

**BEFORE INDEPENDENT COMMISSIONER MCKAY APPOINTED BY NEW
PLYMOUTH DISTRICT COUNCIL**

UNDER the Resource Management Act
1991

IN THE MATTER of an application under section
88 of the Act by BRYAN ROACH
AND KIM ROACH (AND SOUTH
TARANAKI TRUSTEES LIMITED)
to the NEW PLYMOUTH
DISTRICT COUNCIL for land use
consent to construct a dwelling
and associated retaining and
fencing at 24/26 Woolcombe
Terrace, New Plymouth
(LUC24/48512)

STATEMENT OF EVIDENCE OF
BRYAN WYNYARD ROACH
ON BEHALF OF
BRYAN AND KIM ROACH (AND SOUTH TARANAKI TRUSTEES LIMITED
AS TRUSTEES OF BRYAN & KIM ROACH FAMILY TRUST)

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INTRODUCTION AND BACKGROUND

1. My name is Bryan Wynyard Roach and I reside in New Plymouth with my wife Kim Christina Roach. We are Taranaki born and bred and have lived here all our lives.
2. We are law and abiding citizens and we hold a number of consents through our Dairy Farming operation. We have been audited by MPI with no issues, and I hold a number of licences under my own name. I am also a Justice of the Peace number 21129.
3. I am a dairy farmer and have been for approximately 50 years.
4. Kim was originally from Kaponga, South Taranaki and we married about 32 years ago and moved to our home farm in Opunake, South Taranaki which we still own and run.
5. We have three adult children and are soon to be grandparents.
6. Two of our children (our sons) are dairy farmers/engineers both based in Opunake (about half an hours drive from New Plymouth), and our daughter is currently attending Auckland University.
7. Our children all visit us regularly (our sons visit weekly) and come to stay with us at our new house at 24/26 Woolcombe Terrace, New Plymouth – which we have built to accommodate our whole family and extended family.
8. Our daughter has been living with us full time over the 2024/2025 summer holidays before she returns to Auckland University soon.

9. On 13 April 2015 we purchased the property at 24 Woolcombe Terrace, New Plymouth with a view to renovating and extending the existing dwelling house which we had planned to use as a holiday home or weekend Bach for us and our family (while we were still running the farm), and for us to eventually retire and reside in.
10. On 22 September 2017 we first met with Boon Limited Architects (Boon) and Chris Bell Construction to plan our renovations and house extensions for 24 Woolcombe Terrace – and Boon drew up concept drawings for us which were first produced on 20 November 2017.
11. On 15 August 2018 our house plans in respect of those concept drawings were filed with the New Plymouth District Council (NPDC) for building consent.
12. On or about 12 October 2018 our neighbour – Mrs Elaine Priest – who lived at 26 Woolcombe Terrace, New Plymouth - regrettably passed away.
13. Not long after that, Elaine’s son approached us to discuss his late mothers house and whether or not we might be interested in buying it - as he felt he was too old to take on a new build and her estate wanted to sell the property.
14. At that time our property at 24 Woolcombe Terrace had a shared driveway with Mrs Priest’s property at 26 Woolcombe Terrace (and a right of way in respect of same) - and after some consideration we came to the view that buying Mrs Priest’s property at 26 Woolcombe Terrace would benefit our 24 Woolcombe Terrace property – as it would give us better building options in terms of the shared driveway/right of way issues for future building (and further District

Plan restrictions etc). Accordingly, we put our plans for the renovations and extensions of 24 Woolcombe Terrace on hold – and later, on 18 April 2019, we purchased 26 Woolcombe Terrace from Mrs Priest’s estate.

15. On 2 July 2019 a Geosync survey was completed for 26 Woolcombe Terrace as we had decided to build there – and needed the survey done for the project architects (Boon) to complete building designs and plans.
16. In January 2020 Boon produced new concept drawings for 26 Woolcombe Terrace and together with Boon I subsequently had several meetings with NPDC Officers regarding the Council’s sewer at the back of the property, and the right of way issues that we needed to work through, and eventually we agreed on a pathway forward with the Council. It took us approximately one year of consultation and meetings with NPDC Officers to conclude that process.
17. During those meetings I was advised by NPDC Officers that we could not build on a right of way and the right of way was not to be included in site coverage calculations, which limited where and what we could build.
18. Consequently, we decided to amalgamate the two property titles (24 and 26 Woolcombe Terrace) at that time – which was completed on or about 6 November 2020 and a new title was issued containing both properties.
19. During the above planning stage when we were engaging with NPDC another issue arose was in respect of the existing house at 26 Woolcombe Terrace which NPDC Planners advised us had been

partially built over the Council's sewer at the back of the property (that part being the garage) – and that you could not build over such sewer or within three metres of it (obviously we had bought the property in that condition, in that the sewer had already been built over before we bought it).

20. To resolve that issue we submitted a proposal to NPDC to allow it access to the sewer that runs underneath our garage – which now has lift out panels throughout to allow access. The NPDC agreed to our proposal – all at our cost – and we engaged BTW Company, New Plymouth to draw up the relevant engineering drawings etc which were approved by NPDC on or about 22 December 2021 – copy attached as **Appendix A**.
21. The sewer issues had to be dealt with before the NPDC would allow us to build – and the revised building consent for our new house at 26 Woolcombe Terrace was lodged with Council in September 2021 and granted by NPDC in January 2022.
22. Building of our new retirement house at 26 Woolcombe Terrace then commenced with Chris Bell Construction in early February 2022.
23. The existing retaining wall in front of the footpath had to be demolished and BTW Company drew up engineering plans for a new structural retaining wall on or about 22 March 2022.
24. On or about 19 April 2022 the Sewer Duct Trench Agreement documentation was finalised and signed off between us and NPDC (which was organised at our expense by NPDC's lawyers at that time) – and on or about 28 April 2022 the front footpath retaining wall foundations were poured at a level to ensure that our new house

level was as close as possible to the old house level (because of the shared driveway).

25. To facilitate our new build we also had to have designed and built a new retaining wall/fence between our property at 26 Woolcombe Terrace, and the property owned by Mr and Mrs Whyte at 28 Woolcombe Terrace.
26. We engaged BTW Company again to survey that boundary in order to produce engineering plans for the new retaining wall/fence – and survey plans were produced at that time (on or about 9 May 2022) – which also revealed that Mr and Mrs Whyte’s existing retaining wall/fence between the two properties was partially encroaching on and built over our property at 26 Woolcombe Terrace as shown on Plan number 220392-01 attached as **Appendix B** (which is an issue that we will need to resolve with Mr and Mrs Whyte at some stage soon – however, we understand that that issue is not something that can be resolved under this retrospective resource consent application process).
27. Prior to that, at the start of February 2020, the existing house at 26 Woolcombe Terrace was removed and excavations for our new house began.
28. This was early stages no extra height had been filled and it was still at existing ground level – and sand and bricks were removed and replaced with fill. We were always going to build our own retaining wall and fence, however also, Mr Whyte came and saw us and said we had damaged his retaining wall. I asked him to show me but he couldn’t show me anything.

29. He also advised me that his retaining wall was not designed to cope with our new build and therefore that was another reason we engaged BTW Company to design the new retaining wall.
30. On 19 May 2022 Daniel McEwan, Boon provided us with Landscape direction for our property – and on 24 May 2022 the sewer line concrete retaining walls were installed, and on 22 June 2022 the concrete blocks were completed.
31. On or about 15 June 2022 the neighbour's side of the retaining wall for our fence was concreted, and steel reinforced, and the ground floor slab concrete for the house was also poured around this time.
32. On or about 10 October 2022 the new steel framework for the new house construction was commenced – and at about that same time Mr and Mrs Whyte advised us that they thought the front corner of our new house design breached the relevant daylight angle provisions in the Operative New Plymouth District Council Plan (ODP).
33. We notified Boon about that immediately – as we had specifically instructed Boon at the outset of designing our new house to make sure that there would be no District Plan breaches that would require us to obtain written approval of any neighbours and/or a resource consent from the Council – as we were already acutely aware that Mr and Mrs Whyte would not provide us with their written approval - and that they would oppose any resource consent application – as they had already expressly told us that before we even broke the ground and began our excavations in 2020.
34. Mr Whyte had already been to see me and had told me that he would never sign a resource consent approval like the Gillbank's did, who

used to reside at 24 Woolcombe Terrace next to the neighbour with the swimming pool at 22 Woolcombe Terrace.

35. Boon checked matters further with the surveyors and advised us that there was, or potentially could be, a small breach of the ODP daylight angle rules at the front corner of the new house.
36. We knew that we would need to discuss the issues with Mr and Mrs Whyte and arranged a meeting with them. The Whytes invited us to their house for a meeting which we attended. The Whytes told us they would be happy to sign off approval for a resource consent for the whole house to allow the steel frame to stay there - but only if we pulled down our front deck area and veranda roof. I told the Whytes that we would think about that. They also said at this meeting that they knew that one day they would be built out.
37. After consideration, we were not prepared to meet Mr and Mrs Whyte's above proposal - and so we instructed Boon to redesign that front corner with a bay window - to avoid potentially having to obtain Mr and Mrs Whyte's approval - and to avoid having to apply to NPDC for a resource consent (which we were well aware Mr and Mrs Whyte would oppose).
38. The steel framing that had already been erected at that time was then totally taken down - and revised steel frame plans were drawn up and re-designed and submitted to NPDC for approval on or about 23 December 2022 – and subsequently approved by NPDC.
39. The steel framing construction then recommenced in early 2023 after the Christmas break as a permitted activity under the ODP (and we had received confirmation that no resource consent was required at

that time). The costs to take down the structural steel and then revise, and re-erect came to approximately \$85,000.00 (being Sparks Metal Fabrications costs only).

40. On or about 23 May 2023 a further amendment to our house design plans was made by Boon to add in a bay window which was also designed to be compliant with the ODP.
41. At that time we had no knowledge whatsoever about any issues with our house in terms of the Proposed New Plymouth District Plan (PDP) and had been advised by Boon that they believed that our house design and build was 100% compliant as a permitted activity under the ODP and that we did not require any resource consent.
42. In May 2023 the honed block work for the retaining wall/fence to be built between 26 and 28 Woolcombe Terrace arrived on site for installation - and the new retaining wall/fence concrete block work commenced again in mid June 2023 (that work had been delayed due to delays in the manufacturing of those honed blocks).
43. At some time around then we recall Mr and Mrs Whyte approaching us because they were concerned about the height of the new retaining wall/fence and thought that it might have breached the ODP. We told them that we had specifically designed it to avoid any such breach – and that if any parts of it were too high then we would ensure that it would ultimately be compliant with the ODP permitted height limit (2.5 metres).
44. On or about 11 August 2023 our builder (Chris Bell) also received a stop work notice from NPDC because of the fence issues that Mr and Mrs Whyte had complained about to the Council.

45. We instructed our team to stop work, and around that same time we were advised by the Council that once the new retaining wall/fence was finished – they would require an as built survey of the wall to confirm its height – and that the Council’s view was that the retaining wall/fence also now had to comply with the new PDP rules due to the building delays, and progressions with the PDP over the last couple of years.
46. We were confused by all this and subsequently sought legal advice and instructed Connect Legal Taranaki to assist us – and a letter was subsequently sent to Mr Gareth Green, NPDC CEO and Mr Zane Wood, NPDC Planner about those matters on 22 September 2023 – copy attached as **Appendix C**. We tried to work through the issues as best we could - which were all entirely unforeseen by us.
47. We were still endeavouring to resolve matters with NPDC when Mr and Mrs Whyte subsequently lodged interim enforcement order proceedings in the Environment Court in respect of these matters on 22 March 2024.
48. At the time the abovementioned issues first arose in August 2023 we were still totally unaware of any PDP rules or requirements regarding the retaining wall/fence – as we had deliberately instructed our project architects to ensure that all designs complied with the permitted activity standards under the ODP (which they did) - and the designs for the house and the retaining wall/fence never considered the PDP as we did not need to consider the PDP when those designs were produced.

49. On receiving the enforcement order proceedings we and our team of consultants were all shocked to learn that there had been a surveying mistake (which is explained in Mr Arnold's evidence) – which we were advised meant that parts of our new house might also be in breach of the ODP and PDP permitted standards.
50. On 9 April 2024 we attended an Environment Court mediation with NPDC and Mr and Mrs Whyte and in good faith we agreed to reduce the retaining wall/fence height to the permitted PDP standards (2 metres) and we also agreed to seek retrospective resource consent by way of the resource consent application now before you.
51. The house build is basically now complete and NPDC has issued Code Compliance Certificate in respect of it dated 15 October 2024 a copy of which is attached as **Appendix D**.
52. We completed the new driveway to our property in December 2024 – and the only matters yet to be completed are as follows as soon as practicable by Chris Bell Construction:
- Louvres on first storey decking areas (to be completed as soon as practicable by Chris Bell Construction).

The intent of recommended consent condition 2 in the Officer's Report is supported - but we need some flexibility with the final location of the louvres (in terms of proximity to the glass balustrade which may be closer or further away, but will still provide the same screening function in that same location on the drawings – and might be, for example, fixed or pivoting) – and, in that context, we need to ensure that we have the ability to maintain them; and, the final materials of the louvres may differ in respect of what might be

available, or we finally decide to use (for practical and maintenance reasons), at the time of installation i.e. timber may not be the final materials we use, we might use, for example, aluminium (which can be powder coated with 'timber' look for example).

SUBMISSION IN OPPOSITION

53. We have read the Submission in Opposition to our Resource Consent Application filed by Mr and Mrs Whyte dated 5 December 2024 and have responded generally in our evidence to certain points (and some of our expert consultants are responding to other points) but would also like to note the following specific matters with reference to their submission paragraph numbers as follows:

- (a) paragraph 21 of that submission - The large dominant house – The Whytes views of the Maunga was looking across and through our property which would be lost if anyone built a two storey house on 26 Woolcombe Tce. Also the Whytes house has blocked our north-eastern views of the beaches and ocean. The Whytes did say to us, Mrs Whyte's words "*we knew we would be eventually built out*".
- (b) paragraph 22 - We have included images from our rear deck and from our Kitchen window of the views we have lost because of the Whytes house - see attached as **Appendix E**.
- (c) paragraph 25 - This is a car park and driveway area council bylaw says you have to have off street parking. We have never seen the Whytes use this area other than for parking or cleaning, washing of their cars.

- (d) paragraph 26 - our house is a two storey dwelling - the Whytes is three storey's.
- (e) paragraph 28 - The louvers are yet to be erected – but are still going to be installed.
- (f) paragraph 36 - It's a tar sealed car park.
- (g) Affidavit of Mr Whyte – paragraph 1.5 – I (Bryan) can only recall one conversation with Mr Whyte .
- (h) paragraph 3.1 - The Whytes construction of their retaining wall has nearly half its length built on our property. We will be asking the Whytes to remove this as the building act states you're not allowed to build a retaining wall on the boundary line.
- (i) paragraph 4.4 - The digging equipment was not oversized and is common when building a new house e.g. diggers, concrete trucks and a crane.
- (j) paragraph 4.5 - This was early stages no extra height had been filled and it was still at existing ground level - sand and bricks were removed and replaced with fill. We were always going to build our own retaining wall and fence when Mr Whyte came and saw us and said we had damaged his retaining wall. I asked him to show me but he couldn't show me anything.

- (k) paragraph 4.6 - Mrs Whyte has misunderstood us. The plans were not even finalised and there were some issues with the Council sewer that we had to sort, and the right of way between 24 and 26 Woolcombe Terrace. Furthermore Mr Whyte had already been and seen me (Bryan) and told me that he would never sign a resource consent like the Gillbanks did, next to the neighbour with the swimming pool, on Woolcombe Terrace.
- (l) paragraph 4.11 - The Whytes invited us to their house for a meeting which we attended. The Whytes told us they would be happy to sign off a resource consent approval for the whole house to allow the steel frame to stay there - only if we pulled down our front deck area and veranda roof. I told the Whytes that we would think about that. They also said at this meeting that they knew that one day they would be built out.
- (m) paragraph 4.15 - The block contractor didn't work to the plan and added in too many blocks.
- (n) page 071 - BTW report showing My Whyte's retaining wall is on the Roachs property .
- (o) Page 086 our brief with the architect was to keep within the council building and district plan regulations so we did not need to apply for a resource consent, because Mr Whyte had already advised me that he would not sign any written approval. The boundary fence is a permitted activity.
- (p) Time line thee pages from the end of Affidavit.

- (q) 2021. Mrs Whyte has misunderstood us in general conversation in passing, it was never our intention to get a resource consent as Mr Whyte said he would never sign off on one.

- (r) Fence. (Had a meeting with the Roachs) The council had already told us we would have to survey the fence and I told the Whyte's it would be compliant.

OFFICERS REPORT

- 54. Officers Report – I have read the Officer's Report and thank the Officer for his report. I generally agree with the report and recommended consent conditions – subject to the comments from, and issues raised by, my expert consultants; and, subject to my comments in paragraph 52 above.

CONCLUSION

- 55. This has been an extremely stressful process with many sleepless nights for us, especially recently.

- 56. We are absolutely horrified that we designed a house to be compliant with the District Plan so that we did not need to obtain any neighbours written approvals and/or resource consent – which was one of the very first things we stressed to Boon and Chris Bell Construction at our abovementioned meetings in 2017 (because of Mr & Mrs Whyte).

57. On top of that we have recently had to move our spa pool further away from the Whyte's house (and views) to the back of our house for more privacy – because Mr Whyte keeps looking over the fence and taking photos of us in our house on an almost daily basis.

58. We also wanted to design a house to cater for our extended family and to fit in with the rest of the street – and we think that the house design is in fact very respectful of the street and its surrounding environment and neighbours and is a good fit.

BRYAN WYNARD ROACH

12 MARCH 2025