

Report on a Publicly Notified Resource Consent Application

(Section 42A)

Application Reference:	RMA/2020/2000
Applicant:	Simon Jay and Josie Martin
Site address:	70 and 74 Rue Balguerie, Akaroa
Legal Description:	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
Proposal:	Construction and operation of an entrance building, café and expansion of the sculptural gardens tourist activity
Zoning:	Residential Banks Peninsula
Overlays and map notations:	Remainder of Port Hills and Banks Peninsula Slope Instability Management Area Heritage Item (667) and Heritage Setting (123) Ngā Tūranga Tūpuna
Activity status:	Discretionary
Submissions:	215 in support 32 in opposition 1 which does not state a position (13 of these submitters seek to be heard)
Date of Hearing:	3 rd July 2023
Recommendation:	Decline

Preamble

1. My name is Rachel Ellen May Cottam. I am employed as a Senior Resource Management Planner and based in the Civic Offices of the Christchurch City Council. I have been employed by the Christchurch City Council since November 2016. I hold a Bachelor's degree of Environmental Policy and Planning with First Class Honours from Lincoln University. I am an intermediate member of the New Zealand Planning Institute and have over 6 years of experience working in the planning and resource management field.
2. This report has been prepared with advice from the Council staff detailed below. A copy of their reports has been attached in the following appendices:

Officer	Position	Appendix
Josie Schröder	Principal Advisor Urban Design	Appendix 1A
William Field	Senior Urban Design	Appendix 1B
Bill Dray	Civil Engineer	Appendix 2A
Yvonne McDonald	Senior Subdivision Engineer	Appendix 2B
Nigel Grant	Team Leader Environmental Health	Appendix 3A
Isobel Stout	Senior Environmental Health Officer	Appendix 3B
Mark Gregory	Transport Network Planner	Appendix 4A
Axel Downard-Wilke	Consultant Transport Engineer	Appendix 4B
Thomas Joshi Vithayathil	Wastewater Capacity Team	Appendix 5

3. This report reviews the application for resource consent and addresses the relevant information and issues raised. It should be emphasised that any conclusions reached or recommendations made in this report are not binding on the Commissioner. It should not be assumed that the Commissioner will reach the same conclusion or decision having considered all the evidence to be brought before them by the applicant and submitters.
4. An independent Commissioner Andrew Henderson has been appointed to decide on this application in line with Council delegations. Commissioner David Mountfort, made the s95 notification decision.

Proposed activity

5. The applicant has applied for the construction and operation of an entrance building, café and expansion of the sculptural gardens tourist activity. Some of the design elements have changed since the s95 notification decision.
6. The proposal is described in detail in Section 3 of the assessment of effects. The key aspects of the proposal are:

Entrance building/road reserve

- The proposed entrance building would be located at the northern end of 74 Rue Balguerrie, where it has a road boundary with Rue Balguerrie.
- The entrance building is proposed to have an area of 124m² and has been designed to feature an oval “egg” shape with spiral roof.
- The building will contain ticketing, bathroom facilities, lobby and storage.
- An area of 5m² will be designated for the purchase of souvenirs and gifts.
- The building would be setback over five metres from the road boundary.
- A driveway is also proposed adjacent to the building for deliveries.
- Visitors will enter the building via a newly formed ramp and stairs located within the application site.

Café

- The café would be located towards the southern boundary of 74 Rue Balguerrie near to where it adjoins 70 Rue Balguerrie and would replace an existing café currently operated out of ‘The Giant’s House’ (Linton House).
- 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 Giant’s House’.

- The café would be open 10:00am to 5:00pm daily (the same as 'The Giant's House').
- The café would be 112m² in area and with an approximate 24m² deck landing orientated to northeast and a ramp linking to the existing landing providing wider access to the site.
- The café would comprise of servicing area, kitchen and food preparation area, pantry, indoor seating, and bathroom facilities on the first floor. The ground floor would contain a storage and display area, staff offices and amenities.
- 'The café will employ up to three full time equivalent staff during peak seasonal months.

Expansion of 'The Giants House'/sculptural gardens

- The expansion will include further accessibility for all users between 74 and 70 Rue Balguerie with an informal pathway following site contours.
- 'The Giants House' and sculptural gardens would cover both 70 and 74 Rue Balguerie.
- The existing signage will be relocated to 74 Rue Balguerie.
- 'The Giant's House' and garden would be open to visitors 10:00am to 5:00pm daily.
- 'The Giant's 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 Balguerie has an existing access point located adjacent the western boundary. This vehicle crossing will be closed off once a new crossing is constructed adjacent to the eastern boundary.
- The applicant has indicated anticipated average and maximum hourly numbers of visitors for the expanded activity below:

Table 1: Anticipated Average & Maximum Hourly Visitors Numbers			
Season	Frequency (Hours)	Visitor Numbers per Hour (Anticipated Average)	Visitor Numbers per Hour (Anticipated Maximum)
Winter (May – September)	No Limit	<20 visitors	20 visitors
Summer (October – April)	No Limit	45 visitors	120 visitors

- It is estimated the number of vehicles arriving and parking on-street is three vehicles under the winter maximum visitor numbers and on average 7 in the summer months up to a maximum of 20 vehicles per hour in summer.
- A booking system is proposed to 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 bus bookings. Scheduled buses shall not idle for more than 5 minutes after arrival or 5 minutes before departure.
- There shall be no provision for playing music, live or otherwise or amplification of any outdoor sound such as the use of a PA system on the site at 74 Rue Balguerie.¹

Associated works

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

7. Since the release of the s95 decision, the application has provided further information and amended plans. These include:

¹ The initial application noted that RMA/2015/1157 for the establishment of a stand-alone café will be surrendered if this application is granted. since this time, the consent has lapsed.

- The café design has changed including the ground floor will contain a storage and a display area.
 - The café hours were changed to be the same as the 'The Giant's House'.
 - Traffic and urban design assessments have been provided.
 - Mobility parking is no longer proposed onsite.
 - The operational hours changed to 10am-5pm.
 - Additional voluntary conditions in terms of coaches and PA systems were proposed.
8. Subsequent to public notification process, the applicant has provided further information and amended plans. This includes:
- An acoustic report has been provided.
 - The entrance building is now setback 5 metres from the road boundary.
 - A ramp/footpath is no longer proposed within the road boundary.
 - An updated landscaping plan (labelled as 'indicative screening vegetation plan') has been provided.
 - A footpath is proposed to be constructed along Rue Balguerrie to meet the existing footpath and provide a pedestrian route to the site. This includes a designated bus parking area outside of the application site.
9. A site visit was undertaken on 5th August 2022.

Background

10. This application for resource consent was received on 10th September 2020 with a section 92 request for information sent on the 25th September 2020. All required information was received by 29th October 2020. During the period of October 2020 to June 2022, the applicant was determining whether they wanted to proceed with the application through public notification.
11. This application was publicly notified on the 20th June 2022. The submission period closed on the 19th July 2022. A total of 248 submissions were received during this period – 215 in support, 32 in opposition and 1 which did not state a position. Refer **Appendix 7** for the location of submitters in the immediate area.
12. The s95 report has provided a detailed summary of the surrounding environment and the consent history of the site. I consider this to be still be relevant.

Description of the site and existing environment

13. The application site is located at 70 and 74 Rue Balguerrie.

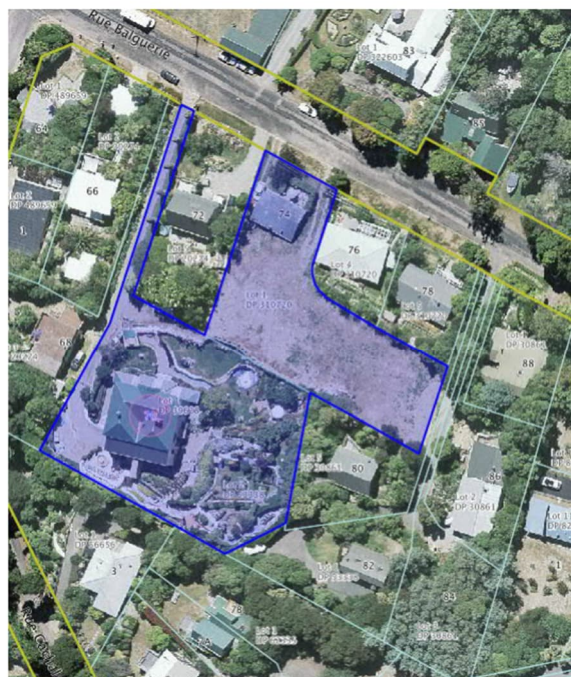


Figure 1. Site location Source: CCC Smartmap 2016 Aerial

14. The application site and surrounding environment are described in Section 2 of the AEE submitted with the application. I adopt the applicant's description. It is noted that this is also described in detail in the s95 report.

District Plan – Relevant rules and activity status

Christchurch District Plan

15. The site is zoned Residential Banks Peninsula under the District Plan. 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.*
16. The objectives and policies for this zone have been outlined in the s95 report, and are discussed in detail later in this report.
17. In addition, the District Plan has been amended on the 18th February 2022 to remove the requirement to provide car parking minimums as required by the National Policy Statement for Urban Development.
18. The proposal requires resource consent under the following rules in the District Plan:

Activity status rule	Standard not met	Reason	Matters of control or discretion
Rule 14.8.1.4 D1 Any activity not provided for as a permitted, controlled, restricted discretionary, non-complying or prohibited activity	N/A	Although it meets the definition of Place of assembly ² 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 ² per person. Does not meet Rule 14.8.1.4 D6 Retail activity ³ standard iii. the maximum floor area used for retail activities on any site does not exceed 50m ² . For these reasons the activity including the retail activity which includes the proposed retail in the	N/A

² 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.

³ 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
		entrance building and the café (food and beverage) which triggers the catch all rather than rules D5 (Place of Assembly) and D6 (Retail activity).	
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</p> <p>Visitor: 1 space/300m² PFA</p> <p>Staff: 1 space/100m² PFA (2 spaces minimum)</p> <p>Table 7.5.3.2 Museums and galleries</p> <p>Visitor: 1 space/200 m² PFA</p> <p>Staff: 1 space/1000m²</p>	<p>As noted above the proposed café will have a total PFA of 81m².</p> <p>A total of 2 cycle spaces are required in respect to food and beverage activities. 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 results in the requirement for 6 visitor cycle parks and 3 staff cycle parks.</p> <p>The proposal is proposing five cycle parks in the application site.</p>	Rule 7.4.4.4 Minimum number of cycle parking facilities required.
Rule 8.9.2.3 RD1	<p>Rule 8.9.2.1 P1 Earthworks shall not exceed 20m³ over any 12 month time period.</p> <p>b. Earthworks shall not exceed a maximum depth of 0.6m other than in relation to farming activities, quarrying activities or permitted education activities.</p>	<p>A total of 70-100m³ of earthworks are proposed. In respect of the platform of the stair and backfilling as well as the driveway and paths.</p> <p>The cut for the new retaining wall is approximately 2.2m deep.</p>	<p>Rule 8.9.4.1 Nuisance</p> <p>Rule 8.9.4.3 Land stability</p> <p>Rule 8.9.4.6 Amenity</p> <p>Rule 8.9.4.9 Sites of Ngāi Tahu Cultural Significance</p>

19. Additional matters noted in pages 5-6 of the s95 decision remain relevant. In addition, I note the following:

20. There is a marginal recession plane intrusion shown on the Café elevations along the southern boundary adjoining 80 Rue Balguerie. The intrusion is approximately 1m vertically which consists of a small canopy of the café. There is also a small setback intrusion is area due to the same part of the building which is approximately 1.3m setback from the southern boundary. These intrusions are very minor due to being located between the corner boundary of the application site at 70 Rue Balguerie and 80 Rue Balguerie as seen below. I consider these aspects will be included in the overall amenity assessment. As the activity is not permitted under the zone, this does not need to be triggered as a non-compliance.

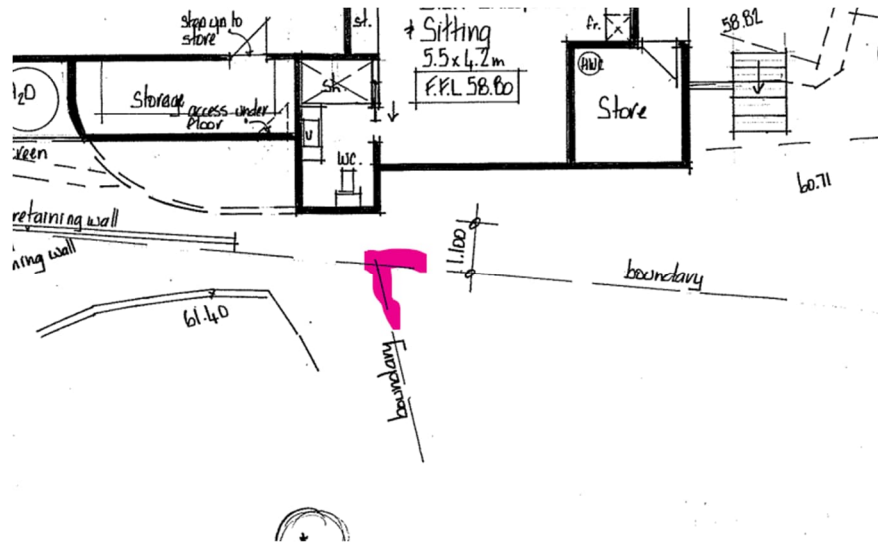


Figure 2: Area of recession plane and setback intrusion.

21. The proposed café also would not comply with the building height requirement of 7m. Depending on the location of the building, the height ranges from 7.89 to 9.8 metres. As the activity is not permitted under the zone, this does not need to be triggered as a non-compliance.
22. The entrance building is now setback over five metres from the road boundary which is now compliant with the built form standards. I note this will be further discussed in the assessment in amenity.
23. In addition, the proposal will not be offering mobility parking onsite as part of this activity. This does not create an additional non-compliance under Chapter 7. The applicant is now also proposing 5 onsite cycle parks by the entrance building.
24. The acoustic report identifies compliance with the noise standards for a maximum of 80 patrons during the day. This however, does not reflect the maximum patronage proposed by the applicant therefore no data is present to confirm a non-compliance for noise. There is potential for this application be non-complying as a result of noise exceeding the standard by 10dB however this would not affect the assessment and conclusions in the report. The applicant is invited to clarify any noise exceedance as a result of their proposal.
25. Although the above changes have been made, I do not consider re-notification of the application is required in this instance. While these changes are affecting the aspects of the expansion's design, I do not consider it changes the proposal fundamentally.
26. Overall, the proposal must be considered as a **discretionary activity** under the District Plan.

Submissions

27. 248 submissions were received on this application (215 in support, 32 in opposition and 1 which did not state a position).

28. The submissions have been attached to this report in **Appendix 6**. I have provided a summary of submissions in **Appendix 8**.
29. Copies of all submissions have been provided to the Commissioner.
30. A number of submitters have requested that their names and contact details are withheld under section 6 or 7 of the LGOIMA. I recommend that they are accepted.
31. There are two late submissions From Dr Marie Connolly and Anna Freed. The reason for the first late submission was due to a submission page expiring, the submission was sent via email to Council's customer services at 5:06pm on the 19th July 2022. I recommend that this be accepted as a late submission. Ms Freed has provided confirmation that she did attempt to lodge a submission online however it was never received by Council Staff. I note her submission is very similar to other submissions therefore I consider it is appropriate to accept as a late submission.
32. A submission by Jesse Lennis, appears to be submitted in error as it relates to the Canterbury Stadium. I have contacted the submitter however have not received any response. As it is not relevant to the application, I recommend this submission is not taken into account.
33. There are a number of matters raised in the submissions that cannot be considered in the resource consent application. I have listed these below:
- Council should support further development both financially and by advertisement through any tourist related publications. This is administered by different departments of Council.
 - Council should offer support in the preservation and maintenance of the historic homestead. This is administered by different departments of Council.
 - Property Values and
 - Trade competition

Resource Management Act 1991

34. When considering an application for resource consent and any submissions received, the consent authority must have regard to the matters listed in Sections 104, and 104B of the Resource Management Act 1991. Subject to Part II of the Act, which contains the Act's purpose and principles, including matters of national importance, the consent authority shall have regard to:
- a) *Any actual and potential effects on the environment of allowing the activity.*
 - b) *Any relevant provisions of a plan or proposed plan,*
 - c) *Any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
35. It should be noted that other than giving pre-eminence to Part II, Section 104 gives no priority to other matters. They are all matters to have regard to and the consent authority must exercise its discretion as to the weight that it gives certain matters, depending on the circumstances of the case.
36. Under Section 104B, when considering an application for resource consent for a discretionary activity, a consent authority may grant or refuse the resource consent, and (if granted) may impose conditions under section 108.
37. Pursuant to Section 104(3)(a)(i) a consent authority must not have regard to trade competition when considering an application.

Preliminary Matters

Planning– Significant Definition and Residential Amenity

38. Prior to making an assessment of actual and potential effects, I note that a key policy in this application is 14.2.6.3, which reads as follows:

14.2.6.3 Policy - 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.

39. I note 'significant' is not well defined in the District Plan or the Resource Management Act 1991 and given its importance in this application, I consider it appropriate to make some preliminary comment. I have therefore analysed the definition further to determine the effects of this activity and its appropriateness.
40. Significant is defined in the Oxford Dictionary as '*Sufficiently great or important to be worthy of attention; noteworthy; consequential, influential.*'⁴ The quality planning website notes that a significant effect is a noticeable effect that will have serious adverse impact on the environment but could be potentially mitigated or remedied⁵. While this website should not be relied upon, its definition is similar to the dictionary definition. In my professional opinion, significant is a high threshold to reach in terms of adverse effects which go beyond being noticeable. The effects need to be of a constant nuisance or impediment on the locality and/or the wider environment to be considered severe.
41. I consider it also important to examine the meaning of residential amenity and character to assist with determining significant effects on this matter. In my perspective, residential amenity and character are broken down into tangible and intangible. Tangible includes physical aspects such as noise, traffic and design of buildings, street scene (residential character) and the effects they generate. Intangible aspects relate to sense of community, residential wellbeing including the expectations a community has on what residential amenity will appear or feel to be. While intangible is not directly addressed in the District Plan, I consider it does require consideration in my assessment.
42. For context, I consider that the zoning description in Policy 14.2.1.1 and Policy 14.2.4.1 assist in setting the threshold of what is anticipated in the residential environment in this locality. These policies place emphasis on retaining the character of Akaroa visually, achieving high quality residential environments and '*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.*' I also note residential amenity effects have a lower threshold than significant effects anticipated in other zones such as commercial where activities such as this proposal are anticipated.
43. I have utilised the above analysis in terms of determining effects and the consistency of objectives and policies. The commissioner may reach a differing opinion on the definition of significant. I do consider that this matter is subjective and the determining of significant could be of a higher threshold than my assessment above.

Actual and Potential Effects on the Environment (S.104 (1)(a))

44. 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 are contained in the relevant objectives and policies, and any associated matters of discretion or control.

⁴ Sourced from [significant, adj., adv., and n. : Oxford English Dictionary \(oed.com\)](https://www.oed.com/)

⁵ Sourced from [Have the Appropriate Effects been Identified and Addressed | Quality Planning](#)

45. Since the s95 notification decision, the applicant has made changes to the application as outlined above in paragraphs 7-8. In addition, further clarification on the activity has been provided. As a result, my view and assessment may at points differ from Ms Hislop's in terms of the level of effects created by the proposal and the overall conclusion.
46. I have considered the relevant issues and it is my view that they fall broadly into the following categories:
- Residential character and amenity
 - Nuisance effects
 - Scale of activity
 - Combined effects
 - Traffic effects
 - Construction effects
 - Effects on heritage values
 - Cultural effects
 - Ecology Effects
 - Effect on Services
 - Positive effects

Section 104(2) – Permitted baseline

47. In the s95 decision, Ms Hislop provided an assessment on whether a permitted baseline was appropriate and determined that the proposal is not comparable to permitted activities anticipated in the zone. I consider this to be still relevant.

Existing Environment

48. Ms Hislop provided a description of the existing consented environment of the application site in Pages 4-5 of the s95 notification report. I consider that this is still relevant. The operation at 70 Rue Balguerie has an existing consent for this activity, the proposal is to expand this operation onto 74 Rue Balguerie. Although this report is assessing the effects of the overall activity, the existing consent can still be relied on.

Alternative Locations

49. The Resource Management Act 1991 requires that resource consent applicants undertake an assessment of alternative locations or method where any adverse effect is likely to be significant⁶. The applicant has not provided such an assessment as they consider effects are not significant⁷. Notwithstanding I consider the activity cannot occur on an alternative location as the activity is primarily related to the existing activity at Linton House and its associated gardens.

Residential character and amenity (Urban Design)

50. Since the s95 notification decision, the applicant has provided an urban design assessment (Urban Design Assessment – Residential Banks Peninsula Zone, Transport Zone, 28th April 2022). This has been reviewed by Council's Principal Advisor (Urban Design) Josie Schröder and Senior Urban Designer William Field⁸. These assessments are attached in **Appendices 1A** and **1B** of this report. It is understood that the applicant is proposing landscaping to be established in an organic manner alongside the proposed sculptures. However, there would be more structured planting along some of the internal boundaries which the 'indicative screening vegetation plan' has provided for, in order to mitigate adverse effects to neighbouring sites and persons.

⁶ Fourth Schedule RMA clause 6(1)(a).

⁷ Refer to section 7.2 of the applicant's assessment of effects.

⁸⁸ Ms Schröder no longer works at Council and therefore the urban design assessment was taken over by Mr Field. Both assessments are included in Appendices 1A and 1B. The effects assessment will only reference Mr Field's assessment from this point onwards.

51. I am in general agreement with Mr Field's assessment including his area and site context description. Mr Field and Mr Compton-Moen concur on the matters as outlined in paragraph 33 of My Field's assessment. I agree and adopt their assessment.
52. Mr Field and Mr Compton-Moen however, disagree on the conclusion on residential character and amenity. Mr Field concludes that:
- The proposal will appear commercial in nature from neighbouring properties/street scene and departs from the expected residential character of the locality. The combination of the café building height exceedance, proposed pathways, the combined design of all buildings and structures (including the Linton House, consented staircase, sculptures), the lack of landscaping information, potential signage, and the proposed works on the street create this commercial appearance. Visual attention would be drawn to the site due to the visitor activity and vivid character of these elements. These aspects create a combined adverse effect on residential amenity and character.
 - The 'indicative screening vegetation plan' does not cover a number of matters as outlined in Mr Fields assessment (paragraph 63). This includes landscaping detailing, signage, façade detailing and colouring⁹ and fencing. It is considered the vegetation proposed would not visually mitigate the commercial nature of the site.
 - It is unclear where signage is proposed within the new entrance area on the application site. The existing signage is brightly coloured and if combined with other future signage visible to the street, it will add to the commercial appearance of the proposal.
 - There are concerns about the usability of the future internal access. The intent is to improve the quality of access within the activity however no information has been given how it will be achieved and will assist for people who are mobility impaired.
 - In terms of proposed upgrades along Rue Balguerrie, the proposed footpath will improve pedestrian access however it may affect parking for residential properties, may not be well utilised and may impact on traffic safety or infrastructure located on the road. Ultimately a holistic approach should be taken to assess the traffic use of the road to determine how the road should be changed by multiple organisations.
 - Overall, the activity will be considered inconsistent with the valley's residential and rural character. The effects are in relation to street scene, visual dominance, and overall residential amenity.
53. Mr Compton-Moen concludes that:
- The proposal is supported from an urban design perspective.
 - The buildings have been designed to be in keeping with surrounding neighbouring properties, topography and street scene.
 - The buildings will have active frontages to the street, natural surveillance and engaging visual points of interest.
 - The extension will improve the amenity and function of the gardens and is unlikely to have any significant impacts.
54. I agree with the applicant's assessment that the entrance building and café buildings are visually interesting, the entrance building is of scale similar to neighbouring properties, some street scene effects have been mitigated and the proposal incorporates CPTED principles. I do however agree with the concerns of Mr Field. The proposal has a collective commercial appearance when viewed from the street and direct locality which is not in keeping with the residential character. I adopt the majority of Mr Field's assessment however my view differs in regard to the proposed works within the road, where I consider the changes would continue an existing residential street and a bus stop would not detract from that character. I consider Mr Field's comments relate to effects on the street scene and wider locality of Rue Balguerrie. I do not consider it extends beyond to the wider area in terms of residential amenity effects.

⁹ A café render has been provided in the application prior to notification which display bright colours and mosaic features. The building plans have been modified since this point therefore it is unclear what colours are proposed for the building including the entrance.

55. Although permitted residential buildings of a similar scale can be established with varied glazing, façade detailing, rooflines, colouring, other structures (retaining walls, decorations etc) and overall design, the appearance of the proposal does not appear residential and in addition the movements of people add to the commercial appearance and perception of the activity. Overall, I consider that this scale of activity combined with the collective building design is not anticipated in the residential character expected in the locality.
56. Mr Field and some submitters have raised concerns about the accessibility of the path. While the accessibility of the path is at the applicant's risk to construct appropriately¹⁰, the hardscape or structures that may be required could have a further adverse impact on the appearance of the locality and commercial appearance of the activity. This includes if retaining walls, rails or cable cart/lift system are required.
57. The 'indicative screening vegetation plan' does not cover a number of matters as outlined in Mr Fields assessment (paragraph 63). This includes landscaping detailing, signage, façade detailing and colouring¹¹ and fencing. It is considered the vegetation proposed would not visually mitigate the commercial nature of the site. Had the proposal included a similar level of vegetation as to what was present on the site between 2010-2014, this would provide better amenity by softening the operation from the street.
58. Mr Field has concluded the proposal has moderate-high effects¹². In my perspective, high represents significant adverse effects but it could be argued that it is marginal in this application due to the moderate-high effects. There is uncertainty with building finishes, signage, proposed structures (retaining walls, hand rails, paths, sculptures) which could increase this effect to high (significant).
59. However, taking into account the above, including the uncertainty around certain elements, I consider the adverse effects of residential character are noticeable, significant and a departure from the Residential Banks Peninsula Zoning Characteristics.

Neighbour Amenity

60. In terms of the recession plane and setback intrusions, I consider the effects of these to be less than minor as they only marginally intrude on the corner boundary of 80 Rue Balguerie and these persons are located at a higher elevation.
61. Mr Field has raised concerns in terms of privacy and overlooking which I am in agreement with. It is not necessarily the buildings which create result in this adverse effect, rather the congregation areas and use of the gardens as a result of the buildings and expansion of the activity¹³. It is anticipated that high visitor movements across various levels of the site and street scene will create overlooking, privacy and quality of life impacts on neighbouring properties/persons adjacent to the application site. Some areas provide direct sightlines into living and bedroom windows of neighbouring properties 72, 76 and 86 Rue Balguerie. If residential allotments were established in this area, overlooking could occur naturally due to the elevation of the site. The difference being the volume of patrons as a result of this activity are significantly larger than any anticipated resident numbers.
62. In addition to Mr Field's assessment, the privacy and overlooking effects could be further exacerbated due to the operation occurring daily (including public holidays) which will create a regular intrusion in

¹⁰ The proposal will need to comply with D1 (Access Routes) of the Building Code and the building consent application should include an accessibility report. If they cannot comply with the building consent, the applicant will need outline reasoning why this is not reasonably practical.

¹² Mr Field is a registered member of the New Zealand Institute of Landscape Architects.

¹³ The buildings albeit the café are complying with built form standards including site coverage and are sufficiently setback from internal boundaries. Although the glazing may create some overlooking due to the elevation of the buildings i.e. the Café, similar overlooking could occur for a permitted building due to the topography of the site. In addition, the zoning rules do not have any restrictions on glazing.

terms of privacy and overlooking. In addition, I hold some concerns that if patronage meets the maximum of 120 patrons it is unclear how queuing outside the entrance building will be managed. This could have further adverse effects in terms of overlooking and privacy in the sightline areas Mr Field has mentioned.

63. Had the proposal included a similar level of vegetation as to what was present on the site between 2010-2014, this would provide better amenity and privacy by softening the operation from the neighbouring properties. As outlined above the 'indicative screening vegetation plan' in its current form does not fully address privacy and overlooking matters. While there is potential for the planting proposed to mitigate visual effects for neighbouring properties in time, it is unclear whether levels and sightlines have been appropriately assessed. Notwithstanding this, even with sufficient planting to mitigate any overlooking and privacy effects, given the numbers involved, I consider it likely that there would still be adverse effect on the residential amenities of neighbouring persons, including a perception of lost privacy.
64. I consider the effects to be noticeable and will be significant in terms of privacy and overlooking which will have adverse impact on the well being on neighbouring residents.

Noise and disturbance

65. The applicant has provided an acoustic report by Marshall Day which has been peer reviewed by Council's appointed acoustic specialist Ms Isobel Stout. Her assessment is attached in **Appendix 3B**. I have summarised the findings of the Marshall Day report:
- The day measured had approximately 80 visitors during the day including a bus party of 26. This was considered to be a busy summer day during the school holidays;
 - It was found that existing areas on site including patron arrival, outdoor seating and amplified music were below the permitted activity noise requirements of 50 dB LAeq. Patron cars are not expected to exceed this noise level.
 - It is anticipated that similar patron levels will continue to be below 50 dB LAeq
 - Although noise which includes patron conversation will be audible on occasion, it is considered to be acceptable in terms of maintaining residential amenity.
 - It is recommended that loudspeakers around the existing site (70 Rue Balguerie) are reconfigured towards the site to avoid it being heard at adjoining neighbouring properties
 - It is considered that the expected amount of tour buses is to be lower than 5 buses a day. With the applicant proposing that bus engines will not idle for longer than 5 minutes, noise levels will be less than 55dB LAeq at the closest dwelling to the bus drop off. It is considered that this approach is acceptable.
 - It is agreed that observed number of patrons is lower than the anticipated numbers of patrons in the application (45 per hour on average and 120 per hour maximum). A high number of patrons does not mean the site will generate noise greater than the noise standards in the District Plan¹⁴.
66. Ms Stout agrees with the findings of the report in terms of vehicles on the road, visitors assembling at the entrance, throughout the garden, use of the café, noise from music, café operations and equipment on site. Ms Stout considers that the marking of a specific coach drop off point outside the entrance and the coach booking system will confine the majority of noise to a smaller area and would reduce the level of nuisance created by the proposal. The recommendation in terms of reorientating speakers, not conducting group tours on the site and a coach booking system have been accepted by Ms Stout.
67. While the total sound measurements are compliant, Ms Stout considers this sound effect (large groups) are noticeable and distracting for neighbouring properties. There is no evidence that the worst case scenario of 120 patrons per hour will not result in an increased noise level above that measured or above the District Plan limits. Notably, Ms Stout considers the worst-case scenario is unlikely to comply with the District Plan at all locations. The number of patrons proposed will increase the likelihood of groups congregating around property boundaries and creating unreasonable noise in this residential environment. Although the acoustic report states no seating is proposed outside of the café,

¹⁴ Additional commentary was provided on the 11th May 2023 by Jon Farren of Marshall Day.

during summer days where doors and windows are open, Ms Stout considers the noise levels are likely to be louder than measured in the acoustic report¹⁵. It was initially understood outdoor service for the café was to occur in the courtyard on 70 Rue Balguerie which differs to the noise assessment provided and Ms Stout's recommendation. The applicant will need to clarify this in the hearing process. Overall Ms Stout considers the maximum of 120 patron per hour is likely to create unreasonable levels of noise and nuisance, such that, in her opinion, it would have an unacceptable adverse effect for neighbouring properties.

68. I consider Ms Stout has appropriately addressed submitters concerns. This includes noise generated by visitors, gathering adjacent to neighbouring properties, effects of music, maintenance noise, proposed lift and associated traffic noise. In terms of construction noise, there are higher noise standard requirements, and it is noted these works are temporary. In terms of maintenance noise, Ms Stout has provided a recommendation that electronic gardening equipment is to be used onsite should the application be accepted. I consider that maintenance of a garden is normal in a residential environment. Although the site is of a larger scale than other sites, I do not consider it is required to utilise only electric machinery. To aid in minimising adverse construction effects, I would recommend set operating hours for all construction work. I consider that an acoustic fence would not be useful in this instance due to the elevation of the sites which would render any acoustic fence ineffective unless noise was created immediately adjacent to a boundary.
69. I adopt the majority of Ms Stouts assessment and consider the proposed patronage of 120 visitors an hour to have an adverse effect on the amenity and wellbeing of neighbouring persons. Like other amenity effects, these effects could be occurring daily. In addition, this noise is likely to travel more easily due to the site's elevation, the relatively quiet nature of the street and the type of noise being produced. In addition, I hold some concerns that if patronage meets the maximum of 120 patrons it is unclear how queuing outside the entrance building will be managed. This could have a further adverse effect in terms of nuisance for adjacent neighbouring properties.
70. Overall, I consider the adverse noise effects to be significant and unacceptable.

Other nuisance effects

71. The other nuisances raised in submissions included fumes from vehicles idling and composting smells which included some retaining along an internal boundary consisting of putrescible materials.
72. In terms of fumes causing a nuisance, the applicant has proposed that buses are only allowed to idle for a maximum of 5 minutes at the designated park outside the application site. In addition, the applicant is proposing that bus booking system will limit bus comings and goings to 5 buses a day. If the booking system and idling maximum is effectively implemented, these factors will minimise the fume nuisance that is created.
73. Submitters have noted retaining (containing putrescible materials) and composting is occurring within the application site along the boundaries of 76 and 78 Rue Balguerie. While composting is a positive effect environmentally, this has caused a smell and insect nuisance for the neighbouring properties. There are concerns that this nuisance will increase from the café expansion. I would recommend that any composting/putrescible shall be setback away from neighbouring properties and covered. This allows the applicant to continue this operation while reducing odour and insect nuisances. I have recommended this **Appendix 9**, should the application be granted.
74. Overall, I consider other nuisance effects are less than minor and are appropriate.

Scale of Activity

75. In terms of the scale of the activity, it is understood that the essence of the currently consented activity was a small-scale attraction. Notwithstanding that, the activity has grown from its original proposal overtime and a further expansion is proposed.
76. The applicant has volunteered to restrict visitor numbers to 120 visitors on site per hour. This factor in addition with the noise, residential amenity and transport effects, suggest that the application resembles a commercial operation and appearance which will, in my opinion, exceed a scale far greater than the original proposal or what is anticipated in the zone. A number of submitters have raised similar concerns.
77. In Chapter 14's objectives and policies, there is a slight tension between Policy 14.2.1.1 and 14.2.6.3 as one has a lower threshold than the other. The most relevant policy is 14.2.6.3 which requires existing non-residential activities do not have a significant adverse effect on the character and amenity of residential zones. Notwithstanding I consider the proposal does not meet both standards and the proposal has a significant adverse effect on residential character and amenity being created as outlined above. I consider this also indicates that the scale of the activity is not in keeping with the anticipated activities of the Residential Banks Peninsula Zone and locality.
78. While the 120 maximum patrons an hour is the worst case scenario, as it is unclear how often this will occur, I have to consider the activity could anticipate this daily regardless of peak season. The applicant has provided estimated averages of less than 20 in winter and an average of 45 an hour in peak, however the worst case scenario is a substantial increase in numbers in comparison. There is also a question of how a maximum visitor threshold will be managed should additional visitors arrive while the garden was at capacity to admit new patrons. This has the potential to increase the adverse effect in terms of scale of activity.
79. For the scale proposed in this application, I consider that this is disproportionate to an anticipated non-residential activity in the zone and is not keeping with the residential character in the locality. I consider the effects in terms of scale activity to be significant and unacceptable.

Combined Effects on Residential Amenity

80. In terms of combined effects, I hold concerns regarding the visual effects, uncertainties, effects on neighbouring properties and overall residential amenity effects.
81. Firstly, the proposal will have adverse visual effects. The activity will appear commercial in a residential environment due to the following combined features;
- i. The combined large glazing areas on the proposed buildings would collectively show the nature of the activity occurring onsite while individual buildings with large glazing areas are generally anticipated in zone.
 - ii. The existing and proposed structures on site including stairwells, retaining walls and potential signage, pathways with structures and lift arrangements (if needed) provide further hardscape not anticipated collectively in a residential environment.
 - iii. The congregation areas such as stairwells, entrance buildings and café entrance will identify the activity on the street as commercial once the expansion is operative.
 - iv. The lack of vegetation screening and softening the activity from the street and surrounding neighbouring properties.
 - v. Uncertainties in design aspects such as retaining walls, path formation, sculptures, other structures, façade and signage detailing could further worsen visual effects.
 - vi. In addition, I hold some concerns that if patronage meets the threshold of 120 patrons and it is unclear how queuing outside the entrance building will be managed. This could have adverse effect in terms of overlooking and privacy in the sightlines areas Mr Field has mentioned.

82. All tangible aspects (residential character, nuisance and traffic) of the proposal collectively will cause adverse effects on neighbouring properties. These include;
- Congregation areas on or within proximity of the site such as stairwells, on the road, entrance building and café entrance due to their location will create privacy (overlooking) and noise effects which will be exacerbated by the maximum amount of patrons proposed. There is potential for the existing courtyard to be used for café service which will increase this effect (this needs to be clarified by the applicant). The proposed landscaping appears not to mitigate these adverse effects effectively.
 - With the maximum patronage proposed it could cause collective effects with car parking, bus manoeuvring and congregation in the street if not addressed appropriately by a transport management plan.
 - There is also a question of how a maximum visitor threshold will be managed should additional visitors arrive while the garden is at the proposed capacity. This has the potential to create further nuisance effects in terms of noise and disturbance as well as visual effects.
 - The reversing of buses uphill whilst not creating a safety effect, may create an adverse effect on the perception of safety. In addition to noise of reversing vehicles it could further increase nuisance on neighbouring properties.
 - The above effects will have an adverse effect on the well being and quality of life of nearby residents which would likely deplete the resident's appreciation and perspective of the residential character of the locality.
83. This overall creates an adverse effect on residential amenity that I consider to be significant, noticeable, and result in potentially regular adverse effects on the locality. I also consider that the proposal does not meet the expected character and amenity as described in the zone description. This has been reflected in multiple submissions.

Traffic Effects

84. Since the s95 notification decision, the applicant has provided a transport assessment (The Giant's House Transport Assessment, 12th June 2022) and has made changes to the application to address transport effects. These effects have been reviewed by Council's appointed transport engineer Axel Downard-Wilke from Viastrada. His reports from 19th September 2022 and 25th May 2023 are attached in **Appendix 4B**.
85. I have summarised his conclusions below
- Bus (of any size) manoeuvring can occur safely via a three point turn into Rue Cachalot and then reverse up towards the application site. It is noted that applicant has looked into manoeuvring on private land but was unable to find any alternatives. The proposed manoeuvring is considered acceptable due to low volumes of traffic on the road and the mitigations proposed on the site. Yellow lines being established on Rue Cachalot (extending longer than the applicant has shown) are fundamental to achieving safe manoeuvring and avoid parking in the manoeuvring area.
 - The applicant has proposed a footpath extension along Rue Balguerie to address transport and safety effects while minimising conflict with the bus manoeuvring. This is to resolve adverse safety effects identified and acknowledge that most patrons access the activity on foot. This has been accepted by Mr Downard-Wilke.
 - Mr Downard-Wilke has recommended that the frontage of the application site (74 Rue Balguerie) be upgraded to include a footpath along the proposed entrance, sealed bus stop, mobility park, informal pedestrian crossing point to the east and associated signage. This will enable accessibility to the site from all modes of transport in a safe manner.
 - Mr Downard-Wilke considers cycle parking needs to be provided onsite due to increase demand within the locality and would also assist to reduce the amount of foot and vehicle traffic heading to the activity. Mr Downard-Wilke has proposed 6 cycle parks to be provided on the site.
 - It is recommended that delivery vehicle movements are limited to outside trading hours to avoid any adverse effects on patron transport and loading.
 - In terms of mobility, the current mobility park is being removed and would require prior arrangements from patrons to be accessed. Mr Downard-Wilke has proposed that mobility park

is provided on the street with operating hours of 9-5 but it must apply every day (including public holidays).

- Mr Downard-Wilke has recommended conditions which in his view will address and mitigate adverse transport and safety effects. This includes adopting Ms Stout's recommendation of a maximum of 80 patrons at any given time, a bus booking system, upgrades to the road as outlined above, cycle parking, a safety audit for proposed upgrades and reduced bus idling time in a specified bus park. If the 120 patrons per hour is accepted then a transport management plan is required.
- He considers vehicle speed is not likely an issue caused by the bus drivers and patrons related to this activity.
- Mr Downard-Wilke considers if the above mitigations are in place they address most of the submitters concerns and reduce adverse transport effects in the locality. If Ms Stout's recommendation is accepted, on-street parking demand is unlikely to exceed supply.
- The proposed works within the road require community board approval for works. This is a separate process to the resource management process. Should the community board decline the works and the resource consent application is granted, the applicant would need to seek a variation to the consent under section 127.

86. I generally accept Mr Downard-Wilkes assessment and recommendations. The recommended conditions have been reviewed by the compliance team who confirm the conditions proposed are enforceable. In addition to Mr Downard-Wilke's assessment, I have provided some commentary in relation to the concerns raised by submitters:

- In terms of deliveries, the applicant needs to provide more information as to whether out of hours delivery are likely and how many deliveries are expected per week as the current recommendation may be difficult to enforce. This has been raised as an issue with bus manoeuvring and foot traffic as part of the submissions.
- To re-enforce Mr Downard-Wilke's assessment, the submission from IDNZ have noted that drivers are familiar with the site and surrounds and will avoid impediment of driveways and idling. This aspect will be further improved by the proposed mitigations.
- There may be disagreement with Mr Downard-Wilkes assessment of the manoeuvring of buses however I consider the rationale provided is acceptable. While the proposed manoeuvring may be acceptable from a safety perspective, it may be impractical to occur depending on the ability of the driver and the traffic present when manoeuvring occurs. It is recommended that operators are aware of the required manoeuvring within the road. I have some concerns that it may also have an adverse effect on the perception on safety for residents and users of the road.
- The proposed mitigation will assist in reducing potential damage to the road corridor during summer.
- The proposed footpath will remove parking on the grass berm of Rue Balguerie. While this will resolve some of the parking concerns, depending on the maximum patronage it may create a nuisance to the locality. It is noted car parking cannot be fully considered in the District Plan as it is no longer required to be assessed under The National Policy Statement on Urban Development (NPS-UD).
- The entrance building increased setback and footpath will assist in reducing traffic disruption and hazard caused by a congregation of people on the road.

87. Mr Downard-Wilke has proposed a transport management plan if 120 patrons are accepted. I consider that while a transport management plan may address this issue in terms of adverse transport effects, it could increase the level of effects in terms of combined effects and scale of activity. In addition, I hold some concerns that if patronage meets the maximum of 120 patrons and it is unclear how queuing outside the entrance building will be managed. This could have transport effects in terms of congestion and safety implications which would be in addition to the perception of safety from the buses reversing uphill. I consider that if a transport management plan is required, the condition needs to be prescriptive to ensure the transport effects are managed. This could be worked through in the hearing process.

88. Overall, I consider the transport effects to be minor and acceptable.

Construction effects

89. The assessment of effects in the s95 report as described by Ms Hislop are still relevant. I have obtained comment from Council's Senior Subdivision Engineer Ms Yvonne McDonald to discuss points raised by submitters. Ms McDonald's assessment is attached as **Appendix 2B** of this report.¹⁶
90. I have summarised Ms McDonald's comments below:
- Ms McDonald has reviewed the Davis Ogilvie application which identifies 31m³ of earthworks for the proposed path (with exception for works within proposed building footprints);
 - Ms McDonald has reviewed concerns raised by the owners at 78 Rue Balguerie. Ms McDonald notes that the applicant has proposed drainage is to be controlled with a stormwater connection capable of managing drainage across the site. Surface drainage conditions have been recommended to address concerns of adjacent properties. Ms McDonald has assessed the cut height differences and retaining walls on the boundaries against #76 and #72. Land stability conditions are recommended which relate to the site access and ensure stability of adjacent properties are adequately addressed;
 - There is little detail of the proposed internal path. Ms McDonald considers that stability and nuisance conditions can be imposed to control the stabilisation of the path. Ms McDonald does not consider the gradient of the pathway to be relevant to managing construction effects;
91. I adopt Mr Dray's and Ms McDonald's assessment and recommendations. In terms of the uncontrolled retaining along the internal boundary of the application site and 78 Rue Balguerie, I cannot comment whether this has occurred and it was difficult to identify when onsite as soils./materials have been present in this area for some time. I am satisfied that Ms McDonald's conditions will ensure stability of any retaining and will not create an adverse effect on neighbouring properties. Whilst earthworks have the potential to create nuisance effects, road network damage, drainage effects, noise and land instability, I consider these matters can be adequately mitigated via conditions of consent.
92. In terms of amenity effects as a result of the earthworks, it is my understanding is there are no other earthworks proposed near internal boundaries other than which is within the building footprint, and for the driveway, which are for cut earthworks, such that no overlooking/privacy effects would result. I do not consider the earthworks create an adverse amenity effect if the proposed conditions above are complied with.

Cultural effects

93. Ms Hislop provided a succinct summary of effects for cultural values in her s95 report. This included consulting with Mahaanui Kurataiao (MKT) and their proposed recommendations. There was no submissions that raised any concerns with cultural effects. I consider Ms Hislop's assessment to be still relevant and recommend an accidental discovery protocol and erosion and sediment controls are provided in the set of recommended conditions should the application be approved. Overall I consider the cultural effects to be less than minor and acceptable.

Effect on heritage values

94. A concise assessment was provided by Ms Hislop in the s95 report. Submitters have provided some comments in regard to the heritage values of the site:
- One submitter considered that the proposal ensures the protected building is retained for public use/good and enables the building to be appropriately maintained. This submitter saw no issue with the mixing of modern architecture and the existing Linton building;
 - Some submitters considered that the proposal does not compliment the Linton building and had an adverse effect on heritage values. This included that the existing Linton building was already not painted in appropriate colours.

¹⁶ Mrs McDonald has provided an assessment on the previous design which included a ramp within the road frontage. The entrance building and footpath/ramp has been setback to be fully within the application site. I therefore consider that these comments no longer relevant and have been removed from the summary.

- Heritage New Zealand held a neutral stance in their submission. It was noted the proposal does not affect the listed building or its relevant heritage setting. Their submission noted part of 74 Rue Balguerie has potential for archaeological evidence. This is due to this area being part of the original area where Linton was constructed (pre-1900's) and it is likely the site is a site of significant rubbish disposal (due to the topology of the site). The proposed works are recommended to be assessed by a consultant archaeologist.

95. It is noted a previous consent RMA/2015/1157 (RMA92029407) was granted for a cafe within the heritage setting of the Linton Building which holds similarities to the proposal. I accept Ms Hislop's assessment that the proposal does not affect the heritage values of the site and note that residential amenity and design effects are addressed above. I consider that evidence of an archaeological authority being obtained prior to works commencing is required as a condition to ensure heritage effects are managed. This aligns with the protection of Cultural Values. I consider the effects to be less than minor and acceptable.

Ecology Effects

96. The site is not located within the site of ecological significance however some submitters have raised concerns with effects on ecology, particularly Tui's nesting. Their concerns included;

- Native trees were removed on 74 Rue Balguerie to provide for the expansion to this proposal which is not providing connective spaces or supporting birdlife nesting.
- Tuis are nesting in the adjacent properties. The area is also known for native bird breeding areas close to the application site including bellbirds and moreporks;
- The proposal defeats the purpose of the objectives of the Banks Peninsula Conservation Trust;
- The noise of conversational tones, movement of people, and vehicles as well as emissions of vehicles will negatively impact the local wildlife and how it behaves. It is our duty to protect these birds and provide them with a quiet and safe environment;
- It is recommended avoiding any building work between October and May;
- The world is in a climate change emergency and neighbouring residents are doing their best to limit their own carbon emissions and the increase use of vehicles to access the site is not assisting the reductions of carbon.

97. I note that noise and nuisance effects are discussed above.

98. In terms of Tui nesting areas, I have obtained specialist input from Council Ecologist Andrew Crossland. I have summarised his comments:

- If there is regular tui nesting sites within the footprint of vegetation proposed for destruction or within the footprint of likely disturbance – this will need to be investigated further.
- An accidental discovery protocol for nests should be adhered to given the protected and native status of the tui.
- Tui are very discrete about their nesting site and appears they are nesting in the adjacent property. they may not be nesting on the applicant's property as Tui are territorial and potentially another pair so close to the existing pair's territory would be excluded by aggressive territorial behaviour.
- It is unlawful to disturb the nests, eggs or young of nesting protected birds under the Wildlife Act 1953. This includes general gardening, parks maintenance and farming activities.
- Any works and vegetation clearance should only take place outside bird breeding season. If works are proposed a bird management plan shall be prepared and nest investigated.

99. Mr Crossland has noted that area where any vegetation is proposed to be removed should be investigated for nests. It is noted vegetation has been removed prior to this application and therefore cannot be assessed at this point of time. The only earthworks proposed are in terms of the proposed path and buildings, it is unlikely these areas will have soil be exposed for long periods of time as stability will need to be maintained on the site. It is therefore unlikely that birds will utilise the site for nesting areas. In addition, the site has been utilised for human activity for a long period of time and is currently not sheltered with vegetation which will deter birds from nesting in this area. I therefore

consider it most appropriate to place an accidental discovery protocol of nesting birds, eggs and their young instead of a bird management plan. It is noted that the applicant will need to comply with requirements of the Wildlife Act 1953 as well as the Resource Management Act 1991. There may be additional requirements from the Wildlife Act 1953 which the applicant may be required to do in this area. I consider the ecology effects to be acceptable if conditions are complied with.

100. In terms of climate change, under the Resource Management Act 1991 climate change effects are required to be taken into account. Climate change effects themselves are unlikely to affect the site due its location however submitters have raised concerns with the application site creating additional emissions. It is noted that the amount of buses are to be limited including maximum idling of 5 minutes. In addition, the proposed footpath will prevent more cars from parking in this area and will encourage more pedestrian activity on the site. It is also noted that the applicant cannot fully control the movements of the public accessing the site. I therefore consider that the proposed recommendations will suffice and potentially reduce emission intake in the area.
101. Overall I consider the ecology effects to be less than minor and acceptable.

Effects on services

102. A submission raised whether the three waters infrastructure in Akaroa has capacity for the proposed expansion, in particular wastewater. Specialist input was obtained from Council Wastewater Capacity Team who reviewed the information submitted by the applicant. The applicant commented that the additional wastewater flow would equal 40 persons and based the standard on AS/NZS 1547:2012 which would equate to 25L/Person/Day. The wastewater team have confirmed that the property is not situated within a wastewater capacity constraint area and the proposed development can be therefore accommodated in the Council's network.
103. In terms of other servicing, this will be investigated as part of the building consent process. Overall, I consider the servicing effects to be acceptable.

Positive effects

104. The applicant has addressed positive effects in section 5.8 of the assessment of effects. They consider the proposal will provide an improved experienced to customers and a greater level of accessibility. It will also continue to be a significant tourist attraction in Akaroa and provide economic benefits including employment opportunities onsite and in the surrounding environment. The applicant considers that the proposal also contributes culturally and socially to the local community.
105. There is a consensus within the submitters, that the proposal achieves the above factors¹⁷. The activity has brought a lot of enjoyment to all users of the site. In addition, a submitter has commented the proposal provides additional revenue sources to ensure the existing heritage building is maintained or protected. The majority of the submitters supporting the application consider the proposal to be a great tourist experience that should be enhanced and retained in perpetuity. Many submitters deem the proposed café to be convenient and helpful for groups of all ages. It is noted the applicant has been awarded the Fellowship Award for Royal New Zealand Institute of Horticulture (RNZIH) due to the contributions she has made at the application site. The company has grown from a small scale activity to a larger scale commercial activity due to popularity of the applicant's art in horticulture and sculptures.
106. Overall, I agree the proposal has a vast number of positive effects, which are primarily in terms of protecting heritage, tourism and economic benefits. I agree with Ms Schröder's comments in her assessment that the proposal provides a range of interesting additions to an engaging and artistic tourist attraction. Submitters have also commented that the proposal will provide greater access for persons who are mobility impaired. While this is a positive effect; the applicant has not provided plans to confirm how this pathway will occur on the site. Due to the site's gradient, it may be difficult to achieve this.

¹⁷ *The majority of the submissions received were supporting the proposal.*

107. In addition, the applicant has made efforts to address the adverse transport effects of this activity. This includes creating a footpath which connects from the existing footpath prior to Rue Cachalot to opposite the application site. While some areas deviate from the traditional footpath it will provide a safe route for pedestrians to access the site. I consider that this is a positive effect which will mitigate some of the adverse effects already experienced in the locality from the existing activity.

Conclusion with respect to effects on the environment

108. In summary, the application provides a wide range of positive effects to the locality, economy and tourism however in my opinion the application has significant adverse effects which are unacceptable. This is primarily due to the adverse effects in terms of residential amenity and character, nuisance, scale of activity and combined effects (including some effects from transport). In my perspective the adverse effects outweigh the positive effects. I consider that the activity is creating a full scale commercial operation in a residential area which is not anticipated by the Residential Banks Peninsula Zone.

109. Overall, I consider the adverse effects to be significant and unacceptable.

Alternative Application and Associated Effects.

110. I consider there is potential for my recommendation to change if the application is modified in terms of patron numbers and landscape mitigation. I have provided some recommended conditions in **Appendix 9**, should the Commissioner decide to grant this consent.
111. In terms of noise, Ms Stout has recommended that the maximum number of patrons on site at any one time shall be limited to 80 which is an average of 45 visitors per hour. Although it may not comply with the noise standards at times. Mrs Stout considers that any noise would be reasonable and would not cause a nuisance. Mr Downward-Wilke has relied on Ms Stout's recommendation as this would not require a transport management plan. I consider from a transport perspective, this may in addition to other transport conditions resolve issues raised above.
112. I have some concerns that this level still may not be enough to mitigate the privacy and overlooking effects and it still has the potential to generate unacceptable nuisance for neighbouring properties. In addition, if 80 patrons maximum is applied, it does not address potential effects on the street in terms of queuing and overlooking if additional visitors arrive while the garden is at the proposed capacity. I have suggested some conditions to address this however these need to be further discussed. I do consider some form of reduced patron numbers will resolve multiple issues on the site and if a reduced patron number is accepted, further investigation on determining the appropriate numbers is required.
113. In terms of overlooking and privacy effects, I consider that a landscape mitigation plan is required as well. If a landscape mitigation plan, of sufficient detail and quality, was provided, it has the potential to mitigate these residential amenity (privacy and overlooking) and character effects (street scrape) and in my opinion result in a moderate adverse effect which may be acceptable and is further reduced over time as vegetation matures. The landscape mitigation would need to be comparable to a detailed design landscaping plan which addresses all concerns and uncertainties identified above. I have listed these in **Appendix 9**. If this was accepted, I consider that vegetation should be established alongside the construction of buildings, to ensure the vegetation is of an adequate height. While some vegetation may not reach their natural height, the short term effects may be acceptable depending on the denseness and species of vegetation chosen around the internal boundaries.
114. While mitigations such as an extensive landscaping plan and reduction in patron numbers could assist with resolving multiple effects, it will not reduce the scale of the activity. I consider it marginal whether the expansion activity is appropriate in a residential zone even if the mitigations above are taken. In addition, there are concerns from submitters that the conditions if accepted will not be adhered to. If new mitigations are proposed at the hearing, this needs to be further assessed at this time.

115. Regard must be had to the relevant objectives and policies in the Christchurch District Plan, which are attached in **Appendix 10**.

Chapter 3 – Strategic Objectives

116. It is important to consider the following objectives and their relevance to the proposal in the cascading chapters:
- In terms of strategic objectives 3.3.1 and 3.3.5, the activity is providing for economic development and allowing a business activity to establish and prosper;
 - Cultural consultation has occurred as part of the earlier application and no concerns were raised by the local Katiaki. I consider the application is consistent with Objective 3.3.3.
 - Objective 3.3.7 requires multiple aspects to retain a high-quality urban environment which include;
 - o Is attractive for residents, businesses and visitors;
 - o Recognised special character and amenity value areas are identified and appropriately managed;
 - o Promote the re-use and redevelopment of buildings and land;
 - o Improves overall accessibility and connectivity for people, transport (including opportunities for walking, cycling and public transport) and services.
- I consider these aspects are better addressed in the chapters outlined below and will be readdressed in the conclusion of objectives and policy assessment.
- Objective 3.3.14 requires the control of activities via zoning to minimise conflict between incompatible activities. Conflicts are to be avoided where there may be significant effects on health, safety and amenity of people and communities. This is also further discussed in the Chapter 14 assessment as well as the conclusion.

Noise

117. I consider the objectives and policies 6.1.2.1, 6.1.2.1.1 and 6.1.2.1.4 to be relevant for this application. The objectives and policies seek to;
- Enable land use activities to contribute Christchurch's economic, social and cultural wellbeing by managing noise effects on amenity values, health of people and communities which are consistent with the anticipated outcomes of the receiving environment (residential environment).
 - These noise effects can be managed by limiting sound levels, location and duration of activities and sound insulation for sensitive activities.
118. I do not agree with the Applicant's assessment of the objectives and policies assessment¹⁸. As outlined in the assessment of effects, the current proposal does not meet the anticipated outcomes of the residential environment. This is both in terms of compliance if 120 patrons per hour occur on site and in terms of residential amenity. The activity as currently proposed will have an unacceptable effect on the amenity values and the wellbeing of neighbouring properties as discussed. I consider the proposal to be contrary to the objectives and policies for noise.
119. If the applicant proposes to reduce the maximum amount of patrons to 80 at any given time and Ms Stouts other recommendations are adopted, this matter is likely to be resolved such that the proposal would be consistent with these objectives and policies.

Residential

120. In terms of the residential amenity and character, the applicant has considered that there may be inconsistencies with the objectives and policies however the proposal is not contrary to these. Policy 14.2.1.1 outlines the intended character of Residential Banks Peninsula Zone as outlined below:

¹⁸ Refer to section 6 of the assessment of effects.

“within Banks Peninsula, limited low density residential development adjacent to existing residential townships and small settlements, that complements the surrounding environment, is able to be efficiently serviced by public infrastructure and in some limited circumstances private infrastructure; and is in locations not subject to significant risks to life safety and property damage from natural hazards. Includes urban and suburban living, commuter accommodation and the small harbour settlements. The 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. Opportunities for residential expansion around Lyttelton and Akaroa are constrained by the availability of reticulated services and land suitability. The smaller settlements around Lyttelton harbour provide a variety of residential opportunities. Residential areas at Cass Bay, Corsair Bay, Church Bay and Diamond Harbour offer a lower density residential environment with relatively large lots. Each settlement differs as a reflection of its history, the local topography, the relationship with the coast and the type of residential living offered. 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.”

121. While most of the objectives and policies of Chapter 14 relate to residential activity, the following are relevant to the application.

Policy 14.2.4.1- Neighbourhood character, amenity and safety

- a. Facilitate the contribution of individual developments to high quality residential environments in all residential areas (as characterised in Table 14.2.1.1a), through design:
- i. reflecting the context, character, and scale of building anticipated in the neighbourhood;
 - ii. contributing to a high quality street scene;
 - iii. providing a high level of on-site amenity;
 - iv. minimising noise effects from traffic, railway activity, and other sources where necessary to protect residential amenity;
 - v. providing safe, efficient, and easily accessible movement for pedestrians, cyclists, and vehicles; and
 - vi. incorporating principles of crime prevention through environmental design.

Objective 14.2.6 - 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;
 - 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.

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

122. My understanding of the non-residential activities objective and policies is that the activity must first identify a strategic or operational need to locate in a residential zone (Objective 14.2.6), these activities

may occur if they are considered insignificant¹⁹ I have used NZEnvC 119 for guidance when assessing strategic and operational need. Operational necessity relates to the activities employed in producing the final product. Necessity is of higher importance than need. I consider from this information that in relation to this policy, it equates to the activity needing to be performed in residential location due to the qualities located in the local area. I consider there is a need, in terms of strategic need²⁰ and operative need to locate in the residential zone due to the fixed location of the Linton House and associated gardens and its heritage status and setting.

123. I consider Policies 14.2.6.1, 14.2.6.4 and 14.2.5 are not relevant in this application due to the principal activity being existing. While the activity is expanding into a site which has not been used for commercial activities and include new components to the activity (minor retail, a larger hospitality area for example), it is not appropriate to separate these matters as a new or separate activity. The application is therefore being considered as a whole and includes existing activities established on the site at 70 Rue Balguerie. I therefore consider it falls under a redevelopment and expansion of the activity. Therefore, the key policy to assess is 14.2.6.3.
124. The site has the potential to be redeveloped in 9 houses if the Linton house was removed. This is unlikely to occur, notwithstanding I do not consider it undermines the potential for residential development as the surrounding sites are largely fully developed to their potential. As the proposal is not undermining the potential for residential development consistent with the zoning description, the activity needs to avoid significant adverse effects on the character and amenity of the Residential Banks Peninsula Zone. I have discussed the term significant in my assessment above.
125. I consider that there are inconsistencies with these policies for the following reasons:
- The zoning description puts emphasis on the character of Banks Peninsula and Akaroa which include low density residential development, historic and colonial form architecture, narrow streets, distinctive residential buildings, large amount of vegetation and the retention of the high settlement character. As noted in Mr Field's assessment, it is not currently considered that the character of Akaroa and the locality of Rue Balguerie is achieved in this activity.
 - In Policy 14.2.1.1, the zone description clearly identifies that if non-residential activities are not compatible with the character of the zone the effects need to be controlled to mitigate adverse effects on the character and amenity of the area. As mentioned in the effects assessment, mitigation is not achieved due to combined residential amenity effects.
 - Policy 14.2.4.1 requires high quality design by facilitating development to reflect the character context and scale of the neighbourhood. I do not consider this to be achieved for following reasons:
 - i. The activity appears commercial in nature which reduces the street scene design²¹ quality, does not match the character anticipated in the area due to their collective forms and activity (including the exceedance in height of the café).
 - ii. While the activity will provide a high level of onsite amenity for the patrons, the worst-case scenario level has not been minimised to protect residential amenity in terms of noise or visual effects, rather the residential amenity effects including intangible aspects would worsen overtime.
 - iii. The site would provide safe efficient and easily accessible movement for pedestrians and vehicles due to the proposed changes in transport and the activities operation via proposed conditions including a transport management plan if the 120 patrons per hour is accepted. While CPTED has been incorporated into the design of the proposal, It is unclear how mobility impaired patrons will both access the site if mobility parking is unavailable and if the pathway proposed in the

¹⁹ I have followed the approach taken in NZEnvC 111 *Fright V Christchurch City Council*.

²⁰ NZEnvC 119 has described strategic need as relating to the long term or overall aims and interests of a company which will be achieved on a rural location. I have used this as guidance when forming my opinion and in the residential zoning context.

²¹ It is acknowledged that the street scene has improved due to changes in the application.

proposed expansion is up to a sufficient grade. Some of these effects may contribute combined adverse residential amenity effects.

iv. There are uncertainties in the proposal design which may increase the level of effects.

- The commercial activity operating daily including Sundays and public holidays, will not assist in reducing in the residential amenity effects,
- The effects assessment above determined there are significant adverse effects on residential character and amenity.

126. Overall, I consider the proposal is contrary with Chapter 14 of the District Plan.

Transport

127. The transport objectives and policies seek an integrated transport system for Christchurch District, that is safe and efficient for all transport modes, responsive to current and future needs and enables economic development, supports safe, healthy and liveable communities by maximising integration with land use, reduces dependency on private motor vehicles and promotes public and active transport use, managed using the one network approach (objective 7.2.1.1). I have expanded beyond the applicant's assessment of the transport objectives and policies.

128. If Mr Downard-Wilke recommendations are accepted, I consider the proposal to be generally consistent with Chapter 7's objectives and policies for the following reasons:

- In terms of Policy 7.2.1.4, mobility parking has been recommended on being established on the street which will provide direct and accessible access to the activity while loading will be available onsite and deliveries will occur outside trading hours (if determined appropriate). Car parking is no longer required to be assessed in the District Plan, therefore it is considered the proposal is in keeping with expected needs of the activity. Mr Downard-Wilke considers the efficiency and safety of the transport network will be improved by the proposal which include implementing a transport management plan;
- Public and active transport is promoted by ensuring activities provide an adequate amount of safe, secure and convenient cycle parking, dedicated bus stop and booking system and the proposed footpath and accessible entry (policy 7.2.1.6). It is considered this aspect will be improved by the proposal due to the changes made by the applicant. The matter of the accessibility within the site is not relevant to the roading network assessment.
- The changes to the transport infrastructure will generate a positive effect of greater connectivity in the locality by continuing the existing footpath along Rue Balguerie. It is not considered the proposed transport infrastructure will create reverse sensitivity effects that would undermine the transport activities in the transport/residential zone but rather improve them (Objective 7.2.2 and Policies 7.2.1.8, 7.2.2.1, 7.2.2.2 and 7.2.2.3).

Chapter 8 – Earthworks

129. In terms of the earthworks, I adopt the applicant's assessment and consider the proposed is consistent with the relevant objectives and policies in Chapter 8.

Chapter 9 – Natural and Cultural Heritage

130. I adopt the applicant's assessment and consider additional recommendations would assist with consistency with the objectives and policies if the applicant is granted.

Other chapters of the District Plan

131. The application is consistent with the remainder of the District Plan.

Conclusion

132. In summary the application is mostly consistent with the objectives and policies of District Plan except noise and residential chapters. The proposal is providing for economic development in Banks Peninsula locality and the proposal would not adversely affect the transport network given the proposed mitigation. There is also a strategic and operational need for the activity to be established in

this area however the application is creating significant adverse effects in terms of residential character and amenity and noise effects. I consider that there is considerable weight towards the proposal being contrary with the District Plan objectives and policies.

133. After considering the relevant objectives and policies it is my conclusion that in an overall sense, the application is contrary with the District Plan and should be declined.

Alternative application and consistency with district plan.

134. As mentioned in the effects assessment, there is potential for most adverse effects to be resolved. If acceptable mitigations were to occur, there is potential that the proposal may create minor tensions with objectives and policies however these could be acceptable and non-contrary to the District Plan. This is a matter to be further discussed at the hearing.

Other relevant Statutory Documents (S.104 (1)(b))

135. Statutory documents of relevance to this application include National Policy Statement on Urban Development.
136. Regard must be had to the NPS Urban Development which came into effect on 20 August 2020. Most of the objectives and policies relate to creating a well-functioning urban environment in relation to housing and business sections. This is not relevant to the application site as the Akaroa settlement does not fall within the urban environment definition due to the population numbers. The provisions relating to car parking assessment are relevant to the consideration of this application. This removes the minimum car parking requirements from being assessed in the application (excluding accessible car parks). It is noted that there are some concerns with the impact on on-street parking by the proposal however full weighting cannot be given to these.
137. The District Plan has been recently reviewed and gives effect to the higher order planning documents. As such, there is no need to address them specifically in this report. It is noted that District Plan Change 13 and 14 are not relevant to this application.

Relevant Other Matters (S.104 (1)(c))

Precedent effect/Plan integrity

138. It is appropriate to have regard to the issue of precedent, as well as the effect of granting consent upon the integrity of the District Plan and public confidence in its consistent administration. Case Law has established, through the High Court in *Rodney District Council v Gould*^[1], that concerns relating to plan integrity and precedent effect are not mandatory considerations. The Court held that they are matters that decision makers *may have regard to*, depending on the facts of a particular case including:
- i. Whether a proposal is contrary to the objectives and policies of the plan; and if so
 - ii. Whether in the circumstances of a particular case a proposal can be seen as having some unusual quality.
139. I consider these matters below, however, before doing so address the suitability of considering precedent and plan integrity for discretionary activities. While precedent is more commonly addressed for non-complying activities, I highlight the position of the High Court in *Stirling v Christchurch City Council*^[2] which, with reference to *Norwood Lodge v Upper Hutt City Council*^[3], stated: “*This decision dispels any suggestion that precedent effect might not be a legitimate consideration when the application under consideration is an application for a discretionary activity.*” *Stirling v Christchurch City*

^[1] [2006] NZRMA 217.

^[2] [2011] 16 ELRNZ 798.

^[3] [2016] CA 37/06.

Council shares similarities with the current application, both being discretionary activities for out of zone commercial activities that will not result in distributional effects in and of themselves.

140. More recently, the matter of precedent was considered through the Environment Court in *Ohau Protection Society Incorporated v Waitaki District Council*^[4]. This decision states at paragraphs 105 and 106, that while adverse precedent is more typically considered in relation to non-complying activities:

“That is not to say adverse precedent could not be a valid RMA issue for a discretionary activity although it would be unusual. As is the case for non-complying activities, however, the issue essentially comes back to a proper interpretation of the related intentions of the relevant plan. Although somewhat counter-intuitive, we accept there is a theoretical possibility that grant of consent for a discretionary activity could be so at odds with the relevant objective and policies of a plan as to undermine its integrity and so set an adverse precedent...”

141. I have concluded above that the application is contrary to the objectives and policies of the District Plan and consider that precedent and plan integrity are relevant considerations. This differs from the Applicants Assessment of Environmental Effects, which does not consider such matters.

142. I have given consideration to the uniqueness of this site within the context of the District Plan. I consider the site is unique due to the location of the Linton House and the Akaroa location. A similar activity is unlikely to happen elsewhere due to the combined location and heritage status of the building. In addition, in some other residential context where lower residential amenity is identified , non-residential activities of similar scale could be established with lesser effects. I therefore consider that it is unlikely that the proposal will create a precedent.

143. In relation to plan integrity, I note the position of the High Court in *Stirling v Christchurch City Council* at [90]:

“While in some situations the concept of precedent and integrity of the District Plan might amount to the same thing, that is not necessarily the case. I agree with Ms Dunningham that whereas the concept of precedent reflects the concern that the granting of consent may have planning significance beyond the immediate vicinity of the land concerned, plan integrity is more likely to reflect the public confidence in the Plan.”

144. Having regard to this, I consider the current application has the potential to affect plan integrity in terms of determining adverse significant effects on residential amenity and character. If the application is approved as currently proposed, it could create an expectation that the threshold of significant is higher than anticipated which could undermine public confidence in the administration of the District Plan. Multiple submissions emphasised the loss of residential amenity and character by the proposal and considered the effects to be significant. It could emphasise a lower importance on achieving high quality residential amenity and character in the Residential Zonings of the District Plan.

Part 2 of the Act

145. The matters outlined previously are subject to Part 2 of the Act which outlines its purpose and principles.
146. The use, development and protection of resources is to be sustainably managed in a way that enables people and communities to provide for their social, economic and cultural wellbeing and their health and safety, while avoiding, remedying or mitigating any adverse effects of activities on the environment.

^[4] [2018] NZEnvC 243.

147. The Christchurch District Plan has recently been reviewed. Its provisions were prepared under the higher order planning documents and, through its preparation and the process of becoming operative, have been assessed against the matters contained within Part 2.
148. Taking guidance from recent case law²², the District Plan is considered to be the mechanism by which the purpose and principles of the Act are given effect to in the Christchurch District. It was competently prepared via an independent hearing and decision-making process in a manner that appropriately reflects the provisions of Part 2. Accordingly, no further assessment against Part 2 is considered necessary.

Conclusion

149. After considering the actual and potential effects on the environment of allowing the application, it is my conclusion that there are significant adverse effects on residential amenity which are unacceptable.
150. In my opinion this proposal is contrary the objectives and policies of the District Plan.
151. I consider that the proposal supports Part 2 of the Resource Management Act 1991.
152. Having considered all of the relevant matters under Sections 104, 104B and 104C, it is my opinion that consent should be declined.

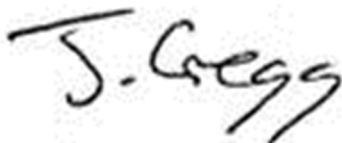
Recommendation

153. I have assessed this application to construct and operate an entrance building, café and expansion of the sculptural gardens tourist activity at 70 and 74 Rue Balguerie. Having considered all the matters relevant to this application, I recommend that this application be **declined** pursuant to Sections 104, 104B, and 108 of the Resource Management Act 1991.



Rachel Cottam
SENIOR PLANNER

Reviewed by:



Jonathan Gregg
Team Leader Planning
08/06/2023

²² *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316