

DECISION OF HEARING COMMISSIONER UNDER THE RESOURCE MANAGEMENT ACT 1991

Proposal:

Resource consent is sought to construct a multi-unit development consisting of eight residential dwellings, and associated earthworks.

This resource consent is **GRANTED**. The reasons for this decision are set out below.

Application Number:	LUC22/48356
Site Address:	51 Barrett Street, New Plymouth
Legal Description:	Section 2389 TN OF New Plymouth
Applicant:	Te Atiawa Iwi Holdings LP
Hearing Date:	16 August 2023
Hearing Panel:	Angela Jones, Independent Hearing Commissioner
Appearances:	<p><u>For the Applicant:</u> Maia Wikaira – Legal Counsel Dion Tuuta - Cultural and Corporate Milla Saris - Architect Brad Dobson - Landscape Architecture Laura Buttimore - Planner Andrew Skerrett – Traffic (Did not attend the hearing. Evidence taken as read)</p> <p><u>Submitter:</u> Leonard Jury – 107 Morley Street</p> <p><u>For Council:</u> Campbell Robinson – Planner</p>
Commissioner’s Site Visit:	16 August 2023
Hearing Closed:	25 August 2023

Summary of Decision

1. I, the Independent Resource Consents Hearing Commissioner, acting under delegated authority from the New Plymouth District Council (“the Council”), pursuant to s104C of the Resource Management Act 1991 (“the RMA”), and under the provisions of the Proposed District Plan – Decisions Version (“PDP”), **grants** resource consent for the reasons outlined in this decision report.

Appointment

2. I, Angela Jones, an independent hearing commissioner was appointed by the Council in terms of s34A of the RMA to hear the Applicant, Submitter, and the Reporting Officer for the Council, and to make a decision on the application.

Time Period for Decision

3. At the close of the hearing, it was stated that it was anticipated that the 15 working days to release the decision would be met as required by the Act.

Proposal

4. The proposal is to construct a multi-unit development consisting of eight new two-storey terraced townhouses for Papakāinga, and associated earthworks.
5. A detailed description of the proposal is described in the application document titled “Resource Consent Application for 8 Townhouses at 51 Barrett Street, New Plymouth” under Section 3.0 “The Proposal”. I consider this to be a fair and accurate description.
6. For clarity, from hereon in I will refer to the proposed dwellings as they are referred to in plans prepared by Solari Architects, Revision A, dated 02/11/22.

Site and Locality

7. The subject site is located on the south-eastern corner of Barrett Street and Morley Street. Aerial photographs showing the site and zoning boundaries are provided below. The site is currently vacant of buildings, as the residential bungalow and garage previously on the site have been removed, with an existing vehicle access off Morley Street. Established vegetation is located along a portion of Morley Street frontage and along the eastern boundary. The site is generally flat.



Figure 1: Aerial Photograph (source: Grip Map)



Figure 2: Operative District Plan Zoning

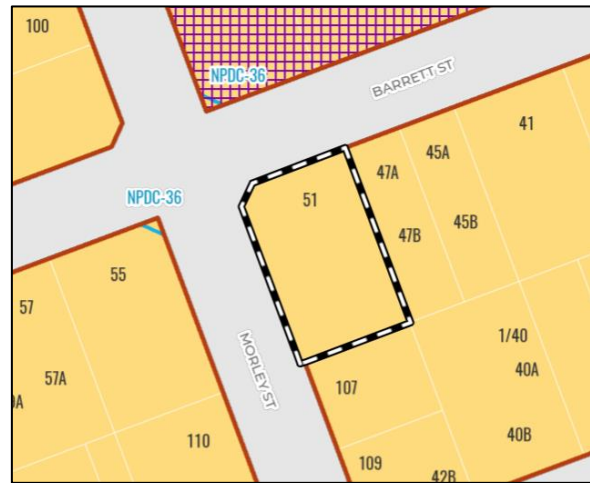


Figure 3: PDP – Decision Version Zoning

8. The surrounding environment is generally residential in character with dwellings typically being one and two-storey detached dwellings. Some higher density developments include four single storey units located on the site to the east of the subject site.
9. The surrounding area is of significance to Mana Whenua, Ngāti Te Whiti Hāpu and Te Kotahitanga o Te Atiawa Trust. Otūmaikuku pā is north of the subject site located on the former Barrett Street Hospital. The site development itself is intended for whānau housing (Papakāinga), along with the former Barrett Street hospital site to the north.

Activity Status

Operative New Plymouth District Plan

10. The site is located within General Residential A Environment Area of the Operative New Plymouth District Plan (the District Plan). The site is within the Churchill Heights Viewshaft Overlay area.
11. The site has a road widening corner splay designation (ref: L67) which has been taken and therefore is not of relevance to the subject site.
12. The s42A report, authored by Mr Robinson, considers the land-use proposal a Restricted Discretionary Activity under the Operative District Plan. The 42A report also outlines the rules for which resource consent was originally sought under the Operative District Plan. I have not repeated those in this decision as consent is now required under the Proposed District Plan as outlined below.

Proposed New Plymouth District Plan Status

13. The application was lodged under the Operative District Plan. Decisions were released on the PDP on 13th May 2023 changing the underlying zoning of the application site from General Residential Zone to Medium Density Residential Zone (MDRZ).
14. Section 86B of the RMA outlines that a rule in a proposed plan has legal effect when a decision on submitters relating to the rule is made and public notified except in specific circumstances set out under 86B (b) and (c) that are not applicable in this case. As such, the provisions of the MDRZ Chapter and Zone of the PDP are considered to have legal effect.
15. The decision version of the PDP was the subject of an appeal period which closed on 26th June 2023. No appeals were received that were relevant to the MDRZ zoning, or objectives, policies or rules, or in relation to the Churchill Heights Viewshaft.
16. Under Section 86F a Rule in a Proposed Plan must be treated as operative (and any previous rule as inoperative) of the time for making submission or lodging appeals has expired. The application therefore no longer requires consent under the Operative District Plan.

Proposed District Plan – Decisions Version

17. As noted above, the site is located within Medium Density Residential Zone of the Proposed New Plymouth District Plan – Decision Version. The site remains within the Churchill Heights Viewshaft Overlay area.
18. The s42A report, authored by Mr Robinson, considers the land-use proposal a Restricted Discretionary Activity under the Proposed District Plan – Decision Version.
19. MRZ-R3 sets out the rule for Māori purpose activities, for which the proposal meets the definition, which are a permitted activity where all MDRZ standards are complied with. Where the proposal

does not meet one or more of the standards, it is a Restricted Discretionary Activity. The proposal is unable to comply with the following standards:

- MRZ-S3 (height in relation to boundary) - The development fails to meet the 45-degree height in relation to boundary requirement on the property to east of the site (47A & B Barrett Street). The proposal complies with the height in relation boundary requirements on the boundary with 107 Morley Street.

Under MRZ-S3 discretion is limited to effects on the streetscape and planned character of the area, the extent to which topography, site orientation and planting can mitigate the effects, and the effect on amenity values of nearby residential properties.

- MRZ-S5 (minimum building setbacks) - The first-floor elevations of units 1, 3 and 4 are located within 1.5 metres of the Morley Street boundary (nil setback). The proposed bike structure (1.2m x 4.7m x 2m) on the Barrett St frontage is considered a building and is within the 1.5m road boundary setback.

Under MRZ-S5 discretion is limited to effects on streetscape and planned character of the area, the extent to which topography, site orientation and planting can mitigate the effects, effect on amenity values of nearby residential properties, the extent to which the reduction in the setback is necessary due to the shape or natural and physical features of the site, mitigation of adverse effects through screening, planting or alternative design.

- MRZ-S6 (outdoor living space) - Units 1 and 2 do not meet the minimum outdoor living space dimension of 3m x 3m.

Under MRZ-S6 discretion is limited to effect on streetscape and planned character of the area, amenity values of nearby residential properties, onsite privacy and outdoor living space on site, mitigation of adverse effects through the use of screening, planting or alternative design.

- MRZ-S7 (minimum outlook space) - Units 5 and 6 cannot provide a 6-metre outlook depth from the principal living room of a dwelling or main living and dining area, providing a 5.35 metre depth.

Under MRZ-S7 discretion is limited to effect on streetscape and planned character of the area, amenity values of nearby residential properties, outlook space on-site, mitigation of adverse effects through the use of screening, planting or alternative design.

20. MRZ-R30 sets out the rule for building activities including demolition or removal of a structure, which are a permitted activity were all MDRZ standards are complied with. The proposal does not comply with all MDRZ standards and therefore is a Restricted Discretionary Activity.

21. Under MRZ-R30 discretion is limited to effects of non-compliance with any relevant MDRZ standards and any relevant matters of discretion in the infringed effects standards.

22. MRZ-R32 sets out the rule for building activities that do not comply with do not comply with MRZ-S3 Height in Relation to Boundary, but complies with MRZ-S4 Alternative Height in Relation to Boundary which are a Restricted Discretionary Activity.

23. Under MRZ-R32 discretion is restricted to sunlight access to the outdoor living space of an existing residential unit on a neighbouring site and the extent of any reduction, attractiveness and safety of the street, overlooking and privacy effects on neighbouring habitable room windows and outdoor living spaces.
24. EW-R10 sets out the earthworks for building activities which are a permitted activity where they meet the conditions. The total earthworks area in the proposal exceeds 150% of the area of the building activity and therefore is a Restricted Discretionary Activity.
25. Under EW-R10 discretion is limited to the extent earthworks will compromise archaeological sites, sites and areas of significance to Māori or historic heritage and whether any adverse effects can be appropriately remedied or mitigated, whether the cut face and any retaining structures can be concealed behind development or effectively landscaped, the potential to create new or exacerbate existing natural hazards, impact natural drainage patterns, redirect overland flow paths or flood flows or create instability, erosion or scarring, whether the earthworks are appropriate for the location and character of the zone, management of visual amenity effects, the control of vehicle movements to and from the site, the effects of non-compliance with any earthworks standards and any relevant matters of discretion in the infringed effects standards, the matters in EW-P3 to EW-P6.
26. Overall, the application for land-use consent is a **Restricted Discretionary Activity** under the Proposed District Plan – Decision Version.

Notification and Submissions

27. Pursuant to s95 of the Act, the application was processed on a limited notified basis. Notification of the application was served on the owners of 107 Morley Street.
28. Submissions closed on 22 May 2023. One submission was received from the owners of the property at 107 Morley Street.
29. The Council officer report prepared in accordance with s42A of the RMA identifies the following matters as the issues raised by the submitters:
 - The proposed density would negatively change the character of the area;
 - The proposal would create adverse traffic effects both for submitters property and the surrounding road network;
 - The development would result in adverse amenity effects including privacy, noise, nuisance, outlook, shading, construction and earthworks effects;
 - A lack of green space is provided within the development;
 - The development would create a range of related nuisance effects such as alcohol consumption, smoking, the keeping of pets, neighbour disputes and increased noise;
 - Effects would be significant and cannot be avoided, remedied or mitigated;

- The proposal would be inconsistent with the purpose, principle and provisions of the RMA 1991, The Taranaki Regional Policy Statement, the Operative District Plan 2005 and the Proposed District Plan 2019.

Summary of Hearing

30. The hearing, held pursuant to s100 of the RMA, was held on 16 August 2023 at Civic Centre, Liardet Street, New Plymouth.
31. The hearing was opened at 9am and after initial introductions and procedural matters, the hearing commenced with the presentations by the applicant and their experts. The submitter spoke to their submission, and the Council officer provided their response. The applicant then provided an interim verbal response and the hearing was adjourned.
32. A site visit was undertaken on 16 August 2023.
33. The applicant provided their written right of reply on 23 August 2023.
34. The hearing was closed via a Minute on 25 August 2023.
35. During the hearing proceedings I exercised my right to question all persons presenting. During the proceedings evidence was heard from the applicant's expert witnesses specialising in planning, architecture, landscape architecture and culture, from the submitters, and from Council's Reporting Officer. Written notes of the verbal presentations, including answers to questions, were taken. The hearing was also recorded. The written evidence is held on file with the Council.
36. For the above reasons, I do not intend to record the material and presentations in full detail in this decision. However, specific issues raised in the material are referred to as appropriate in the Evaluation section of this decision. The following is a summary of the hearing sequence and key points raised during the hearing presentations.

For the Applicant:

- Maia M E Wikaira – Counsel
- Dion Tuuta - Cultural and Corporate
- Milla Saris - Architect
- Brad Dobson - Landscape Architecture
- Laura Buttimore - Planner
- Andrew Skerrett - Traffic (Did not attend the hearing. Evidence taken as read)

Submitters:

- Leonard Jury – 107 Morley Street

For Council:

- Campbell Robinson – Planner

For the Applicant:

Legal Counsel

37. Maia Wikaira's gave a brief summary of the applicant's position including consistency with the NPS-UD, relevance of the permitted baseline under the PDP, agreement between the Council Officer and applicant's planner that the effects on the submitter are 'no more than minor', that the submitters concerns are avoided, remedied or mitigated, positive effects, alignment with the Tai Whenua, Tai Tangata, Tai Ao Iwi Environmental Management Plan, and consistency with sections 6(e), 7(a), and 8 of the RMA.
38. Ms Wikaria's evidence clarified that the Decision's Version of the PDP is the relevant planning instrument when considering the application. While policy MRZ-P2 of the PDP is subject to an appeal to change the scope of this provision, the appeal would not affect the balance of MRZ-P2 as it relates to the application or not and therefore the PDP is taken as operative for the purpose of this decision.
39. Ms Wikaria's evidence confirms the status of the application as a Restricted Discretionary Activity and discusses the applicability of Restricted Discretionary rule MRZ-R32, which is subject to different interpretations by the applicant's planner and the Council Officer. Ms Wikaria's evidence puts forward that whether it is determined that rule MRZ-R32 applies for the purpose of determining the consent application, the Council Officer's assessment against the rule still results in a conclusion that effects are acceptable, and therefore does not preclude the granting of consent.

Response to questions

40. In response to questions, Ms Wikaria:
- Confirmed that despite the appeal to MRZ-P2, the rule triggers are now assessed under the PDP.

Cultural and Corporate

41. Dion Tuuta's evidence was taken as read and a verbal summary of evidence was given at the hearing. Mr Tuuta's evidence set out the land ownership of the subject site under Te Ātiawa Iwi Holdings Limited Partnership as the commercial development manager for Te Kotahitanga O Te Ātiawa, the post Treaty of Waitangi Settlement governance entity for Te Ātiawa Iwi. His evidence also outlined the role of the development in realising the goals of the Te Ātiawa housing programme, as well as the proposed management of the rental properties through a joint-iwi established Community Housing Provider, Ka Uruora, following completion of the development.

Architecture

42. Milla Saris' evidence was taken as read and a verbal presentation was given to accompany the drawing plan set tabled at the hearing. Ms Saris' evidence outlined the key project and site elements, sets out the cultural narrative that underpins the design, assessed the application against the relevant provisions of the MDZ of the PDP, and discusses the sun shading of the proposal against a permitted baseline.

Response to questions

43. In response to questions, Ms Saris:

- Discussed how the design processes landed on the final design and number of units which balances 'holding the edge' of the public realm, the size of the units, and the on-site amenity with meeting the needs of the applicant to have more than four units on the site.
- Outlining the balance taken for the private outdoor spaces of Units 7 and 8 which aims to locate these spaces to achieve maximum sunlight access while maintaining some privacy.
- The consideration made for high-level only compared to large upper level windows in Block B which determined larger sized windows better provide for natural light and ventilation with privacy mitigation achieved through frosting, single windows in secondary bedrooms, and shrouds which restrict overlooking.
- Confirmation that any summer sun studies would show the permitted baseline shading to be greater than the proposal.
- That the sill height for Units 7 and 8 are 800mm above the finished floor level.

Landscape Architecture

44. Brad Dobson's evidence outlined the existing character and landscape values of the area surrounding the subject site, being 'Views', 'Streetscape', 'Experiential', and 'Cultural'. His evidence sets out an assessment of effects against the landscape values using the NZLAG seven-point scale and then goes on to respond to the submission received by the owners of 107 Morley Street.

Response to questions

45. In response to questions, Mr Dobson:

- Confirmed that the landscape plan was amended so there was no grislineia along the southern boundary.
- Confirmed the placement and maintenance of a climber along the Morley Street elevation will need to be managed to ensure outlook is maintained.

Traffic

46. Andrew Skerrett did not present his evidence at the hearing, the evidence submitted to the hearing was taken as read. Mr Skerrett's evidence sets out the traffic generation of the proposed development and the compliance with transport standards set out in the Proposed District Plan.

Planning

47. Laura Buttimore's evidence was taken as read and a verbal summary was provided at the hearing. Ms Buttimore's evidence sets out the effects on the environment, including a description of the permitted baseline with a focus on the PDP permitted baseline, the effects on the adjacent property at 107 Morley Street, and the positive effects of the proposal. The assessment concludes that the adverse effects on the environment can be appropriately avoided, remedied or mitigated.

48. Ms Buttimore's evidence included an assessment against the relevant objectives and policies and assessment of Part 2 of the RMA to which she found the application is consistent with the relevant objectives and policies and achieves the purpose of the Act.

Response to questions

49. In response to questions, Ms Buttimore:

- Confirmed that there were no changes to the Residential Design Guides post-notification of the PDP and therefore no further assessment beyond what was submitted with the lodgement of the application is necessary.
- Clarified that MRZ-R32 could be relevant to the application as Ms Buttimore's original analysis only considered the portion of the building that infringed MRZ-S3 within 20 metres of a road boundary and not the entire building. In the applicant's verbal right of right Ms Buttimore confirmed that after further consideration she agrees that the rule refers to the buildings not an infringement and therefore accepts Mr Robinson's interpretation of the rule.

For the Submitters

50. Mr Jury's spoke to his submission and confirmed his position that the application for two-storey dwellings is too high. Mr July would support no more than four single story buildings on the site as he believes this is appropriate for the site and would provide dwellings that are easy to live in, although he is generally supportive of the overall design and architecture of the development. Mr Jury stated that his preference would be any boundary planting to be maintained at a height of no more than 2 metres. Mr Jury asked that the application is denied and asked that a new proposal for four single storey units is developed.

Response to questions

51. In response to questions, Mr Jury:

- Confirmed 107 Morley Street is currently tenanted.
- Confirmed his understanding of the new planning framework under the PDP and reconfirmed his existing position on the proposal.
- Confirmed he has no other suggested conditions.
- Discussed that the outdoor space at 107 Morley Street, particularly that on the northern side closest to the proposed development, is not currently used however it could be used more in the future if a family were to tenant the dwelling.

For the Council

Planning

52. A report prepared in accordance with s42A of the RMA was prepared by Council's Planner, Mr Campbell Robinson, and was pre-circulated to all parties and taken as read. The s42A report evaluates the initial proposal against the relevant statutory criteria, including the effects on the environment as well as the policy framework of the District Plan, the Regional Policy Statement,

the New Zealand Coastal Policy Statement and the National Policy Statement on Urban Development.

53. In his s42A report, Mr Robinson concludes that the effects will be acceptable. While the notification report found outlook effects to be minor, the compliance now achieved under the PDP suggests the effects of Block B on the submitter's property such as privacy loss, outlook, and building dominance that overall, the proposal should be granted.
54. In the hearing Mr Robinson provided an addendum to his s42A report which included an acknowledgement that one of the provisions of the PDP in the Medium Density Residential Zone, relevant to the application, has been appealed as part of the Proposed District Plan appeals process. The appeal to this provision (MRZ-P2) would not change the meaning or purpose of the policy as it relates to the application and therefore the PDP is taken as operative for the purpose of this decision.

Response to questions

55. In response to questions, Mr Robinson:
- Confirmed that the triggers on consent are now under the PDP and not the OPD, irrespective of the rules at lodgement.
 - Clarified the purpose and parameter of certain draft conditions. These have been subsequently agreed between Mr Robinson and applicant, and an updated set of conditions provided in the applicant's right of reply.
 - Confirmed that MRZ-R32 is relevant to the rules assessment wording of standard MRZ-S4 refers to development within 20 metres of a road boundary and not an infringement.
 - Clarified that a permitted baseline was not applied as part of the Section 95 report as Mr Robinson considers applying a permitted baseline under section 104 provides inconsistency between section 95 and section 104. However, the report includes a discussion at a more conceptual level the more enabling framework regarding height, height in relation to boundary, and setbacks and the more enabling framework of the PDP.

Applicant's Right of Reply

56. The applicant's right of reply at the hearing was provided by Ms Wikaria.
57. In her verbal right of reply, Ms Wikaria:
- Accepted Mr Robinson interpretation that S4 and MRZ-32 applies.
 - Discussed that as the application was made under the ODP a full permitted baseline argument was not undertaken however a permitted baseline is now relevant under the PDP.
 - Acknowledged the concerns raised by the submitter. Noted that the effects of the proposal are anticipated by the PDP which has been through rigorous community engagement. Noted the applicant is proud of the proposed development.
58. A written right of reply was submitted by Maia Wikaira on behalf of the applicant on 23 August 2023.

59. In her written right of reply, Ms Wikaria:

- Confirmed agreement between Ms Buttimore and Ms Robinson on a set of revised conditions that address the questions and clarifications raised during the hearing.
- Provided commentary on those conditions that were queried in the hearing including construction effects and landscaping. The right of reply confirmed conditions 10 to 13 are considered appropriate to satisfy the landscaping requirements and included the latest Landscape Plan including the planting along the southern boundary adjoining Morley Street.
- Confirmed no changes to the Residential Design Guide occurred post-notification and therefore no further assessment is necessary.
- Confirmed conditions 15 and 16 are offered on an Augier basis to ensure the conditions are enforceable. An advice note has also been included that the applicant agrees to the condition under s 108AA(1)(a) of the RMA.

Findings of the Principal Issues in Contention

60. Pursuant to s104C of the RMA, in considering an application for a resource consent for a Restricted Discretionary Activity, I must consider only those matters over which I have discretion. Conditions can only be imposed where they are within the matters over which the Council has discretion.

61. The matters of discretion are outlined earlier in this decision.

62. After analysing the application and evidence; undertaking a site visit; reviewing the s42A report; the submissions; and the right of reply; the proposal raises a number of principal issues in contention. These matters are concerned with:

- Residential amenity on the neighbouring sites.
- Planned character and streetscape.
- On-site amenity.
- Construction.
- Traffic, parking and site access.

Permitted Baseline

63. Section 104(2) of the RMA provides that when considering an application for a resource consent the consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. I agree that a permitted baseline is relevant and the assessment below takes into consideration the permitted baseline.

64. The application provided a model against the permitted baseline under the ODP and PDP. As the PDP is now operative, I have considered the PDP permitted baseline in my consideration.

Residential amenity on the neighbouring property

65. One of the most significant issues of contention with the proposal was the bulk, dominance, and privacy effects on the submitter's property at 107 Morley Street.
66. There are no bulk and location standards breached on the boundary with 107 Morley Street under the PDP. The permitted baseline demonstrates that a building which meets both height in relation to boundary and setback requirements under the Medium Density Zone could be built on the site that would have greater bulk, dominance, privacy and shading effects, than those rendered with the proposed development.
67. Privacy effects from the proposal are mitigated through the design features including the location of living areas and open spaces at ground level; screening through proposed and existing vegetation and fencing; limiting the number and size of windows; frosting; shrouds; and setbacks.

Planned Character and Streetscape

68. The planned character and streetscape effects were issues of contention with the proposal.
69. The planned character for the immediate environment is the character that can occur as a permitted baseline development anticipated in the Medium Density Residential Zone under the PDP. The Medium Density Zone enables and encourages greater intensification when compared to the existing environment surrounding the site. The application demonstrates a change in character which I believe aligns with the planned character of the Medium Density Zone.
70. The proposal will have a positive impact on the streetscape, with activation of the Morely Street and Barrett Street intersection, dwellings fronting the street, and landscaping that maintains a visual connection between dwellings and the street.

On-site amenity

71. The on-site amenity, particularly regarding the size of the outdoor living spaces, was an issue of contention with the proposal.
72. The outdoor living spaces all exceed the required 20m². Units 1 and 2 do not achieve the minimum dimensions however the amenity of these spaces, which are of a usable size with good sunlight access, is suitable. Small areas of communal space and quality landscaping are also provided on-site.

Construction

73. The construction effects were an issue of contention with the proposal.

74. Construction effects will be temporary in nature and can be effectively managed through suitable conditions of consent.

Traffic, parking and site access

75. The traffic, parking, and site access effects were issues of contention with the proposal.
76. A Traffic Impact Assessment found that the establishment of a new vehicle access point, the on-site manoeuvring, and increased traffic generation effects would be less than less than minor on the neighbouring property at 107 Morley Street. Any parking overspill will not impact on the ability of the residents at 107 Morley Street to park on their own property which contained a double garage and area of vehicle hard standing, as well as two vehicle crossings to Morley Street.

Effects Conclusion:

77. In considering the effects of the proposal as a whole, I therefore concur with the assessments of Ms Buttimore and Mr Robinson and consider the effects of the proposal will be acceptable. I further concur with Ms Buttimore that the effects will be no greater than those from a permitted baseline development.

Objectives and Policies Assessment

78. Turning to objectives and policies of the District Plan, I concur with Mr Robinson and Ms Buttimore that the objectives and policies of the Proposed District Plan – Decision Version are relevant to the consideration of this application. The strategic objectives in relation to Tangata Whenua and Urban Form and Development, and objectives and policies in the Medium Density Residential Zone and Earthworks Chapters are relevant to this application. I have identified the specific objectives and policies that I consider relevant to the proposal below.

Strategic Objectives -Tangata Whenua

- TW-13 *Tangata whenua are able to exercise kaitiakitanga and actively participate in resource management processes and decision-making in a way that provides for the relationship of tangata whenua with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes and other taonga of significance to Māori.*
- TW-15 *Recognise that tangata whenua: 1. are kaitiaki; 2. hold unique expertise in mātauranga Māori and tikanga; 3. are the only people who can identify impacts on their relationship with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes and other taonga of significance to Māori.*
- TW-16 *Tangata whenua are able to protect, develop and use their ancestral land in a way which is consistent with their culture and traditions and their social, cultural and economic aspirations.*

TW-17 *Recognise the contribution that tangata whenua and their relationship with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes, and other taonga of significance make to the district's identity and sense of belonging.*

Strategic Objectives - Urban Form and Development

UFD18 *The district develops and changes over time in a cohesive, compact and structured way that:*

- 1. delivers a compact, well-functioning urban form that provides for connected, liveable communities;*
- 2. manages impacts on the natural and cultural environment;*
- 3. recognises and provides for the relationship of tangata whenua with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes and other taonga of significance;*
- 4. enables greater productivity and economic growth;*
- 5. enables greater social and cultural well-being;*
- 6. takes into account the short, medium and long-term potential impacts of natural hazards, climate change and the associated uncertainty;*
- 7. utilises existing infrastructure and social infrastructure or can be efficiently serviced with new infrastructure and social infrastructure;*
- 8. meets the community's short, medium and long-term housing and industrial needs; and*
- 9. may detract from amenity values appreciated by existing communities but improve such values for new communities by providing increased and varied housing densities and types.*

UFD20 *A variety of housing types, sizes and tenures are available across the district in quality living environments to meet the community's diverse social and economic housing needs in the following locations: 1. suburban housing forms in established residential neighbourhoods;*

- 2. a mix of housing densities in and around the city centre, town centres, local centres and key transport routes, including multi-unit housing;*
- 3. opportunities for increased medium and high-density housing in the city centre, town centres and local centres that will assist to contribute to a vibrant, mixed-use environment;*
- 4. a range of densities and housing forms in new subdivisions and areas identified as appropriate for growth; and*
- 5. papakāinga that provides for the ongoing relationship of tangata whenua with their culture and traditions and with their ancestral land and for their cultural, environmental, social and economic well-being.*

Medium Density Residential Zone

MRZO1 *The Medium Density Residential Zone is predominantly used for residential activities and is characterised by medium density housing up to three storeys high in a variety of forms. 114. The proposal is for Papakāinga housing set within two 2-storied blocks with varied architectural forms. By providing a mix of 2 and 3 bedroom units within terrace and semi detached formats, the*

	<i>proposal can be seen as providing a variety of housing forms. Overall, the proposal is considered to be consistent with MRZ-O1.</i>
MRZO2	<i>The role, function and planned residential character of the Medium Density Residential Zone is not compromised by non-residential activities</i>
MRZO3	<i>There is an increase in the variety of housing densities, types, sizes and tenures to respond to community needs, while also responding appropriately and sensitively to the context, planned character, tangata whenua values and amenity values of the surrounding neighbourhood.</i>
MRZO4	<i>Residential buildings provide occupants and neighbours with well-designed living environments.</i>
MRZO5	<i>Buildings are well designed, use land efficiently and contribute positively to the delivery of a compact urban form.</i>
MRZO6	<i>Changes to the planned character and increased housing capacity do not result in incompatible built form and adverse changes to landform that compromise streetscape amenity and natural features.</i>
MRZO7	<i>Adverse effects of activities are managed to provide residential amenity consistent with the planned character of the Medium Density Residential Zone</i>
MRZP1	<i>Allow activities that are compatible with the role, function and planned character of the Medium Density Residential Zone, while ensuring their design, scale and intensity are appropriate, including: 1. residential activities; 2. boarding houses; 3. Māori purpose activities; 4. home businesses; 5. residential visitor accommodation; 6. supported residential care facilities; 7. educational facilities; and 8. medical and health services.</i>
MRZP2	<i>Manage activities that are potentially compatible with the role, function and planned character of the Medium Density Residential Zone, and ensure it is appropriate to establish such activities in the Medium Density Residential Zone having regard to whether: 1. the purpose of the activity assists in enabling a range of housing choices in the district, services neighbourhood needs or enhances social connectivity; 2. the scale of the activity, site design and layout and built form is well designed and integrates with the character of neighbouring residential properties and the streetscape; 3. the location of non-residential activities is close to and accessible to existing centres and not in isolated locations; 4. the activity has the potential to undermine the viability of a nearby centre; and 5. there is adequate existing or planned infrastructure to service the activity. Potentially compatible activities include: 1. four or more residential units per site; 2. retirement villages; 3. childcare services; 4. community facilities; 5. visitor accommodation; 6. general retail activities; 7. supermarkets; 8. entertainment and hospitality activities; 9. business service activities 10. sport and recreation activities; and 11. emergency services facilities.</i>
MRZP3	<i>Avoid activities that are incompatible with the role, function and planned character of the Medium Density Residential Zone, or activities that will result in: 1. reverse sensitivity effects or conflict with permitted activities in the zone; or 2. adverse effects, which cannot be avoided, or appropriately remedied or mitigated, on the planned medium density residential character and amenity</i>

values. Incompatible activities include: 1. industrial activities; 2. primary production and rural industry; 3. commercial service activities; 4. large format retail activities; and 5. integrated retail activities.

MRZP5 Encourage residential development which provides a range of housing types and sizes, including social housing and lower cost, market rate housing, taking account of the housing requirements of different households, especially those on low to moderate incomes.

MRZP6 Allow residential development that is consistent with the role, function and planned residential character of the Medium Density Residential Zone by controlling: 1. the number, design and layout of residential units per site; 2. building height, bulk and location; 3. site coverage and outdoor living space; 4. setbacks from boundaries; and 5. height in relation to boundaries.

MRZP7 Require the effects generated by activities to be of a type, scale and level that are appropriate for the Medium Density Residential Zone, including by: 1. controlling noise, vibration, light or glare (particularly at night); 2. minimising adverse effects on the local transport network, including from inappropriate traffic volumes by providing sufficient on-site parking, servicing, manoeuvring, pedestrian and cycling space; 3. managing earthworks, subdivision and construction work; 4. ensuring the size, design and type of signage is compatible with the planned character and amenity of the residential area that the signage is located in; and 5. minimising hard surfacing and, where possible, retaining or providing visually prominent trees, bush and landscaping.

MRZP7 Require the effects generated by activities to be of a type, scale and level that are appropriate for the Medium Density Residential Zone, including by: 1. controlling noise, vibration, light or glare (particularly at night); 2. minimising adverse effects on the local transport network, including from inappropriate traffic volumes by providing sufficient on-site parking, servicing, manoeuvring, pedestrian and cycling space; 3. managing earthworks, subdivision and construction work; 4. ensuring the size, design and type of signage is compatible with the planned character and amenity of the residential area that the signage is located in; and 5. minimising hard surfacing and, where possible, retaining or providing visually prominent trees, bush and landscaping.

MRZP8 Require that development provides well-designed streetscapes, suitable residential amenity for surrounding properties and public places and does not result in overdevelopment of sites by: 1. ensuring that the height, bulk and form of buildings minimise adverse visual amenity effects, including a sense of enclosure or dominance; 2. reducing the visual effects of the scale and bulk of buildings through variations in facades, materials, roof form, building separation and other design elements; 3. orientating buildings to face the street (without compromising solar gain) and limiting the use of unarticulated blank walls and facades to reinforce the visual connection with the street; 4. discouraging the placement of accessory buildings, garages, parking areas and access ways that detract from, dominate or obscure housing as viewed

from public places; 5. discouraging access ways and the use of high fences or walls on boundaries that limit opportunities for passive surveillance of the street or public open space and that run between properties and create low amenity or unsafe environments; 6. increasing the opportunities for landscaping and permeable surface areas, by minimising the amount of hard surfacing used, to support the overall visual amenity of sites; and 7. retaining visually prominent trees, indigenous habitat and established landscaping that contribute to the amenity of the site and neighbourhood and ecological connectivity.

MRZP8

Require that development provides well-designed streetscapes, suitable residential amenity for surrounding properties and public places and does not result in overdevelopment of sites by: 1. ensuring that the height, bulk and form of buildings minimise adverse visual amenity effects, including a sense of enclosure or dominance; 2. reducing the visual effects of the scale and bulk of buildings through variations in facades, materials, roof form, building separation and other design elements; 3. orientating buildings to face the street (without compromising solar gain) and limiting the use of unarticulated blank walls and facades to reinforce the visual connection with the street; 4. discouraging the placement of accessory buildings, garages, parking areas and access ways that detract from, dominate or obscure housing as viewed from public places; 5. discouraging access ways and the use of high fences or walls on boundaries that limit opportunities for passive surveillance of the street or public open space and that run between properties and create low amenity or unsafe environments; 6. increasing the opportunities for landscaping and permeable surface areas, by minimising the amount of hard surfacing used, to support the overall visual amenity of sites; and 7. retaining visually prominent trees, indigenous habitat and established landscaping that contribute to the amenity of the site and neighbourhood and ecological connectivity.

MRZ-P10

Encourage living activities that are healthy, accessible and sustainable by: 1. using universal design to cater for people of all ages and abilities; 2. orientating buildings to maximise solar gain for natural light, warmth and moisture control; 3. incorporating innovative design to assist occupants in minimising energy and water consumption; and 4. providing for small-scale on-site energy generation (such as solar panels) to meet the needs of occupants.

MRZ-P11

Ensure activities and development in the Medium Density Residential Zone that may compromise cultural, spiritual or historic values of importance to tangata whenua consult with and seek expert cultural advice from tangata whenua, including with respect to mitigation options.

Earthworks

- EWO1** *Earthworks and associated retaining structures necessary for the construction, maintenance or operation of activities are enabled, provided that adverse environmental effects are avoided, remedied or mitigated. EWP1 Allow earthworks and land disturbance that are associated with the construction, maintenance and repair or upgrade of the following activities, while ensuring the scale, volume and effects of earthworks and land disturbance are appropriate: 1. fences, poles, pile or service connections; 2. gardening, planting or any vegetation and the construction or maintenance of garden amenities; 3. sport and recreation activities; 4. conservation activities; 5. replacement, removal or installation of underground petroleum storage systems; 6. interments in a burial ground, cemetery or urupā; 7. the transport network; 8. walking and cycling tracks and leisure activities; 9. network utilities, including new and extended vehicle access tracks ; 10. building activities authorised by a building consent; 11. silage pits in the rural production zone; 12. vehicle access tracks associated with agriculture, pastoral and horticultural activities in the Rural Production Zone; or 13. other earthworks within specified limits and meeting the Earthworks Effects Standards.*
- EWP2** *Manage earthworks that have the potential to: 1. create new or exacerbate existing natural hazards, particularly flood events, or cause adverse impacts on natural coastal processes; 2. result in adverse effects on: a. the stability of land or structures; b. visual amenity and character; c. waterbodies and scheduled features; d. the health and safety of people and communities; e. indigenous biodiversity; f. the operation of network utilities; or 3. result in adverse construction noise, vibration, odour, dust, lighting and traffic effects.*
- EWP3** *Ensure earthworks are undertaken in a way that avoids or appropriately remedies or mitigates adverse effects on cultural, spiritual or historical values of importance to tangata whenua, by: 1. having regard to: a. the extent to which the earthworks or land disturbance may compromise the particular cultural, spiritual or historical values of importance to tangata whenua associated with the site and, if so, the outcomes of any consultation with tangata whenua, including any expert cultural advice provided with respect to: i. opportunities to incorporate mātauranga Māori into the overall scale, form and extent of the earthworks or land disturbance; ii. opportunities for tangata whenua's relationship with ancestral lands, water, sites, wāhi tapu and other taonga to be maintained or strengthened; iii. options to avoid, remedy or mitigate adverse effects; and b. the outcomes of any consultation with Heritage New Zealand Pouhere Taonga. 2. in all cases, requiring appropriate steps to be followed in the event that sensitive material is discovered during earthworks and land disturbance.*
- EWP4** *Ensure that earthworks are of a type, scale and form that is appropriate for the location having regard to the effects of the activity, and: 1. the impact on*

existing natural landforms and features and indigenous vegetation; 2. changes in natural landform that will lead to instability, erosion and scarring; 3. impacts on natural drainage patterns and secondary flow paths; 4. compatibility of the earthworks and the design and materials for any retaining structures with the visual amenity and character of the surrounding area; 5. the extent to which the activity mitigates any adverse visual effects associated with any exposed cut faces or retaining structures, including through screening, landscaping and planting; and 6. the impact of the movement of dust and sediment beyond the area of development.

EWP5

Require earthworks and any retaining structures associated with future land development or subdivision to be designed, located, managed and undertaken in a coordinated and integrated manner, including by: 1. managing large-scale earthworks associated with subdivision, including for the purpose of site development and creating roads or access to and within the subdivision; and 2. considering the appropriateness of earthworks in conjunction with site design and layout of future subdivision and development of land, particularly for future infill or greenfield subdivision.

EWP6

Ensure that earthworks and any associated structures are designed as far as practicable to reflect natural landforms, and where appropriate, landscaped to reduce and soften their visual impact having regard to the character and visual amenity of the surrounding area.

79. The majority of these objectives and related policies have been assessed in both the applicant's AEE, by the applicant's planner, Ms Buttimore in her Statement of Evidence and in the Council's s42A report.
80. I note that the applicant's planner, Ms Buttimore, generally agrees with the discussion of the objectives and policies by the Council planner in his s42A report. I also generally agree with Mr Robinson's assessment.
81. To conclude this assessment, in my opinion, the proposal is consistent with the overall ambit of the above objectives and policies of the Proposed District Plan – Decisions Version.

Other Matters

National Policy Statement on Urban Development

82. The National Policy Statement on Urban Development (NPS-UD) is applicable to this application. The NPS-UD came into effect in July 2020 and is about ensuring urban development recognises the national significance of urban environments and the need to enable such environments to develop and change, and to provide sufficient development capacity to meet the needs of people and communities and future generations in urban environments. The NPS-UD directs decision making under the Act to ensure that planning decisions enable development through providing sufficient development capacity for housing and business.

83. The s42A report outlines the objectives and policies of the NPS-UD which are particularly relevant to this application, and I concur with the assessment undertaken by Mr Robinson. Overall, I consider the proposal will contribute to providing New Plymouth with additional residential living accommodation that provides for future resident's social, economic, cultural and environmental wellbeing.

New Zealand Coastal Policy Statement

84. The subject site is not located in proximity to the coast, I do not consider that the New Zealand Coastal Policy Statement 2010 is relevant to this proposal.

Taranaki Regional Policy Statement 2010

85. The Taranaki Regional Policy Statement (RPS), in particular Sub Objective 1, relating to promoting sustainable development, and Sub Policy 1, relating to sustainable development in urban areas, are relevant to this application.
86. Overall, I consider the proposal to be consistent with the RPS and concur with the assessments of Ms Buttimore and Mr Robinson.

Land Use Consent Decision

87. Consequently, having regard to the evidence presented, and the relevant statutory criteria under s104C and for the reasons set out above, the Independent Commissioner **GRANTS** consent to construct a multi-unit development consisting of eight residential dwellings, and associated earthworks at 51 Barrett Street (being Section 2389 TN OF New Plymouth) subject to the conditions below.

Reasons for the Decision

88. Section 113(1)(a) of the Act requires that I state my reasons for the decision of approval. Although it will be clear from the assessments carried out above, for the avoidance of doubt I confirm that the principal reasons for the granting of this consent are:
1. The effects of the proposal are acceptable and no greater than what would result from a permitted baseline development.
 2. The proposal is consistent with the objectives and policies of the District Plan.

Conditions of Consent – Land Use

Approved Plans:

- The use and development of the land shall be undertaken in accordance with the application submitted with application No. LUC22/48356 including further information submitted during the processing of the application and with the following plans:

Plan No	Name	Revision	Date
PLANS BY SOLARI ARCHITECTS			
Sk230721	Ground Floor Plan - Outdoor area circles & Acc Carpark	A	21.7.23
RC-010	Proposed Site Plan - Roof	A	2.11.22
RC-011	Proposed Site Plan – Ground Floor	A	2.11.22
RC-020	Floor Plan – Type A	A	2.11.22
RC-021	Floor Plan – Type B	A	2.11.22
RC-022	Floor Plan – Type C	A	2.11.22
RC-023	Floor Plan – Type D	A	2.11.22
RC-024	Floor Plan – Type E	A	2.11.22
RC-030	Proposed Site Elevation - North	A	2.11.22
RC-031	Proposed Site Elevation – South	A	2.11.22
RC-032	Proposed Site Elevation - East	A	2.11.22
RC-033	Proposed Site Elevation - West	A	2.11.22
RC-034	Proposed Site Elevation - North (Block B)	A	2.11.22
RC-040	Proposed Sections - Block A	A	2.11.22
RC-041	Proposed Sections - Block-B	A	2.11.22
RC-042	Proposed Sections - Block A & B	A	2.11.22
RC-080	3D Views - Unit 1 off Barrett Street	A	2.11.22
RC-081	3D Views - Morley Street Elevation	A	2.11.22
RC-082	3D Views - Looking up Morley Street	A	2.11.22
RC-083	3D Views - Corner	A	2.11.22
RC-084	3D Views - Southern Courtyards (no vegetation)	A	2.11.22
RC-085	3D Views - Aerial (no vegetation)	A	2.11.22
210	Proposed Contours Plan	1	26.10.22
230	Proposed Cut and Fill Contour Plan	1	26.10.22
300	Proposed Accessway Plan	1	26.10.22
PLANS BY BLAC.			
L5.1	Underplanting Plan	-	30.01.23
L5.2	Tree plan	-	30.01.23
L1.0	Site Plan		30.11.22
PLANS BY ENVELOPE ENGINEERING			
1763-01	Proposed 3 waters layout plan	1	26.10.22

Communications and Public Liaison:

- At least 48 hours prior to the commencement of earthworks, the consent holder shall submit to the Council's Planning Lead, confirmation of a project liaison person who is to be the main contact for all persons impacted by the construction of the project. If the liaison person is not available for any reason, an alternative contact shall be provided, to ensure that a liaison person

is available by telephone 24 hours per day/seven days per week during the duration of the demolition and construction phase of the development.

Complaints Register:

3. At all times during the earthworks and construction period of the proposal and for a period of 6 months following completion of construction the consent holder shall maintain a register of any complaints received alleging adverse effects from, or related to, the exercise of the consent. The record shall include:
 - a) The name and address (where this has been provided) of the complainant;
 - b) Identification of the nature of the complaint;
 - c) Location, date and time of the complaint and of the alleged event;
 - d) Weather conditions at the time of the complaint (as far as practicable), including wind direction and approximate wind speed if the complaint relates to air discharges;
 - e) The outcome of the consent holders investigation into the complaint;
 - f) Measures taken to respond to the complaint; and
 - g) Any other activities in the area, unrelated to the project, which may have contributed to the complaint (such as non-project construction or unusually dusty conditions generally).
4. Where a complaint is received the consent holder shall:
 - a) Acknowledge the complaint within 2 working days,
 - b) Promptly investigate, identify the level of urgency in respect of the complaint and communicate that to the complainant; and
 - c) Take reasonable steps to remedy or mitigate the matters giving rise to the complaint if there are reasonable grounds for the complaint within 10 working days of receiving the complaint or such sooner time as may be reasonably necessary in the circumstances.
5. The consent holder shall also maintain a record of its responses and any remedial actions undertaken. This record shall be maintained on site and shall be made available to the Council's Compliance and Monitoring Officer every month until the construction period is concluded.

Hours of Construction Work:

6. The working hours for any earthworks or construction activities on the site, including the transport of excavated material from (or to) the site, are restricted to:
 - Monday to Saturday 7:30am to 5:30pm;
 - No work is to be carried out on Sundays or public holidays.

Construction Traffic Management Plan:

7. Prior to the commencement of construction, a Construction Traffic Management Plan (CTMP) shall be provided to the Planning Lead for approval. The CTMP must address the control of the movement of construction vehicles to and from the site. The CTMP shall contain sufficient detail to address the following matters:
 - a) measures to ensure the safe and efficient movement of the travelling public (pedestrians, vehicle occupants, local residents etc). Such measures may include temporary speed

- restrictions, manned access points and restrictions on vehicles exiting the site by way of right-hand turn.
- b) The location of the access point.
 - c) restrict hours of vehicle movements to protect amenity of surrounding environment during earthworks phase.

Erosion and Sediment Control Plan:

- 8. Prior to the commencement of any earthworks, the consent holder shall submit an Erosion and Sediment Control Management Plan (ESCMP) to the New Plymouth District Council Planning Lead or nominee for approval. The ESCMP shall be in general accordance with, but not limited to, the measures outlined within the engineering report by Envelope Engineering submitted with the application. Once approved the development shall be undertaken in accordance with the ESCMP.

Final Palette of Materials:

- 9. Prior to the lodgement of building consent, the consent holder shall provide a schedule of the external materials and colours to be utilised for Blocks A and B building facades to the Council's Planning Lead for approval. This shall include all visible external features including roofing, cladding, down pipes and guttering, windows and doors. The plan shall be generally consistent with the matters outlined in the application.

Hard and Soft Landscaping Plan:

- 10. A Hard and Soft Landscape Plan must be submitted to, and approved by, the Council's Planning Lead prior to landscaping works commencing onsite. The Plan shall be generally consistent with the Plan by Blac. Revision B dated 30.01.23.
- 11. Works undertaken in accordance with the Hard and Soft Landscape Plan approved under Condition 10 above, must be completed by the consent holder prior to the units being occupied.
- 12. All plantings must be monitored for 48 months from time of planting in order to allow for plant establishment to the satisfaction of the Council's Planning Lead. Within this period monitoring includes the removal of weeds within the vicinity of the plantings and the replacement of plants that die, or are removed, with plants of the same species and original size. Any plants that fail must be replaced at the expense of the consent holder. All plantings must continue to be maintained by the consent holder thereafter.
- 13. Landscaping shall be maintained to not impede direct sight from the kitchen areas of units 1-4 within Block A to the Morley Street public footpath.

Existing Vehicle Access:

- 14. Prior to the occupation of the units, the existing vehicle access on Morley Street shall be reinstated with curb and channel at the expense of the consent holder to the satisfaction of the Council's Planning Lead.

Cultural Monitoring:

15. Prior to commencement of works, the consent holder shall advise Ngāti Te Whiti of the start and finish dates for the construction works approved in this resource consent.
16. No less than seven working days prior to the works commencing, the consent holder shall invite Ngāti Te Whiti to undertake on-site cultural monitoring during ground disturbance works.

Accidental Discovery Protocol Cultural or Archaeological Artefacts:

17. The applicant is advised to contact Ngāti Te Whiti hapu and Heritage New Zealand if the presence of an archaeological or cultural artefacts are uncovered or are suspected of being uncovered. Work affecting archaeological sites is subject to a separate consent process under the Heritage New Zealand Pouhere Taonga Act 2014. If any activity associated with this proposal, such as building modification or demolition, earthworks, fencing or landscaping, may modify, damage or destroy any archaeological site(s), an authority (consent) from Heritage New Zealand must be obtained for the work to proceed lawfully. The Heritage New Zealand Pouhere Taonga Act 2014 contains penalties for unauthorised site damage.

Monitoring and Review:

18. The conditions of this consent may be reviewed by the Council in accordance with Section 128(1) of the Resource Management Act 1991 by serving notice within a period of twelve (12) months from the date construction commences on the site and thereafter within a period of three (3) months commencing on each anniversary of the date of the grant of this consent for a period of 1 year for any of the following purposes:
 - a) In order to deal with any adverse effects on the environment, which may arise from the exercise of this consent. These effects may come to the Council's attention via justified complaints, reports and/or observations by Council Officers; or
 - b) To deal with unintended inaccuracies contained in the consent application that materially influenced the decision made on the application and is such that it is necessary to apply more appropriate conditions to avoid, remedy or mitigate effects on the public realm or onto specific parties.

Advice Notes:

1. This consent lapses 5 years from the date it was granted unless the consent is given effect to before that date; or unless an application is made before the expiry of that date for the Council to grant an extension of time for establishment of the use. An application for an extension of time will be subject to the provisions of section 125 of the Resource Management Act 1991.
2. This consent is subject to the right of objection as set out in section 357A of the Resource Management Act 1991.
3. At the time of Building Consent, the consent holder will be required to supply information for on-site stormwater control, water and sewer capacity.

4. Lighting used within the car park area shall comply with the relevant provisions of the Proposed District Plan and if applicable the, the Operative District Plan.
5. The consent holder shall at all times adopt the best practicable option to ensure the emission of construction noise does not exceed a reasonable level in accordance with Section 16 of the Resource Management Act 1991 and comply with the relevant construction noise provisions of the PDP.
6. Any excavation that takes place within road reserve during this development shall require an approved Corridor Access Request (CAR). Refer to the National Code of Practice for Utility Operators' Access to Transport Corridors for additional information. Applications can be made via the website www.beforeUdig.co.nz or 0800 248 344. A CAR along with a Traffic Management Plan must be submitted a minimum of 5 working days before an operator intends to start work for minor works or 15 working days for major works and project works. All costs incurred shall be at the consent holder's expense.
7. Conditions 15 and 16 of this consent have been offered by the applicant and are imposed on an *Augier* basis, which provides that, if an otherwise ultra vires condition is volunteered by a resource consent applicant and a consent is granted with that condition, then that condition is enforceable. For completeness, it is also recorded that the applicant for resource consent agrees to the condition under section 108AA(1)(a) of the Resource Management Act 1991.



ANGELA JONES
Independent Hearing Commissioner

15 September 2023