and; the extent of glazing.*

Given the above and as noted above, Ms Schroder considers the effects on the streetscape as a result of the Entry Building will be more than minor.

In respect to Ms Schroder's comments regarding limited vegetation, I note the applicant has advised through further information in terms of the entrance building, there will be a line of trees planted on the west side fence line from road to entrance house, which will most likely be a continuation of the existing Michelias, or bamboo. The applicant states that the intent is to retain the existing plum tree if possible, but this will be dependent upon site preparation. There will also be some planting on the east side front of the entrance however, until such time as the building is constructed the species and locations will not be determined.

Ms Schroder also advises:

*... while providing passive surveillance to the street while open for business, I consider that the extent and scale of glazing appears more commercial rather than residential in nature. In combination with hard landscape elements, both within the site and adjacent to the street, I believe these will substantially detract from semi-rural quality and amenity of the location.*

Having considered Ms Schroder's comments and opinion that the effects of the Entry Building on the streetscape will be more than minor, I take the view that any effects of the streetscape and residential character in terms of the wider environment will be no more than minor rather than more than minor for the following reasons:

- In my opinion the Entrance Building will not detract from the coherence, openness and attractiveness of the street noting that Akaroa is characterised by range of building typologies including built form - sizes, shapes, styles, setbacks, roof forms and materials; and
- The applicant intends to retain the existing plum tree (if possible) and plant from the west side fence line from the road to the entrance; and
- The Entry Building is relatively low in height and set in part to the topography and whilst it is located 1.1m from the road boundary at its closest point, the unique egg shape of it means that it tapers off at each side thereby reducing the overall visual impact on the streetscene.

### Café

In terms of the proposed café the applicant states it has been designed to a modest scale and its location has been specifically considered taking into account the connectivity of the building within in the wider site. The applicant considers the building design is reminiscent of a glass house with a roof and expanses of glazing and glass doors and decorative finishes and they anticipate the building will become part of the garden art work in its own right. The deck area has been designed to allow visitors to appreciate sculptural gardens from a different vantage point.

Ms Schroder notes that the Café Building is set at some 22m distance from the Giants House, reflecting a similar grain of built development to open space to the surrounding area. Further, Ms Schroder states that the Café Building is of a domestic scale and materials and is partially built into the topography of the ridgeline, reducing its visual impact and effects associated with commercial activities.

Ms Schroder has raised some concerns in respect to the proposed Café Building. Ms Schroder notes that there are a number of elements that are or will be located in proximity to the Café Building that potentially increase the visual impact of the proposal and lessen its domestic quality, particularly when viewed from the north-west from public space or from the properties above the site. This includes the existing stair and retaining walls and the proposed footpaths, flat areas and ramps. Ms Schroder considers that in combination with the Café Building, these hardscape elements will result in a more evident commercial use rather than domestic appearance, particularly when populated by visitors.

Ms Schroder considers in effect this would detract from the landscape character i.e. residential sites, with building interspersed with predominantly vegetation and some open lawn areas, which are characteristic of the semi-rural context of this upper valley area. Rather the commercial operation including built form and hardscape would be more predominant, resulting in visual impacts that are minor, when viewed from above, or from the south east of the site from Rue Balquerie. Ms Schroder considers that an effective landscape plan, however could enable the mitigation of these effects such that they would be reduced to less than minor.

I note the applicant was asked to provide a landscape plan but instead advised that the landscape design and sculptural elements are not static or pre-determined these evolve as the applicant, a qualified artist and Horticulturist with 45 years practical and technical experience works intuitively with creating and planting, depending on what suits the situation. This is how the existing gardens were developed and no plants will be removed from the site. I note the plans do identify some plant species in the existing landscaping.

Having considered Ms Schroder's assessment and the applicant's rationale, and noting, in particular the distance of the proposed Café Building from the street towards the centre of the site and its domestic scale and materials in my opinion, whilst a landscape plan would provide additional mitigation as it currently stands any effects on the character of the wider residential environment as a result of the café building and associated hard standing will be no more than minor.

#### *Expanded sculptural gardens activity*

The proposed expansion of the sculptural gardens increases the scale of the existing commercial activity itself and increases the numbers of visitors, which will impact on the existing character of the residential area.

I note the effects of the existing activity on the character of the area are largely mitigated by its location on a back section down a 50m driveway and in association with a heritage building and setting, which is inherently in keeping with the character of the area even if the sculptures themselves are unique.

Whilst, I do have some concerns about the compatibility of the scale of the activity, this is more of an issue in terms of the impact on the amenity of neighbouring properties and in my opinion any effects on the character of the wider environment as a result of the expansion of the activity will be no more than minor given there is already a commercial activity on part of the site.

#### *Conclusion*

Overall, I consider any effects of the proposed buildings and expanded sculptural gardens on the wider residential character will be no more than minor.

### **Traffic**

#### *Background*

Traffic generation from the proposed maximum number of visitors attending the attraction could potentially result in adverse effects on the safety and efficiency of the transport network. The applicant has not provided an assessment of traffic generation/parking effects from a Traffic expert despite being advised to do so, therefore my assessment relies on Mr Gregory's assessment.

The applicant notes that it is somewhat difficult to estimate traffic generation because of the nature of the proposal and significant fluctuations in visitor numbers as well as more recently the event of Covid-19 which has caused visitor numbers to have virtually ceased. I accept that it is difficult to estimate traffic generation as there are many variables at play.

I note the applicant has undertaken a survey of visitor modes of transport during the period 22/11/2018 – 31/03/19. The applicant considers this data will provide an accurate snapshot of traffic generation. The survey was conducted on each visitor arrival and recorded the mode of transport in hourly blocks. The identified modes of transport were: walk, car, bus/shuttle.

The applicant states that approximately 89% of visitors surveyed walked to the site. Furthermore, the applicant states that there were 0-33 vehicles per day (66 vehicle movements per day). The maximum number occurred on 30<sup>th</sup> December 2018 with the maximum number of vehicles to the site in one hour period (1pm-2pm) being 11 vehicles also on that date.

Further, the applicant notes that if the maximum number of vehicles between 2pm-4pm left at closing (4pm) after spending 1-1.5 hours at the site this would generate 16 vehicle movements. Parking demand is greatest between 11am-12pm. The applicant has advised that the activity generates between 0-4 buses per day. The maximum number of buses (four) occurred on the 25<sup>th</sup> January 2019 which corresponded with the arrival of two cruise ships in Akaroa.

I understand that the buses the applicant refers to are coaches rather than shuttles which also attend the site. I note the above relates to peak periods rather than over the winter when numbers are less.

Further, I note the applicant considers that there is not necessarily a direct linear relationship between an increase in the size of the garden, to an increase in visitor numbers and thus traffic generation/parking demand and it is difficult to quantify whether or not the expansion will result in an increase in visitor numbers beyond those already experienced.



I consider it reasonable to assume that with an increased area of garden and a new offering i.e. cafe there would be some increase in visitors. From a commercial perspective it would not seem logical to make such a significant investment without the expectation in respect to visitor numbers. In any case, I consider what is being proposed would result in an increase in visitors and therefore pedestrians, cars and buses in comparison to what was originally consented.

The applicant has volunteered to restrict visitor numbers to 125 visitors on site per hourly period (with 150 visitors on site per hourly period on 20 occasions), I do have concerns about how this would be managed should additional visitors arrive whilst the garden was at the proposed capacity.

### *Traffic Safety*

An increase in traffic generation can compromise safety, particularly in respect to pedestrians and other road users.

The applicant notes the majority of visitors arrive on foot. However, the footpath stops at 67 Rue Balguerie so for part of the journey (approximately 85m) there is no footpath, requiring pedestrians to either walk on the road or the roadside berm and negotiate power poles and landscaping.

As noted above, the applicant advises there were a maximum of 66 vehicle movements per day with a maximum of 11 vehicles at one time on 30 December 2018.

I have most concern with the combined safety effect of buses coinciding with pedestrians walking to the site without a footpath as well as cars simultaneously arriving and parking on the street. I note the applicant has proposed a condition to manage bus bookings so that there is only one bus at any time, which would mitigate effects to some extent. Also noting the consented activity approved buses to be parked on the street, albeit at a much reduced frequency, based on the application documents.

Mr Gregory notes that the majority of visitors do not currently arrive by car, and therefore wider network effects (associated with traffic) are not anticipated, even in the event of significant traffic growth, based on the data provided.

I do have concerns given the lack of footpath for approximately 85m, cars and buses arriving at the site and the reliance on street parking in an area which is also used by the general public for walking, cycling and driving, however, I consider the effects on the wider environment and public in terms of safety from this traffic would be no more than minor, noting Mr Gregory's comments and with the implementation of a bus booking system restricting bus numbers to one at a time as proposed by the applicant.

### **Parking**

A significant shortfall of car parking (56) is proposed and in the following assessment, I address the effects of this on the safety and efficiency of the transport network, I consider effects on amenity due to lack of on-site parking are also relevant and address these under effects on persons later in this report. I note the lack of on-site cycle parking would not in my opinion impact on the public/wider environment or adjacent properties because any such effects would be limited to on-site amenity for staff and visitors.

It is of particular relevance to note that the National Policy Statement on Urban Development took effect on 20 August 2020 and it requires that within 18 months, District Plans must no longer contain minimum car parking requirements in urban areas.

Given the parking requirements are still in the District Plan the rule breach is triggered and the effects of non-provision of parking still require assessment. Further, it is my understanding that for discretionary activities such as this even when the requirements are removed there will still be the ability to consider the effects of lack of on-site car parking.

### *Car parking*

The proposed activity would result in a significant shortfall in car parking on the site as required under the current provisions of the District Plan in relation to the increased area of the sculptural gardens and the café. I also note that no additional mobility parks would be provided. I accept the applicant's assertion that the parking requirement

associated with the food and beverage activity (9 car parking spaces) which is considered ancillary to the activity is unlikely to generate a separate parking demand.

As noted above there has been up to 11 vehicles visiting the site at one time, which gives some indication of current on-street parking demand. The area which will be mostly affected by the use of street parking for the activity is localised to, and in close proximity to the site. In my opinion, any effects of the shortfall of car parking on the wider environment will be no more than minor.

### *Bus parking*

There is currently no dedicated bus parking and whilst the applicant has indicated they are willing to work with the Council through a separate process to this for the purposes of this application it must be assumed there is no dedicated bus parking proposed.

The applicant has advised at present buses park along Rue Balguerie either on the southern side of Rue Balguerie to the west of 70 Rue Balguerie's driveway or on the northern side of Rue Balguerie on the verge adjacent to 73 Rue Balguerie. In terms of bus manoeuvring, subject to the size of the bus the larger buses utilise Rue Cachalot and smaller vehicles are able to undertake a u-turn within the road carriageway.<sup>8</sup>

In my opinion with the implementation of a booking system reducing the number of buses to a maximum of one at time any effects of the proposal in terms of lack of bus parking on the wider environment will be no more than minor compared to the existing situation.

### **Historic Heritage**

As noted above the Giants House (Linton) is a Heritage Item located within a Heritage Setting. The heritage values of a place are those held by the public, they exist because of the benefits they offer to the community in terms of identity and sense of place. I agree with the applicant's assertion that the proposal will not diminish the integrity of the original Heritage Item or affect the heritage values of the buildings or settings given the building and sculptural garden are located on the adjoining site and do not extend into the Group 1 listed site or setting. As such I consider any effects on the wider environment in relation to historic heritage will be less than minor.

### **Conclusion**

The adverse effects of this proposal are localised and relate only to the owners/occupiers of the adjacent properties. Any effects on the wider environment are considered to be no more than minor.

<b>Step 4: Relevant to all applications that don't already require notification – section 95A(9)</b>	
<i>Do special circumstances exist that warrant the application being publicly notified?</i>	<b>No</b>

### **Conclusion on public notification**

Having evaluated the application against the provisions of section 95A, my conclusion is that the application **must not be publicly notified**.

### **LIMITED NOTIFICATION TESTS [Section 95B]**

Where an application does not need to be publicly notified, section 95B sets out the steps that must be followed to determine whether limited notification is required.

<b>Step 1: Certain affected groups/persons must be notified – sections 95B(2) and (3)</b>	
<i>Are there any affected protected customary rights groups or customary marine title groups?</i>	<b>No</b>
<i>If the activity will be on, adjacent to, or might affect land subject to a statutory acknowledgement, is there an affected person in this regard?</i>	<b>No</b>

<sup>8</sup> In order to park on the south side coaches would need to perform a u-turn

<b>Step 2: Preclusions to limited notification – section 95B(6)</b>	
<i>Does a rule or NES preclude limited notification for all aspects of the application?</i>	<b>No</b>
<i>Is the application for a land use consent for a controlled activity under the District Plan?</i>	<b>No</b>

There are no preclusions to limited notification under this section.

<b>Step 3: Notification of other persons if not precluded by Step 2 – sections 95B(7) and (8)</b>	
<i>For a boundary activity, are there any affected owners of an allotment with an infringed boundary under s95E?</i>	<b>N/A</b>
<i>For other activities, are there any affected persons under s95E, i.e. persons on whom the adverse effects are minor or more than minor, and who have not given written approval?</i>	<b>Yes</b>

### **Assessment of affected persons**

The statutory context for assessing the adverse effects of this application on the environment is outlined earlier. It is equally relevant to the assessment of affected persons, which extends to include the owners and occupiers of adjacent properties.

The properties which are identified in the following assessment are considered to be adjacent to the site and/or the activity. To assist Figure 3 below shows the properties which are considered to be both adjacent to the site and/or activity (including the main area in which vehicles park and turn) and for which effects are considered to be at least minor. In addition, Table 1 below summarises the adjacent properties in which effects are considered to be at least minor. The effects on these properties are identified and discussed in the following assessment.



Figure 3. Adjacent properties in which effects are considered to be at least minor (blue circle)

## Residential amenity

### Background

The proposed expansion of the existing activity with a new entrance building and café building on an existing residential site has the potential to compromise the residential amenity of the surrounding residential environment.

The residential amenity of a localised area can be adversely affected through additional traffic generation, reliance of an activity on street parking, loss of visual amenity, general nuisance and disturbance from the number of visitors and loss of privacy/overlooking to adjoining properties. All of which will reduce the pleasantness of the residential environment.

Before considering the effects of the expansion of the activity and the proposed built form it is useful to note what is being proposed is essentially the expansion of an existing commercial activity, which increases the scale of the existing activity through the following:

- Expanded commercial activity across two residential sites down to the street level;
- New larger café offering;
- 150 visitors per hour on 20 occasions per year otherwise 125 persons per hour;
- No additional onsite bus or car parking as part of the application;
- Hours of operation 1st May – 30th September 11am – 2pm, 1 October – 30th April 11am – 4pm. (Café summer hours same as Giants House).

I repeat the application advises the following based on a survey they carried out:



- Applicant states 0-4 buses per day (at time of survey 22/11/2018 – 31/03/19 and condition offered limited to 1 bus per hour);
- Applicant states 89% of visitors arrived by foot (at the time of survey); and
- Applicant states maximum daily vehicles to the site was 33 on 30 December 2018 – Generally between 0-33 vehicles (at time of survey).

I understand the applicant's rationale for the proposal is to provide an enhanced visitor experience and they note the (pre-Covid) burgeoning and unprecedented number of visitors to Akaroa arriving by cruise ships. As such, the applicant states that the numbers of visitors to the Giants House has significantly increased. Although, the applicant does not consider these numbers will be sustained once the Lyttelton cruise ship berth opens and given the recent global Covid-19 pandemic. It is therefore difficult to determine the impact these will have on visitor numbers.

I agree with the applicant that it is difficult to quantify whether or not the expansion of the gardens will result in an increase in visitor numbers above those already experienced – given this is the case it makes sense to focus on the maximum numbers proposed and consider such effects on this basis. As noted above the applicant proposes a maximum of 125 visitors per hour with the addition of 150 visitors per hour on 20 occasions in the calendar year.

It is useful to consider that the existing consented activity anticipated small groups in modest numbers with the occasional bus tours. I have discussed the existing consent with Mr Wilson who processed the original, and he has advised that what he understood to be small groups in modest numbers was several groups of 10-12 persons occasionally coinciding with a tour bus group. As such, I consider the numbers proposed would be an increase in the scale of the activity and the visitor numbers compared to the consented activity.

### **Loss of privacy/overlooking and outlook**

In my opinion the adjoining neighbours at 66, 68, 72, 76, 78, 80, 82 86, and 88 Rue Balguerie as well as 7B and 3 Rue Cachalot could potentially experience a loss of privacy due to the number of visitors experiencing the gardens/using the café directly next to their boundaries. Loss of privacy from overlooking could particularly affect the neighbouring properties to the north of the existing activity given the site is above these properties.

The applicant considers that dense plantings along the boundaries will ensure privacy, although they have not specified whether they mean existing or proposed plantings.

The applicant also states that the location and orientation of the café has considered not only physical structures and constraints yet has also been sited to maximise the northerly aspect whilst not compromising the outlook and/or privacy on adjoining sites.

The proposed/existing landscaping, particularly the griselin hedge located on the eastern boundary would provide some degree of screening, however, I consider that there will be at least a minor loss of privacy through overlooking to the adjoining properties at 72, 76, 78, 80, 86 and 88 Rue Balguerie given the numbers proposed, the location of the café and the fact the site slopes to the north.

In my opinion any effects in terms of loss of privacy through overlooking in relation to 66 and 68 Rue Balguerie will be less than minor given their distance from the extended area of the activity and in respect to 82 Rue Balguerie and 7B and 3 Rue Cachalot their location above the site.

The proposal could also potentially impact on the outlook of neighbouring properties, particularly in respect to properties to the south east of the site for which the café building will be in view. However, given the building is of a domestic scale and materials and is partially built into the topography of the ridgeline, in my opinion any effects on outlook/views from neighbouring properties will be less than minor.

### **Noise and disturbance**

With the expansion of the sculptural gardens, the proposed entrance building, and the café building there will likely be increased numbers of visitors up to the maximums proposed which is likely to result in an increase in noise disturbance from groups of people talking/laughing. In addition, noise disturbance attributable to vehicles arriving and leaving, including car doors slamming, engine noise etc beyond that anticipated on a small local road with a property access function.



As noted above, I have sought input from Mr Grant. Mr Grant notes that no acoustic report has been provided by the applicant to quantify or comment on the degree of compliance with District Plan noise levels. The applicant was advised to provide an acoustic report but has chosen not to.

Mr Grant notes that District Plan noise level for this area for the daytime (7:00 – 10pm) is 50dBA calculated as an Leq (similar to an average noise level) measured over a 15 minute period. There is no maximum (instantaneous) noise level for day time. In such a setting as this application it is likely that typical daytime levels would normally be much lower than 50 dBA, likely to be nearer 40dBA. Mr Grant notes that there is an existing Resource Consent in place for an existing activity but on a smaller scale.

Mr Grant advises that activities associated with this current application that will contribute to noise not normally associated with a residential activity will include –

- Groups of visitors walking up Rue Balguerie to the destination and talking as they walk.
- Passenger vehicles traveling to the site, parking on the road, exiting the vehicles with door closing and talking as they enter the site.
- Heavy Buses traveling to the site, manoeuvring to park and turn around and discharging 30 – 50 passengers at a time to enter the site.
- Visitors moving about on the site

In the absence of an acoustic report, Mr Grant considers that noise from on the site (spread over the site) should comply with daytime residential noise standards on the assumption that -

- 1 The gardens are only open to fee paying visitors (and numbers will be restricted as described).
- 2 The café is open the same or fewer hours than the gardens.
- 3 No outdoor amplified music.

I note that the applicant refers to Rule 6.1.4.2 exempt activities which states that the provisions in Rule 6.1.5 and Rule 6.1.6 do not apply to i. traffic noise generated within a Transport Zone. However, the advice note states that “Although these noise sources are exempted from meeting the rules, any potential and actual adverse effects shall be considered for any discretionary or non-complying activity”. Given this is a discretionary activity such noise effects are not exempt.

With respect to noise generated from traffic activity arriving/leaving, Mr Grant advises that it may not be below the District Plan noise standards. Further, Mr Grant considers that any additional noise associated with traffic will be audible and even if it does comply with the standards may still be intrusive to the point of annoyance.

Mr Grant concludes that the activity which has been applied for will contribute to increased noise levels in the area. It is difficult to conclude, without an acoustical (sic) report, whether those levels would remain below the daytime plan standard.

Taking into account the advice from Mr Grant, I consider that the adjacent properties to the site at 66, 68, 72, 76, 78, 80, 82, 84, 86, and 88 Rue Balguerie as well as 7B and 3 Rue Cachalot are likely to be adversely affected by noise disturbance from people on the site given the number of visitors proposed even if noise standards are met because of the lower typical daytime noise that would be expected in such a residential environment and without any other supporting evidence to the contrary. As such, I consider any effects would be at least minor.

With respect to noise disturbance from visitors walking to the site, passenger vehicles and buses, noting Mr Grant's advice in respect to this noise being audible and no certainty the noise standards in the residential zone would be met, I consider the neighbouring properties which adjoin the main areas which will provide the on street parking to be affected. In my opinion there will be at least a minor effect in terms of noise disturbance from traffic both in terms of pedestrian and vehicle noise to the owners and occupiers of the properties at 60, 62, 64, 73, 66, 72, 76, 78, 83, 85, and 1 and 2 Rue Cachalot without any supporting evidence to the contrary.

## **Traffic and parking**

Increased traffic in the area as a result of the proposed maximum number of visitors combined with the reliance of on street parking could potentially adversely affect residential character and amenity in terms of visual amenity, noise disturbance from the activity (as discussed above), safety, as well as general disturbance/detraction from the pleasantness of the residential environment. I note that the effects of the traffic generated from the activity is one of the key concerns raised by those neighbours who have corresponded with the Council to date.

The congregation of people and traffic in this localised area contrasts with what would be expected in this semi-rural context as described above. This traffic, both pedestrian and vehicular will impact on visual amenity and detract from the pleasantness of the localised area. I note Mr Gregory's comments that localised effects from the activity are anticipated on residential amenity resulting from high degrees of car parking and manoeuvring, and noting the design of the road is not well suited to high levels of on street parking, potential damage to the berm and the presence of a congested section of road space that would otherwise be more removed from the busier town centre parking environment.

In addition the accumulation of people and vehicles which relies on street side parking for buses and cars in an area which does not contain a footpath (as the footpath terminates approximately 85m from the site at 67 Rue Balguerie) could potentially create a safety risk for residents particularly in the localised area.

Mr Gregory notes that high levels of on street parking would escalate pedestrian risks as well, firstly by generation of more pedestrian activity, but also forcing pedestrians to walk in the middle of the road, as the berms are obstructed by landscaping and/or power poles. Further, Mr Gregory states that localised effects are anticipated in terms of safety effects, derived from significant numbers of visitors walking in the road, in the absence of appropriate walking infrastructure in proximity of the site, and mixing with on street parking and manoeuvring coaches.

Based upon the above assessment, I consider there will be at least a minor impact in terms of traffic volumes, manoeuvring and parking effects on the residential character, amenity and safety of the owners and occupiers of the properties adjoining the street from approximately where the foot path terminates to the main areas where it can be anticipated the buses and cars would be parked (which I have previously observed during my site visit). In my opinion these neighbouring properties are 60, 62, 64, 66, 72, 76, 78, 83, 85, 88, 90, 91 and 92 Rue Balguerie and 1 and 2 Rue Cachalot.

## **Earthworks**

The earthworks are proposed in association with the pathways, which will involve the nominal scraping of approximately 0.1 m topsoil then formed with a metal surface, the pathways will be approximately 1m -1.5m wide to allow for 2 persons. The gradients are approximately 1:20. Earthworks are also proposed for formation of the driveway and for the platform, base of stair and backfilling.

I note that it was through the further information requested that the applicant provided details of earthworks in relation to the pathways and driveway which has increased the overall volume, I am satisfied that Mr Dray's assessment and recommended conditions, which refers to the proposed 53m<sup>3</sup> of earthworks for the platform, base of stair and back filling is still relevant and appropriate.

### *Nuisance/land stability*

As is the case with all earthworks, the proposed earthworks has the potential to cause nuisance effects from dust, sedimentation, water/wind erosion, road network damage, drainage effects, effects on quality of groundwater, noise and vibration. Earthworks can also potentially result in land instability.

Mr Dray considers any nuisance effects can be managed through conditions and raised no concerns in relation to land stability. Mr Dray has recommended conditions in respect to erosion and sediment control, dust emissions being managed and notification to the Council prior to works occurring. The applicant has volunteered erosion and sediment control requirements and I consider any effects as a result of the proposed earthworks can be mitigated by the proposed conditions and will therefore be less than minor.

### *Amenity*

The proposed earthworks are relatively small scale in nature taking into account the size of the site, in addition given they are to form the driveway, paths and the base of the stair platform they will not result in adverse effects in terms of visual amenity, landscape context and character, views, outlook, overlooking and privacy will be less than minor.

### *Cultural values*

The site is located within the Ngā Tūrangā Tūpuna cultural overlay. The applicant requested that the Council undertake consultation with Mahaanui Kurataiao (MKT) given the proposed earthworks.

MKT has advised that controls should be in place to manage the risk of erosion and sediment run-off as a result of the earthworks and an Accidental Discovery Protocol (ADP) is an appropriate mechanism to protect any unknown wahi tapu and wahi taonga that may be disturbed as a result of the proposed earthworks activity. MKT has also recommended an advice note be included which encourages the applicant to develop a planting plan for the site which consists of appropriate indigenous vegetation.

MKT advised that if conditions are imposed to reflect these concerns that they would not consider themselves adversely affected. I note the applicant has volunteered conditions both in respect to ADP and erosion and sediment controls.

In addition, I note that given the proximity of 74 Rue Balguerrie to the Giants House heritage setting and the age of the neighbourhood it may be that an archaeological authority is required from Heritage New Zealand (HNZ).

On this basis, I consider any adverse effects in terms of cultural values will be less than minor.

## Summary

For the reasons outline above, I consider that the owners and occupiers of the following properties are affected persons because the adverse effects on them are likely to be at least minor, and they have not given their written approval to the application:

<b>Table 1. Adjacent persons (owners and occupiers) to the activity on whom effects will be at least minor</b>		
<b>Address</b>	<b>Effects</b>	<b>Degree of effect</b>
60 Rue Balguerrie	Traffic noise disturbance, traffic effects on residential character, amenity and safety	At least minor
62 Rue Balguerrie	Traffic noise disturbance, traffic effects on residential character, amenity and safety	At least minor
64 Rue Balguerrie	Traffic noise disturbance, traffic effects on residential character, amenity and safety	At least minor
66 Rue Balguerrie	Traffic and visitor noise disturbance, traffic effects on residential character, amenity and safety	At least minor
68 Rue Balguerrie	Visitor noise disturbance	
1 Rue Cachalot	Traffic noise disturbance, traffic effects on residential character, amenity and safety	At least minor
2 Rue Cachalot	Traffic noise disturbance, traffic effects on residential character, amenity and safety	At least minor
3 Rue Cachalot	Visitor noise disturbance	At least minor
7B Rue Cachalot	Visitor noise disturbance	At least minor
72 Rue Balguerrie	Loss of privacy/overlooking, traffic and visitor noise disturbance, traffic effects on residential character, amenity and safety	Combined more than minor effects on residential amenity
76 Rue Balguerrie	Loss of privacy/overlooking, traffic and visitor noise disturbance, traffic effects on residential character, amenity and safety	Combined more than minor effects on residential amenity
78 Rue Balguerrie	Loss of privacy/overlooking, traffic and visitor noise disturbance, traffic effects on residential character, amenity and safety	Combined more than minor effects on residential amenity
80 Rue Balguerrie	Loss of privacy/overlooking, visitor noise disturbance	At least minor
82 Rue Balguerrie	Visitor noise disturbance	At least minor
84 Rue Balguerrie	Visitor noise disturbance	At least minor
86 Rue Balguerrie	Loss of privacy/overlooking, visitor noise disturbance	At least minor
88 Rue Balguerrie	Loss of privacy/overlooking, visitor noise disturbance	At least minor
90 Rue Balguerrie	Traffic effects on residential character, amenity and safety	At least minor
92 Rue Balguerrie	Traffic effects on residential character, amenity and safety	At least minor
73 Rue Balguerrie	Traffic noise disturbance	At least minor

83 Rue Balguerie	Traffic noise disturbance, traffic effects on residential character, amenity and safety	At least minor
85 Rue Balguerie	Traffic noise disturbance, traffic effects on residential character, amenity and safety	At least minor
91 Rue Balguerie	Traffic effects on residential character, amenity and safety	At least minor

#### **Step 4: Relevant to all applications – section 95B(10)**

*Do special circumstances exist that warrant notification to any other persons not already identified above (excluding persons assessed under s95E as not being affected)?*

**No**

#### **Conclusion on limited notification**

Having evaluated the application against the provisions of section 95B, my conclusion is that the application **must be limited notified** to the affected persons listed in Table 1 above.

#### **RECOMMENDATION**

That, for the reasons outlined above, the application **be processed on a limited notified basis** in accordance with sections 95A and 95B of the Resource Management Act 1991, and that it be served on all affected persons identified under section 95E who have not given written approval to the activity (as listed above).

**Reported and recommended by:** Liz Hislop, Senior Planner

**Date:** 4 November 2020

**Reviewed by:** Hermione Blair, Principal Advisor Resource Consents

**Date:** 6 November 2020

#### **Decision**

That the application be publicly notified in accordance with section 95A of the Resource Management Act 1991..

☒ I have viewed the application and plans.

☒ I have read the report. However I do not accept the conclusions and recommendation of that report in full, for the reasons stated below.

#### Decision maker notes

Firstly, I record that I accept and adopt the conclusion in Ms Hislop's report that the persons she identifies would be affected to an extent that would be at least minor. For that reason, this application should as a minimum be limited notified to those parties.

However I also need to consider whether the application should be publicly notified.

I have read the report by Mr Mark Gregory for the Council. He expresses considerable concern about the transport-related aspects of this application. In particular he is concerned about the absence of footpaths and properly formed parking spaces in the vicinity of the application site, which could result potentially large numbers of pedestrians arriving at the site, either on foot or emerging from parked cars and buses into the narrow carriageway. It is particularly notable that it is anticipated that up to 90% of visitors might arrive on foot. That carriageway can be expected to be significantly constricted by parked vehicles on either side, including large coaches from time to time, and would in fact become a narrow one-way passage at peak times. Visibility and space would be restricted, and I consider there would be a realistic possibility of collisions between vehicles, and between vehicles and pedestrians, which could result in significant injuries. The application is for up to 150 visitors per hour, and while it is unknown if that figure would ever be reached, that is the level of activity which has been applied for and which must be assessed. In passing I note that it would appear to be difficult to limit arrivals at the site in any case. It would certainly be possible to limit visitor numbers at the entry point into the site, but that would not prevent greater numbers arriving on the street outside so the volunteered condition may prove to be ineffective.

While the neighbours identified by Ms Hislop might contribute to the numbers of vehicles and pedestrians on the road, the numbers arriving from outside the neighbourhood would be significantly greater if the numbers applied for eventuate. Therefore this is not a localised effect that is capable of being addressed through limited notification. Rather it is an effect on the wider environment which I consider to be more than minor.

I have considered whether this effect is comparable to the effects that could be expected to arise from the existing consent and so should be discounted accordingly. The existing consent was granted in 2001. As lodged the application was simply to provide light lunches and morning and afternoon teas and coffees from Linton House. Through further information this was expanded to include occasional concerts and performances for 50-60 people, an annual 2 week artists workshop for 10-15 people, garden visits for individuals, couples, small groups and occasional buses, and signage.. No numbers were specified, but the term "small scale" is used in the application documents and the Council decision. The activities were confined to the existing heritage building and the gardens at 70 Rue Balgurie.

The business has clearly been very successful. In part this has been due to the regular arrivals of cruise liners in Akaroa Harbour since the Canterbury Earthquakes, and the severe damage caused to Lyttelton Harbour. It has also benefitted from the gardens being awarded 6 Stars by the New Zealand Gardens Trust in recognition of its endorsement as a Garden of International Significance. The resultant publicity must have attracted additional visitors to the site. The success of the business has caused the owners to purchase additional property in order to provide two additional buildings consisting of an entry/reception /sales building and a cafeteria, to expand the gardens, and to plan for peak visitor numbers of up to 150 per hour on up to 20 days per annum and up to 125 visitors per hour on other occasions.


This level of activity is clearly not the "small scale" level envisaged in the 2001 consent. Therefore I do not consider that consent establishes a comparable consented environment for the purpose of assessing the current application under the Resource Management Act. The current application therefore needs to be considered on its merits as a new application.

I am aware that the projected visitor numbers may never arise, especially because of the recent reopening of Lyttelton Harbour to cruise ships. However nor do I expect that visitor numbers would revert to 2001 levels. In any case I must consider the application as applied for, which includes the high visitor numbers of at least 125 and on occasion 150 visitors per hour that have been applied for.

Therefore I have concluded that there would be effects on the wider environment that would be more than minor. That triggers the requirement for public notification under s95A of the Resource Management Act 1991.

**Commissioner:**

Name: David Mountfort

Signature: 

Date: 12 November 2020



# APPENDIX A – Engineering assessment and recommended conditions

Copy for RMA/2020/2000

RMA/2019/2440 70/74 Rue Balguerie Land Use Consent for Earthworks

Engineering Comments:

This report is confined to the relevant engineering matters under Chapter 8 of the District Plan.

The application is for the earthworks to provide room for the construction of a retaining wall and associated access ramps including a lift and decking to a café building for which a building consent will be sought, and a general extension of the gardens.

The 53m<sup>3</sup> of earthworks required that exceeds that allowed by Table 9 as a Permitted Activity is understood by the applicant to be outside any exemption under rule 8.9.3 of the District Plan as it is not needed for the support of any work to be covered by the building consent.

The site slopes in a number of steps and presents as a number of features that have been built over the years including a large timber retaining wall supporting the garden area and some stairs built relatively recently. The plans indicate some surveyed levels but these may not be sufficient to demonstrate other than the engineering issues.

The site is mapped in the Remainder of the Port Hills and Banks Peninsula Slope Instability Management Area and is clear of any rockfall risk.

However a detailed geotechnical report on file indicates that while the loess silt subsoil typical of the area provides a stable medium for specifically engineered piled foundations, care is required to ensure that surface water runoff is controlled and water is prevented from entering excavations.

The Assessment of Environmental Effects (AEE) refers to the possibility of dust nuisance soiling properties and that suppression will be undertaken by timely watering down as practical and in accordance with best practice. Excessive noise from excavating machinery and haulage is not considered likely and otherwise would have less than a minor and temporary effect.

The AEE also informs that storm water will be able to be controlled with an assumed available network connection and will be managed to avoid inundation or the stability of neighbouring properties or to the detriment of adjoining land.

Based on the information provided or on file, and subject to the adoption of conditions for the conduct of the work, which should be under professional engineering control, it is considered that the applicable provisions of Chapter 8 of the District Plan can be satisfied to enable consent to be granted.

A draft list of engineering conditions is appended for discussion with and agreement by the applicant for inclusion in the consent document.

**Bill Dray**  
**Civil Engineer**  
**Specialist Engineering Services Team**  
**Consenting and Compliance Group**

1. All filling and excavation work shall be carried out in accordance with a site specific Erosion and Sediment Control Plan (ESCP), prepared by a suitably qualified and experienced professional, which follows the best practice principles, techniques, inspections and monitoring for erosion and sediment control contained in ECan's Erosion and Sediment Control Toolbox for Canterbury <http://esccanterbury.co.nz/>. The ESCP must be held on site at all times and made available to Council on request.
2. Run-off must be controlled to prevent muddy water flowing, or earth slipping, onto neighbouring properties, legal road, or into a river, stream, drain or wetland. Sediment, earth or debris must not fall or collect on land beyond the site or enter the Council's stormwater system. All muddy water must be treated, using at a minimum the erosion and sediment control measures detailed in the site specific Erosion and Sediment Control Plan, prior to discharge to the Council's stormwater system.
3. The ESCP shall be implemented on site and maintained over the construction phase, until the site is stabilised (i.e. no longer producing dust or water-borne sediment). The ESCP shall be improved if initial and/or standard measures are inadequate. All disturbed surfaces shall be adequately topsoiled **and** vegetated as soon as possible to limit sediment mobilisation.
4. Dust emissions shall be appropriately managed within the boundary of the property in compliance with the *Regional Air Plan*. Dust mitigation measures such as water carts or sprinklers shall be used on any exposed areas. The roads to and from the site, and entrance and exit, must remain tidy and free of dust and dirt at all times.
5. The consent holder must notify Christchurch City Council no less than three working days prior to works commencing, (email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)) of the earthworks start date and the name and contact details of the site supervisor.

## **APPENDIX B – Urban design assessment**

**To:** Liz Hislop  
**From:** Josie Schröder, Principal Advisor Urban Design  
**Date:** 2 November 2020  
**Re:** RMA/2020/2000 – Giants House. 70 & 74 Rue Balguerrie, Akaroa – Urban Design Assessment

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## Introduction

### Summary

The above proposal is for a dedicated visitor entry building (Entry Building), a café building (Café Building) and expansion of the existing sculptural garden. All of these elements are additions to the Giants House – a tourist attraction which includes a Category 2 heritage listed house 'Linton' and garden, the latter identified as of national and international significance. The intention of the proposal is to expand and improve the visitor experience to the site.

I have visited the site and surrounds.

In respect to the application, I sought further information to fully inform my assessment. There are a number of areas, including in respect to landscape detail, where this has not been provided which has limited my ability to fully assess some of the implications of the proposal.

In summary I consider that the proposal will have adverse effects in relation to visual amenity (built form and landscape) and privacy (overlooking) that are more than minor. These relate to visual impacts of the additional buildings and associated hardscape on the landscape values and residential character, privacy and disturbance effects on neighbours as a result of the activity, including the impacts of the increased movement within Rue Balguerrie and on the site.

I consider that there are adverse effects that may be managed by the application of an effective landscape plan, particularly relating to the Café Building and use of paths within the site. But the more significant effects result from the Entry Building within the context of the Rue Balguerrie and on adjoining neighbours to the site are not so easily resolved.

### Context

Akaroa more generally is recognised as a settlement of heritage importance, with more specific identification of areas or features of heritage or character value. While aspects of the subject site are of heritage value, this vicinity within Akaroa is not identified for specific character or heritage values.

Rue Balguerrie intersects with Rue Lavaud, forming a commercial/community hub. Following the base of the valley from the harbour at the west towards the hills to the east, the valley transitions from urban to semi-rural to rural. Aligned with this, residential character and heritage values are more prominent in the lower parts of the valley.



*Rue Balguerie – lower valley character*

The subject site is located on the southern side of the valley at the urban rural fringe, where there is greater variety in section size, housing styles and ages, with less architectural cohesion than in the lower valley.



*Rue Balguerie – upper valley character (noting the Giants house to the rear)*

Rue Balguerie itself is typical of many streets in Akaroa, particularly within the upper parts of the valleys, with a relatively informal character with kerb on only one side of the street – the southern side - and no footpath. The northern side of the street simply runs into the grassed/vegetated edge land adjacent.

To the north of Rue Balguerie, the base and northern side of the valley is more rural in character, with larger sites, a stream, open land and forested area. Farm buildings typifying a rural landscape are located almost opposite the site of the proposed entry building. A large house within a highly vegetated site is opposite to 74 Rue Balguerie.





*Rue Balguerrie looking to the east from the intersection with Rue Cachalot*

The southern side of the valley, the location of the subject site, is more urban in nature and comprises an area of small valleys, ridgelines and knolls. Private houses surround the subject site, some of which overlook or look across to it, or are located adjacent or below. Housing is relatively dispersed across the hillside with vegetation predominant, but with more condensed residential development immediately adjacent to Rue Balguerrie and the site of the proposed visitor entry building.



*76 Rue Balguerrie*

The subject site is extensive and has a number of elements to it. The main area of the site is located on a ridgeline and includes Linton and the established garden around it. This is accessed by a steep drive from Rue Balguerrie. To the east of Linton, the Café Building is proposed with the café accessed at the same general level as Linton. A stairway structure (consented) connects the upper level to the storage below the café and to a newly established area of garden (previously a bush clad slope) to the northeast containing the cherry blossom trees. At the base of the slope immediately adjacent to the street, is the Entry Building at 74 Rue Balguerrie.





*View to the south west towards the Giants House, including stair structure from 76 Rue Balguerrie*



*View to the south east towards the stair structure and proposed Café Building from in front of 72 Rue Balguerrie (with the site of the Entry Building to the left and current access to the Giants House to the right)*

Currently 74 Rue Balguerrie contains a very small residential building, with a grassed access on the eastern boundary to the larger area of site behind.





## District Plan Provisions

The site is zoned Residential Banks Peninsula. The proposal is for a non-residential activity of a size that results in a discretionary activity status. In addition, the Café Building is marginally over height and the visitor entry building breaches the street setback in respect to the built form standards applicable to permitted activities only.

## Urban Design Assessment

In respect to urban design matters while discretion is unlimited, I have utilised the following matters for guidance in my assessment, noting that the activity is non-residential activity and as such some matters are not relevant and as such have not been addressed. In addition, where matters coincide I have addressed these together.

14.15.1 - Residential design principles, more specifically (i) Hillside and Small Settlement Areas;

14.15.3 - Impacts on neighbouring property; and

14.15.17 - Street scene - road boundary building setback, fencing and planting

In regard to the use of the site I am unclear in respect to a number of aspects of the proposal, for which I sought further information but did not receive it, including:

- The transition of visitors from the Entry Building to the middle and upper reaches of the site. A path indicated on the site plan does not align with the egress from the Entry Building.

- The purpose of the driveway to the east of the Entry Building.
- The landscape outcomes for the site.
- The use of the public berm for access.

These matters in my view have the potential to impact considerably on the level of effects of the activity.

### **Context - Built Form and Visual Amenity**

The site of the proposal is quite large, with each area of the site having its own contextual elements, including topography and landscape character. I consider that each proposed built element in respect to its location on the overall site is located appropriately relative to the scale and form of that building.

#### ***Café Building***

As noted within the context above, much of the site previously contained native vegetation when viewed from Rue Balguerie, but this has been removed to make way for the proposal including extension to the garden.

The Café Building is set at some 22m distance from the Giants House, reflecting a similar grain of built development to open space to the surrounding area. The Café Building is of a domestic scale and materials. It is partially built into the topography of the ridgeline, reducing its visual impact and that of the associated commercial activities. Being at some distance from Linton and at a lesser height, any visual impact on the heritage values of Linton – The Giants House, and its curtilage, in my view will be minimal.

However, there are a number of elements that are or will be located in proximity to the Café Building that potentially increase the visual impact of the proposal and lessen its domestic quality, particularly when viewed from north-west from public space or from the properties above the site. This includes the existing stair and retaining walls and the proposed footpaths, flat areas and ramps.

In combination with the Café Building, I consider these hardscape elements will result in a more evident commercial use rather than domestic appearance, particularly when populated by visitors. In effect this would detract from the landscape character i.e. residential sites, with buildings interspersed with predominantly vegetation and some open lawn areas, which are characteristic of the semi-rural context of this upper valley area. Rather the commercial operation including built form and hardscape would be more predominant, resulting in visual impacts that are minor, when viewed from above, or south east to the site from Rue Balguerie.

I consider that an effective landscape plan however could enable the mitigation of these effects such that they would be reduced to less than minor.

#### ***Entry Building***

In regard to the Entry Building, in terms of the pattern and grain of development i.e. smaller buildings on smaller sites along the on the street frontage in this location, I consider that the scale of the building is appropriate and addresses this aspect of the residential character. The Entry Building is contemporary in nature and visually interesting in intent, form and materials. It is relatively low in height and set in part into the topography of the site, potentially reducing the overall visual scale of the building against the backdrop of the slope. However, as with above in respect to the Café Building, landscape detail is lacking that would give more certainty to the visual effects of the proposal overall.

As noted within the context section there is some coherency in regard to the character of the upper valley area of Rue Balguerie. This includes the building setbacks, level of vegetation, the relatively small scale and form of buildings, with low angled gable roof forms and materials to some degree adjacent to Rue Balguerie. However, the architectural or character values distinct in much of the valley to the west are not as distinctive or coherent here i.e. there are varying ages and styles of building within the immediate locale, from Rue Cachalot to the east, surrounding the subject site.

While visually interesting, the Entry Building is significant in its contrast to the neighbouring residential and rural buildings and I consider there are aspects of the Entry Building that compromise the residential nature of the street and the semi-rural and informal qualities of the streetscene. These are not a result of the Entry Building being simply of a different style and materials per se. Rather they include: the location of the building on the

site, very close to the site front boundary and neighbouring sites, with limited vegetation to the sides of the building and a substantive area of hardscape and walls to the front and sides of the building; much of the grassed public berm utilised as hardscape to allow visitors access to the site and; the extent of glazing.

The Entry Building is located only approximately 1.3m from the street boundary and will be highly prominent within the streetscape. The District Plan built form standard is 3m and the existing buildings are approximately 7m or more back from the street. I consider that the minimal setback will result in the Entry Building being highly prominent within the streetscape. This and associated hardscape will have an adverse impact on the coherence and generally vegetated quality of the streetscape, with limited ability to address this given the proposed attributes of the site.

In addition, while providing passive surveillance to the street while open for business, I consider that the extent and scale of glazing appears more commercial rather than residential in nature. In combination with hard landscape elements, both within the site and adjacent to the street, I believe these will substantially detract from semi-rural quality and amenity of the location.

### **Impacts on Neighbouring Properties**

In respect to urban design, I consider that there are likely to be a number of impacts on neighbours, particularly when considering the proposal without a comprehensive landscape plan.

- Visual impacts of the Café Building and hardscape elements, detracting from the semi-rural and urban outlook to the harbour when viewed from above, as noted earlier. I cannot be specific on the extent of these without visits to individual sites, which I have not undertaken.
- Privacy impacts (overlooking) on neighbours overlooked by the activity of the Café Building and associated visitor areas such as the pathways, and for the properties adjacent particularly below, if effective mitigation most notably effective planting and/or screening is not provided. More specifically to 72, 76, 78 and 88 Rue Balguerie.
- Visual impacts on the amenity for neighbours of the Entry Building as a result of the extent of paving and fencing on the site and lack of planting to visually soften the building and surrounds. More specifically on 72 and 76 Rue Balguerie.
- I was unable to ascertain from my site visit if there will be any impact of the proposal on neighbours' views to the harbour, an important aspect of amenity to many of the properties within the vicinity.

## **Conclusion**

The proposal in itself provides interesting additions to what is already an eclectic and engaging activity. Impacts of the proposal, including landscape character, outlook for neighbours and the management of activity within the site itself, including the Café Building and surrounds, could potentially be mitigated through the application of an effective landscape strategy.

However, I believe that particularly in respect to the existing environment of the Rue Balguerie streetscape, the Entry Building will have an adverse visual impacts on the streetscape and residential amenity, that are more than minor, including the amenity and privacy of neighbours.

## **APPENDIX C – Noise advice**

# MEMO

To: Liz Hislop, Planner, Resource Consents Unit

From: Nigel Grant, Team leader, Environmental Health Team

Date: 3<sup>rd</sup> November 2020

Re: RMA 2020/2000 Giants House – 70 and 74 Rue Balguerrie

## Scope

1. This application relates to the proposal to carry out further development of a site which has an existing consent RMA/2000/103 for the establishment of a bed and breakfast, gallery, garden tours, artist's workshop, and café and concert activities at the dwelling at the property known as 'Linton' and an adjacent vacant site to provide -
  - An entrance Building
  - A café of 95m<sup>2</sup> to replace an existing Café, which would not be open during winter months of (May – September).
  - Expansion of Giants House / Sculptural Gardens which would be open all year with reduced hours during the winter months.
  - Hours of operation are stated as –  
1<sup>st</sup> May – 30<sup>th</sup> September 11:00AM to 2:00PM  
1<sup>st</sup> October – 30<sup>th</sup> April 11:00 AM to 4:00PM
2. No acoustic report has been provided by the applicant to quantify or comment on a degree of compliance with District Plan noise levels.
3. Some conditions have been volunteered which include limits on visitor numbers and heavy vehicle (bus) movements but none directly address the issue of controlling noise.
4. I understand that the proposal is a Discretionary activity under the District Plan and therefore all relevant effects can be considered. The purpose of this memo is to comment on the potential environmental health effects for the purposes of a decision.

## Noise

5. The location is in a residential area with low density housing set amongst a bush setting. It is zoned Residential – Banks Peninsula.
6. District Plan noise level for this area for the daytime (7:00 – 10pm) is 50dBA calculated as an Leq (similar to an average noise level) measured over a 15 minute period. There is no maximum (instantaneous) noise level for day time.
7. In such a setting as this application it is likely that typical daytime levels would normally be much lower than 50 dBA, likely to be nearer 40dBA. I do note that there is an existing Resource Consent in place for an existing activity but on a smaller scale.



8. Activities associated with this current application (RMA/2020/2000) that will contribute to noise not normally associated with a residential activity will include –
- Groups of patrons walking up Rue Balguerie to the destination and talking as they walk.
  - Passenger vehicles traveling to the site, parking on the road, exiting the vehicles with door closing and talking as they enter the site.
  - Heavy Buses traveling to the site, manoeuvring to park and turn around and discharging 30 – 50 passengers at a time to enter the site.
  - Patrons moving about on the site
9. This application has not been supported by a report from a suitably qualified acoustics expert. Such a report would have been able to set out –
- What the typical background levels for such an area could be expected to be.
  - What existing noise levels are being generated by the existing activity which is operating under consent RMA/2000/103.
  - Modelling of potential noise levels if the current application was to be granted given the increased proposed activities, visitor numbers and associated traffic which includes foot, vehicle and heavy vehicle.
  - Comment on whether existing District Plan levels for the zone would be complied with.
  - What conditions are volunteered to mitigate the generation of noise associated with the proposed increased activity
10. In the absence of such a report I consider that noise from on site (spread over the site) should comply with daytime residential noise standards on the assumptions that –
- The gardens are only open to fee paying visitors - (gardens are also capped at number of visitors per hour).
  - The café is open the same or fewer hours than the gardens; and
  - There is no outdoor amplified music.
11. With respect to noise generated from traffic activity arriving/leaving, it may not be below the District Plan noise standards. Any additional noise associated with traffic will be audible and even if it does comply with the standards may still be intrusive to the point of annoyance.

## Conclusion

12. The activity which has been applied for will contribute to increased noise levels in the area. It is difficult to conclude, without an acoustical report, whether those levels would remain below the daytime plan standard.

## **APPENDIX D – Traffic assessment**

**Transport Planning Report**  
**On behalf of Christchurch City Council**

**Request for Further Information**

**In the matter of the Resource Management Act 1991**

**Application to construct a café, entrance building and the expansion of the sculptural  
gardens at the Giants House  
70, 74 Rue Balguerie, Akaroa**

**RMA/2020/2000**

## Contents

1	Description of the proposal .....	39
2	Potential environmental effects.....	40
2.1	Coach access .....	41
2.2	Pedestrian access .....	41
2.3	Car parking.....	42
3	Guidance from the District Plan .....	44
4	Consideration of baseline .....	39

## Description of the proposal

1. The proposal includes construction of a café, entrance building and expanded sculpture gardens.
2. The proposal would attract up to 150 visitors per hour, and proposes that this be limited to 20 weeks per year. For the remainder of the time, 125 visitors per hour is included in the Application.
3. Visitors would arrive on foot, by coach and by car. Survey of visitors found that 89% arrived on foot, however it is also noted that travel mode share is likely to vary from one day to another, depending on numbers of cruise ships (serviced by coaches).
4. The proposal seeks to control coach arrivals by implementing a booking system.
5. Unlike the previous application, no car park or coach park is proposed.
6. The Application is stating that the proposed activities will not generate more car traffic or 'notably increase' pedestrian numbers. The Application seeks to control coach numbers through a booking system and provide on street coach bays.

## Consented baseline

7. I note the evidence of Ms Hislop which includes a synopsis of the transport environment that has been given consent.
8. Established in 2001, the activity was consented to be of a small scale attracting small groups of people. The Planner, in his report, anticipated 'small groups in modest numbers'.
9. Reference was made to buses gaining access to the site, though the frequency and size of these vehicles was not specified.
10. Car parking was provided on site.
11. It was deemed 'unlikely' that conflicts would arise in respect of on-site parking and access
12. A section 128 review clause was included
13. The operation 'on the ground' appears to have expanded significantly over and above what has been given consent.

## Description of environment

14. Rue Balguerie includes an 8.4m wide unmarked carriageway, with a signed speed limit of 50km/h. There are footpath along both side west of Watson Street, and no footpath on either side for a distance of approximately 85m extending west from the site
15. Rue Balguerie is characterised by a high demand for on street parking, which occurs on both sides of the road. Consequently, the available trafficable width is in the order of 3.3m. The extent of this demand is seasonal, and during peak times can be observed for a distance of around 400m east of the town centre.
16. There are informal signs installed to guide pedestrians.
17. There is reported no crash history, except for one crash involving collision with a parked vehicle.
18. Traffic counts undertaken in May 2019 report an average of 365 vehicles per day, and an 85<sup>th</sup> percentile speed of 50.8km/h. The measured speeds indicate that speeding is not a problem. The count might be considered non-representative due to it taking place in May, which is an off-peak time of year.
19. The site is located approximately 640m east of Rue Lavaud.
20. The width of Rue Balguerie east of the site is narrow and the road way winding. The route from approximately 50m east of the site would not be suitable for larger vehicles, including coaches, as there are no safe turning locations. Though it is noted that use of the road east of the site does not form part of the application.
21. The high on street parking demands do not extend as far east of the site. From Muter Street eastwards, the character of the environment is quieter and more reminiscent of a quiet neighbourhood.
22. There are footpaths on Rue Balguerie from Rue Lavaud, on both sides of the Road until Watson Street, and then on the north side only ending mid-way between the site and Watson Street (a distance of approximately 85m).
23. Due to the present disruption to the economy caused by the pandemic, I have not had opportunity to observe the existing activity under 'normal' conditions.

## Potential environmental effects

24. There are potentially effects relating to:
- a. Safety, particularly of pedestrians (including those parking on street) without provision for walking
  - b. Amenity, including effects of parking on street

### Coach access

25. The Applicant provides details that coaches are a key mode of access to the site, particularly servicing cruise ship passengers. Information provided suggests that coaches serve access on more than one third of operational days, and up to 4 coaches have arrived at the site.
26. The Applicant proposes that coaches will turn by reversing into Rue Cachalot.
27. Although this arrangement is not ideal, and no other alternatives to enable direct bus access to the site, the inclusion of buses accessing the activity directly is mentioned in a past consent (RMA/2000/193)
28. Application paragraph 3.7 states that the "Applicant seeks to consult with Council's Transport Unit and the Community Board to enable on street works to establish a designated parking area for coaches with associated signage." A location on Rue Balquerie is suggested.
29. More information would be required before recommend changes to the Community Board (subject to consultation) in order to ensure that the approved works are safe. For example, the propose reverse manoeuvre via Rue Cachalot would require the coach to reverse across the road, as the intersection is located on the opposite side of the road from where the coach may legally park (in accordance with NZ road rules).

### Pedestrian access

30. The Applicants' data indicates almost 9/10 of visitors arrive on foot. During the peak season this equates to approximately 134 pedestrians per hour, each way (268 pedestrians per hour in the road). This presumably doesn't include the visitors arriving by car, parking on street and walking to the site.
31. There is no dedicated footway on Rue Balquerie for approximately 85m on approach to the site.
32. There are safety and levels of service considerations.
33. Crash history provided by the Applicant shows no crashes. The crash period of time is generally more than usually required, but there is no knowledge of exposure during this



period: how much have pedestrian demands grown over twenty years? The Application describes demand being 'developed over decades' implying that for some or much of the crash history period, pedestrian demands would have been lower (perhaps much lower) than present.

34. Although a twenty year history is provided, the surveyed demand data for the activity only cover since 2018. If the 'current' rates of pedestrian demands have been operative for ten years, then more confidence could be placed in the crash history as being plausibly a true representation of underlying safety risks.
35. Furthermore, safety is not the only consideration of pedestrian planning – the NZTA Pedestrian Planning Guidelines include more information here.
36. The Applicant does state that 'pedestrian demand would not notably increase simply because the garden area is larger'.
37. Past consents have established 'modest' visitor numbers; proposed pedestrian demands in the order of 268 people per hour walking to or from the site – is very high from a design perspective; far more than 'modest'.
38. High on street parking would escalate pedestrian risks as well, firstly by generation more pedestrian activity, but also forcing pedestrians to walk in the middle of the road, as the berms are obstructed by landscaping and/or power poles.

## Car parking

39. The proposals includes no car parking, and therefore it is expected to be accommodated on street.
40. No substantial effects based assessment is provided for on street parking. Information is provided relating to the numbers of vehicle currently accessing the site are reported, with the 85<sup>th</sup> percentile demand being for 22 vehicles per day, but not the maximum number observed parking on street at any time.
41. Although I agree with the Applicant, that the café, being an ancillary use, may not generate a separate parking demand by its own right, (but acknowledge that it still might), the overall parking and general access demands to the activity will increase, as the net area and general attraction of the site increases, in line with what has occurred since the permitted baseline in 2001.

42. There is little meaningful parking data to guide assessment either. Although there are parking and traffic generation data bases available, there is little, if any data available for this type of activity, and its unique circumstances.
43. The District Plan would anticipate a parking demand for 47 spaces. This is based on the activity being classified as a food and beverage and museum/gallery.
44. The District Plan parking rates could be considered high, based on the very high share of visitors not arriving by car – a higher share than the District plan would envisage.
45. However, in the absence of alternative data, the AEE should assume a possible future where car parking demand is for 47 vehicles.
46. The effects of high on street parking demands would escalate concerns about pedestrian safety. The berms are typically planted out and landscaped, or inclusive of power poles. Therefore, the pedestrians would be forced to walk in the middle of the road – in the live traffic lanes.
47. The section of Rue Balguerie from 200m west of the site is not subject to the high seasonal parking demands witnessed at the west end of Rue Balguerie. Therefore, the established planning context of this section of street is residential neighbourhood – seen to exhibit very few on street parking demands when the activity is not operating.
48. Therefore the introduction of parking associated with the activity would transform this context, and 47 vehicles parking would generate a section of crowded out road space. Based on space requirements of a car, and location of driveways, this section would be approximately 150m long. Each vehicle would also need to perform a u-turn.
49. The presence of high parking demands, and vehicles manoeuvring in the road, would be noticeable, especially as most turning opportunities available involve three point turns using vehicle crossings.
50. The street is not well designed to accommodate high degrees of parking on both sides. The seal width is 8.4m meaning that that, where there is parking on both sides, two way flow would not be possible.
51. There is also no kerb and channel on the north side of Rue Balguerie, meaning that some drivers would park on the grass. This has potential to damage the berm and under estimate the attractiveness of the street environment.

52. It is difficult to imagine that the proposal would generate a demand for 47 spaces on a regular basis, and note that the previous application included a demand for 18 spaces. However, this would still generate the same effects described above, but relating a smaller area – more like 80m, not 150m
53. On site mobility spaces are not provided. If the activity were restricted discretionary or controlled, there would be no requirement as the Plan requires a provision based on the number of parking spaces provided. However, the Applicant acknowledges the numbers of elderly and potentially disabled visitors, and under such circumstance provision of appropriate parking facilities for these people would represent a reasonable community expectation.

## Guidance from the District Plan

54. The transport assessment might consider the extent to which the receiving road network is appropriate to support this activity, noting that the road and access standards were developed for a residential context.
55. The proposal effectively includes 134 people per hour accessing the development by walking in the road. Although there is not a crash history, this is not a good reflection of the true risk (as noted above). The proposal to generate 150 visitors per hour, even for 20 days per year may be considered to be well above and beyond a threshold for which road provision has been made.
56. There are requirements in the Sub division chapter of the District Plan for when footpaths are and are not required, and this might be taken as a useful guide.
57. The proposed pedestrian demands, of 134 people per hour, far exceeds the standards at which a footpath is deemed required, under Appendix 8.6.8. The minimum requirement, being a footpath on one side only, is deemed appropriate where the road serves twenty dwellings or less, which would produce a small fraction of the walking demands compared to what is proposed.

## Conclusion

58. The activity which exists on the ground (pre Covid 19) is used in the Application as a description of the existing environment, with changes proposed thorough the Application being measured against this.
59. However, recent operations appear to be far in excess of the Consented activity.

60. The proposed visitor numbers of 125 – 150 per hour are far in excess of 'small groups and modest numbers' established in 2001.
61. Attaining a 6 star garden status has elevated the operation, and places it on the itinerary of cruise liners. However, the required infrastructure to support such an activity – including walking access, parking and a suitable coach parking and turning area – has not been developed.
62. The inclusion of a café could be 'game changer' for this development. It is also difficult to envisage visitor numbers being limited by conditions: effectively the operators would need to turn people away at the gate.
63. The majority of visitors do not currently arrive by car, and therefore wider network effects (associated with traffic) are not anticipated, even in the event of significant traffic growth, based on the data provided.
64. However, localised effects are anticipated, including
- a. Safety effects, derived from significant numbers of visitors walking in the road, in the absence of appropriate walking infrastructure in proximity of the site, and mixing with on street parking and manoeuvring coaches
  - b. Effects on residential amenity resulting from high degrees of car parking and manoeuvring, and noting the design of the road is not well suited to high on street parking, potential damage to the berm and the presence of a congested section of road space that would otherwise be more removed from the busier town centre parking environment.
65. With such uncertainty over future numbers, a range of possible scales of effects are possible. A key measure of scale of effect is frequency. However, with the information available, it would be possible to anticipate localised effects to be at least minor.