

**BEFORE THE NEW PLYMOUTH DISTRICT COUNCIL**

**Independent Hearing Commissioner(s)**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of an application by Bryan and Kim Roach & South Taranaki Trustees Limited for construction of a new dwelling and associated fencing and retaining walls (retrospective) at 24/26 Woolcombe Terrace, New Plymouth

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**HEARING STATEMENT OF GEOFFERY MILES WHYTE**

**24 MARCH 2025**

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## HEARING STATEMENT OF GEOFFERY MILES WHYTE

### 1. INTRODUCTION

- 1.1 My full name is Geoffery (Geoff) Miles Whyte.
- 1.2 Together with my wife, Johanna (Jo) Susanna Whyte, we own the property at 28 Woolcombe Terrace, New Plymouth, in our capacities as trustees of the G&J Whyte Trust.
- 1.3 I am making this statement in support of the submission Jo and I filed on the application by our neighbours at 24-26 Woolcombe Terrace for retrospective consent for the construction of a new dwelling, associated fencing and retaining walls. I am authorised to make this statement on behalf of the trustees.
- 1.4 This statement should be read together with the affidavit I provided in support of an application for enforcement orders against the owners of the neighbouring property in March 2024, a copy of which is **attached** to the submission Jo and I filed. I will not repeat the content of that affidavit, save as where necessary to respond to matters raised in the evidence for the applicants.
- 1.5 The purpose of this statement is to explain why Jo and I are opposed to the application. It draws on the expert evidence that we have provided, and who you will hear from shortly. However, I also want to be clear that this statement is intended to convey our experiences as the neighbouring owners and occupiers, our amenity, and how we use and utilise our own property – as I believe that a number of assumptions have been made in both the Council's pre-hearing report and the applicants' evidence which are not fair or reasonable.
- 1.6 I also note that while I am making this statement as a landowner, I am also an electrical and instrumentation ("**E&I**") engineer with over 30 years' experience working in the sector. I obtained a New Zealand Certificate in Engineering (Electrical & Instrumentation) from the Western Institute of Technology in 1987, and am a member of the Registered Engineering Associates. For the last five years, I have worked as an E&I engineer with Tech Trust Ltd, working on commercial building projects. Additionally, I have performed design, project management, building supervision and construction of building works,

including at 28 Woolcombe Terrace, for the past 40 years. I therefore have a clear understanding of engineering process, from initial concept design, to detailed design, through construction and out the other side.

## **2. SCOPE OF STATEMENT**

2.1 In my statement today, I intend to cover off the following key topics:

- (a) Our house at 28 Woolcombe Terrace, and how we use it.
- (b) Developments following the affidavit I gave in the previous Environment Court proceedings.
- (c) My response to the Council's pre-hearing report, as well as the evidence for the applicants.

2.2 I understand that a number of matters raised in the evidence for the applicants sit outside the four walls of the Commissioner's inquiry on the current application for resource consent and so I will not comment on those. However, if I do not refer to a particular paragraph, section, or brief of evidence, that is not to be taken as Johanna and I having accepted its contents.

## **3. OUR HOUSE AT 28 WOOLCOMBE TERRACE**

3.1 As I noted in my original affidavit, our property is the immediate neighbour to the east of the subject site.

3.2 We purchased our section, which is approximately 450 square metres in size, in approximately 2013, and constructed the house which now occupies the site between 2013-2014.

3.3 For Jo and I, the house is our single largest investment. It is also the property we wish to retire to. Jo and I are nearing retirement age, and designed and constructed our house with a view towards what we would need as we stepped away from work full-time. We particularly enjoy the northern aspect of the property, looking out over the New Plymouth coastline. However, we also enjoy other parts of our property, including the rear area at the back of the property.

3.4 I mention this here, as it has been assumed in the pre-hearing report and the applicant's evidence that the area at the rear of our property is predominantly used as a turning area for vehicles connected to the garage. That is incorrect.

As anyone who has lived in New Plymouth for as long as us will know, the New Plymouth coast is often subject to strong north / north-westerly winds, which limit our ability to use and enjoy the outdoor living spaces at the front of our property.

- 3.5 When that is the case, particularly when we are entertaining guests, we will often set up in the outdoor living space at the rear of the property. We have a barbeque which we will often roll out of the garage into the rear space. We also store furniture in the garage which we use when we are occupying the space. Because of the salinity of the air and sea spray, we do not leave furniture out in these spaces, as they would quickly corrode.
- 3.6 Furthermore, and as Jo and I look towards our retirement, we are intending to make even greater use of the space at the rear of our property. We have doors from both bedrooms on the ground floor level which open out directly onto a pathway which leads to this space. The ground floor space, which includes two bedrooms, a bathroom and a kitchenette, may be rented out to provide us with an income, or may be used to house in-home care to assist us in our retirement. For those people, having access to appropriate sunlight access is important as it is for us.
- 3.7 The area at the rear of the property is also an important leisure space for our growing family, including our grandchildren. The area is secure (as it is gated from the street), and will often be used by our grandchildren to ride bikes around. We will often spend time in this area, keeping an eye on the grandkids and making sure they are safe. This is also the area which the neighbouring property directly overlooks, from its numerous large windows, front and rear decks, and the large ground-level deck area.
- 3.8 The other point that I wished to make, and which Ms McRae has mentioned in her evidence, is the nature of the relationship between the two properties. Due to the excavations on our site, that occurred prior to our purchase, our house sits lower than the neighbouring property. Of the windows, some 10 in total, on the western façade of our property, seven relate to habitable rooms, including bedrooms, in addition to 2 bathroom windows. The five large windows on the eastern façade of the neighbouring property all provide opportunities for overlooking, with the largest window being some 3.3 m high by 2.3 m wide.
- 3.9 Before turning to the next topic, I also wanted to note (as I did in my original affidavit) the very different relationship we had with the previous owners of the

neighbouring property at 26 Woolcombe Terrace. This manifested in two ways which are of relevance to this application:

- (a) The first is the retaining wall and fence which has been constructed along the common boundary between the two properties. The retaining wall was built to support excavation on our site to support the ground level activities, and as a replacement for the existing ponga/concrete retaining wall that we inherited from the previous owners. The fence built on top of the wall is a low concrete pillar with aluminium rails installed as infill panels, and was built designed and built in approximately 2015, in conjunction with the then-owners of 26 Woolcombe Terrace, and the rear neighbour whose property fronts to Buller Street. The then-neighbours specifically requested that the fence be built to a low height, to preserve the relationship between the two properties. They also contributed to the cost of the fence.
- (b) The second is the way in which windows have been designed on our property. These are the "small aperture tinted windows" identified in Mr McEwan's evidence as somehow mitigating the effect of the built form from 24/26 Woolcombe Terrace on us, despite the fact that they are both (a) existing; and (b) relate to a number of habitable rooms. These windows were designed in that way to ensure that the privacy of the original dwelling at 26 Woolcombe Terrace would be maintained. The deck balcony solid / glass interface positions were all discussed as the build progressed and agreed with both the 26 & 30 Woolcombe Tce neighbours to ensure adequate privacy.

#### **4. DEVELOPMENTS SINCE THE ENVIRONMENT COURT PROCEEDINGS**

- 4.1 I included a chronology of events in the affidavit I provided in support of our application for enforcement orders, which forms part of the submission material before the Commissioner.
- 4.2 I wanted to update that by reference to what has occurred since the affidavit.
- 4.3 As Mr Roach notes, we attended mediation before an Environment Commissioner in early April, which resolved the application for enforcement orders on the basis that:

- (a) the infringing height of the block wall built along our common boundary would reduce to 2m in height, to be surveyed by the Council's expert; and
- (b) that a retrospective resource consent application would be made for the infringements of the relevant PDP height-in-relation-to-boundary rule.

- 4.4 I note that Mr Roach says that the reduction in height of the wall was made in good faith. I simply note that it was a requirement of the PDP that boundary walls along our side boundary be constructed to a maximum height of 2 m. Without that, the works would have required consent. At no time thereafter has Mr Roach been prepared to discuss any potential redesign of the fence, which adds to that sense of enclosure.
- 4.5 Disappointingly for Jo and I, having gone to the trouble of making an application for enforcement orders to prompt the Council into action, we were then required to raise another issue – namely, the height of the front wall, which exceeded the maximum height under MRZ-S10. We notified the Council of this infringement in early June 2024, and were advised in mid-July 2024 that the Council anticipated the front wall issue being considered through the active resource consent process. I understand that this necessitated an amendment to the current application to include the infringement of MRZ-S10.
- 4.6 We had earlier written to the NPDC, through our lawyers, requesting that NPDC confirm our status as affected persons on any retrospective application for resource consent. We received a copy of the application from NPDC and made some initial comments on it in early July 2024, noting that we disagreed with the applicant's adoption of the alternative height-in-relation-to-boundary standard across the first 20 m; the use of elevated retained ground levels to state building heights, rather than original ground levels; and the inclusion of the proposed louvres as mitigation, despite those louvres having been removed from the design package.
- 4.7 We had also earlier engaged in discussions with Mr Grieve, the lawyer for our neighbours, regarding the works to remove the infringing part of the block wall constructed on our common boundary. I have **attached** the email correspondence between Mr Grieve and myself, which demonstrates a level of misinformation on the part of the applicant's architects as to the events which led up to the removal of that part of the wall. This is just one of a number of concerns I have in relation to the actions of our neighbour.

- 4.8 The enforcement order proceedings were later withdrawn on the basis that the steps I referenced earlier had been completed.
- 4.9 We were then notified of the application by letter dated 8 November 2024, and lodged the submission which is before you now.

## **5. RESPONSE TO PRE-HEARING REPORT AND APPLICANTS' EVIDENCE**

- 5.1 Finally, I wanted to make a number of brief comments in response to some of the statements in the pre-hearing report (including the earlier notification report), and the applicants' evidence.
- 5.2 Before I do so, I want to emphasise that Jo and I have sought to be proactive at every stage of this dispute. Rather than allowing things to fester, or to take an "ambulance at the bottom of the cliff" approach, we have sought to raise matters directly, first with our neighbours and, more recently, with the NPDC to ensure that issues are dealt with as and when they arise. A good example of this was the issue with the original structural steel installation in 2022, which I addressed in my earlier affidavit. As soon as we became aware of the daylight angle and height infringements, we let Mr Roach know within days.
- 5.3 We have also been proactive in offering up solutions to resolve the issues associated with the over height structures, both in 2022 and again more recently. Unfortunately, for whatever reason, our neighbours have not been willing to consider alternatives to their chosen design.
- 5.4 I also wanted to respond to the contention that we would never sign off a written approval or a set of plans (which is raised by Mr Roach in various places in his evidence). It is correct that I have told Mr Roach that we would not give written approval to any infringements of the District Plan standards, as we considered it important that they be complied with. Indeed, this appears to have been Mr Roach's express instruction to his architects who, for whatever reason, have designed a building which failed to comply with those standards. However, and equally, we are not NIMBYs. We support Mr and Mrs Roach being able to build an appropriately massed and located property on their site, subject to compliance with the relevant standards. It has never been the case that we would oppose any building (of a complying height) for the sake of it.

### **Response to the pre-hearing report (including the earlier notification report)**

- 5.5 I understand that Mr Robinson is a consultant planner who has been engaged by NPDC to provide independent advice to the Commissioner on this

application. While I note that Mr Robinson is a step removed from NPDC, I do consider that the failures by NPDC to properly process, inspect, act timely, and ensure compliance with the PDP standards is a relevant matter for you in your role as Commissioner, particularly when it comes to ensuring compliance with any conditions of consent.

- 5.6 I also note my concern that a code compliance certificate has recently been issued for this development in October of last year, when (if the original building consent plans are to be believed) the building should be 245mm lower than it currently stands. It appears to me, at the very least, that while the building might comply with the Code, no effort has been made on the part of NPDC to confirm compliance or otherwise with the heights stated in the building consent. We were also told at a meeting in January 2024 with Damien Morrissey from NPDC that it would not grant CCC to a property without resource consent.
- 5.7 In response to the shading diagrams referred to at paragraph 36 of Mr Robinson's report, I note that the diagrams do not show the shading identified by Ms McRae in her evidence, which extend onto our house. I also disagree, as I mentioned earlier, with the suggestion at paragraph 38 of the report that other outdoor living spaces "*appear to be more functional and provide higher levels of amenity*". The way we use our outdoor living spaces is very much "horses for courses", particularly when shelter is required from the predominant westerly winds.
- 5.8 I disagree with Mr Robinson's conclusions in relation to shading. While I note Ms McRae's evidence largely agrees with that of Mr Robinson, Mr McEwan and Mr Bain in relation to shading effects, I remain concerned by the degree of shading and ensuring the appropriate comparison with a building which could be constructed "as of right" on the neighbouring property.
- 5.9 In relation to paragraph 41, Mr Robinson appears to seek to limit or constrain the degree of any privacy effects by reference to the degree of infringements from windows. For example, we are concerned about the potential prolonged use of window seats by residents of the neighbouring properties, which will increase the potential for overlooking opportunities and a corresponding reduction of privacy.
- 5.10 In relation to the over height nature of the front wall, I note that we will experience effects from our own front downstairs yard (when in use). The ground level in this location is nominally 500-600 mm above footpath level, allowing a clear view to the west over the side boundary wall. Those views will

be impacted by the over height front wall, in addition to the black glass balustrade. If safety is a concern, I note that the balustrade can easily be located outside the front yard setback.

- 5.11 You have already heard from Mr Cameron as to the correct legal approach to retrospective resource consent applications and the question of relative cost, and so I will not make any further comments in relation to paragraphs 55 and 62 of the report.
- 5.12 I also disagree with the comments made by Mr Robinson at paragraphs 85 and 87 of his report in relation to the streetscape character of the surrounding area, which is dominated by flat roof designs like those shown in Ms McRae's evidence.
- 5.13 A number of the points in relation to the notification report are either covered in our original submission, or have been addressed above, but I simply note for present purposes that I disagree with Mr Robinson's conclusions in relation to the degree of effects on our property, and consider them to be greater than what he has assessed.
- 5.14 Wearing my layperson's hat, as well as my engineer's hat, I also agree with the interpretation that Ms Hooper has provided of the alternative height-in-relation-to-boundary standard (MRZ-S4) and support her interpretation over that of Mr Robinson's and Mr Lawn's, for the reasons she gives.

### **Applicants' evidence**

#### *Mr Roach*

- 5.15 At paragraph 37, Mr Roach refers to an earlier building consent which included the redesign of the lowered front steel works. That redesign also removed a rear flat portion of the roof, and replaced it with a high gable design. I mention this only because it demonstrates one potential option (which the Roaches were previously supportive of) which would reduce the effects on us from what is currently proposed.
- 5.16 At paragraph 40, Mr Roach refers to an amendment to include bay windows which were designed to be compliant with the ODP. By this time, the PDP rules have taken legal effect, following the release of decisions on the PDP from 13 May 2023.
- 5.17 At paragraph 53(a), Mr Roach says that my wife had told Mr Roach that we "*knew we would be eventually built out*". This is incorrect. We had undertaken

some design works during our build process to understand what the permitted building envelope on the neighbouring site was, so that we could plan accordingly. We understand that those permitted heights and daylight angles have now changed as a result of the PDP. We also understood that we would not maintain the same openness as we enjoyed prior to the existing house being demolished, as a two-storey house could be constructed as of right. However, neither Jo nor I recall ever saying such a thing. The above design work which we had already undertaken enabled us to promptly identify the original height exceedance of the steel structure, by reference to our own CAD drawings for the build at 28 Woolcombe.

- 5.18 At paragraph 53(b), Mr Roach says that they have lost views as a result of our building. However, our house was constructed well before they purchased the site.
- 5.19 There are a number of other minor matters on points I disagree with Mr Roach, but none of which relate to the present application. In relation to the proposal we made to leave the steel frame in place, but to remove the front deck and veranda roof, this was only at a conceptual level as no drawings or documentation had been assessed— and it never went anywhere in any event, as the Roaches pushed ahead with a different design.
- 5.20 One matter on which I feel I must respond, however, is the allegation that we have been looking over the fence and taking photographs of the Roaches in their house “on an almost daily basis”. I want to reserve all of my rights in that regard, as I consider the statement to be slanderous. I deny ever having done so. To the extent that I have taken photographs, it has been for the limited purpose of supporting either my discussions with the neighbour, or the NPDC, and the subsequent application for enforcement orders. I am concerned that this statement may cause people to think less of me, and that it has been published on the NPDC’s website for the world to see, especially when I consider it to be plainly false.

*Mr Bain*

- 5.21 At paragraph 7.12 of Mr Bain’s evidence, he refers to a height of 1.2m above ground level for the constructed rock wall. The front wall height is 1.41m above original ground level, with a 1.09m glass balustrade atop it. I am not sure where Mr Bain has derived his figures from. I also understand that the front stone wall sits 150 mm inside the boundary, not the 300 mm claimed by Mr Bain at his paragraph 7.13.

*Mr McEwan*

5.22 I note that Mr McEwan refers to a landscape design in his evidence, and makes reference to plans which are not currently before the Commissioner, including reference to a foliage screen. The large stainless steel brackets identified in Ms McRae's evidence along our common boundary are of concern, to the extent that they may be used to support any additional structure which may (itself) require consent.

5.23 Other matters referred to in Mr McEwan's evidence, including our use of the rear outdoor living area, have been responded to earlier.

*Mr Arnold*

5.24 The brief that I am primarily concerned with, however, is that of Mr Arnold.

5.25 I note that Mr Arnold is giving evidence as an independent expert witness, but does not set out his qualifications and nor does he state in what capacity he is giving evidence. My understanding is that Mr Arnold's evidence is primarily aimed at the design brief, while noting that (at various different times) other architects within Boon had responsibility for lodging documents with NPDC and so forth.

5.26 I disagree with many of the statements in Mr Arnold's evidence, much of which I have already covered in response to similar statements by other witnesses. One example of this is Mr Arnold's opinion on the gabled roof, despite that design increasing the effects on us from what was previously designed, and despite the surrounding character comprising mainly flat roofs.

5.27 Much of Mr Arnold's evidence appears to be directed towards the origins of the difference between two sets of building consent plans which altered the identified RLs for the site, apparently in reliance upon advice from the site foreman on-site during site set-out; and how that error pervaded through subsequent drawings. At paragraph 5.8, it is suggested that the difference in levels between the floor slab for the new dwelling and the adjacent garage floor slab was 250mm. However, this is shown on the Geosynch plans as being only 70mm higher. The 24 Woolcombe Terrace house provided a number of benchmarks which could have easily been used to cross-check the results from the contractor – however, this was never done. The ground floor concrete slab as surveyed was constructed to the exact level as stated in the building consent issued, indicating a high level of building and setout practice.

- 5.28 I remain extremely concerned that the changes in RLs, which I understand would ordinarily require a building amendment, were never identified as such in the revised sets of building consent drawings which were submitted to Council after the change was made. I also disagree with the pictorial assessment of the alleged non-compliance with ODP standards, as the original ground level at the street end of the bay window is 200mm lower at the front end. The red non-compliant area should therefore project forward over the bay window at 200mm lower than the point that it ends at the southern end of the bay window, as the window is on the same wall plane as the side wall – shown in red below:



- 5.29 Furthermore, all of the surveying evidence, with the exception of BTW (who undertook a survey of original ground level, but who failed to identify the change in RLs), pointed in the same direction – namely, non-compliance with the requirements of both the ODP and PDP. This could have been easily cross-checked against the levels for the other buildings, including those in the original Geosynch survey in 2013. I do not believe that there was ever a setout error (as Mr Arnold opines at his paragraph 5.26) or a datum error (at his paragraph 7.12). It appears that the error was as the result of incompetence by assuming a 245mm reduction in ground level and failing to ever confirm that the reduction did, in fact, occur.
- 5.30 Fundamentally, however, there was never any official assessment of the degree of infringement, prior to issue of building consent and construction. No analysis, no consideration, and to date, no approval has been given to those infringements – and yet they are presented as the status quo. The drawings are relied upon to confirm compliance when, in fact, the building never complied. It appears that Boon relied on the wrong information, or misinterpreted the information it was given.
- 5.31 Furthermore, and after we had advised the Roaches of the over height nature of their building in late 2023, they chose to continue to build in reliance upon

the (incorrect) BTW information, which was subsequently found to be incorrect, insofar as it related to the levels used for the building consent drawings.

- 5.32 I also reject the suggestion at paragraph 5.15 that we received a revised concept design, and were “generally positive” about it at the time. Mr Arnold was not a party to any such discussion, and I do not recall ever having one. We were never contacted, and nor did we ever receive any amended designs. All that we received across the life of this project was an architectural pictorial representation of the original house in our letterbox, prior to construction, which had no information as to heights etc. All of the information we have obtained has been provided by NPDC under official information requests.
- 5.33 Finally, and to the extent that issues of cost have surfaced throughout the evidence for the applicant and NPDC, it is my own personal view (reinforced by my many years of engineering practice) that there will ultimately be a home for those costs – be it on the landowner, the consultants, or their insurers.
- 5.34 I reserve all my rights in relation to the evidence that Mr Arnold has provided, much of which I note may be for other fora than the present.

## **6. CONCLUSION**

- 6.1 The last three years have been a source of significant stress and anxiety for both myself and my wife, Jo. Our home is a place of sanctuary for us. We feel we have been let down by our neighbours, by their professional advisors, and by the NPDC.
- 6.2 There have been a significant number of failures in the design, consenting and build process of the 24/26 Woolcombe Terrace site. Below is a non-exhaustive list of the systematic failures Jo and I have identified to date:
- (a) An original failure on the part of the applicants to design the building to comply with the rules in the ODP, resulting in infringements of the maximum height and daylight angles.
  - (b) Failure on the part of NPDC to assess the building exceedance in Maximum height, building length and exceedance of daylight angles under the ODP.
  - (c) NPDC's failure to require building concrete pad height verification as concrete pad pre-pour inspection due to the critical nature of the height of the proposed building.

- (d) NPDC's failure in issuing building consent (and CCC) when a resource consent was required.
  - (e) Failure of the applicants' contractors in the design of boundary fence height and its construction without building consent and resource consent.
  - (f) A further failure in the redesign of building (Revision 2) to comply with the rules in the ODP, as a result of the change in RLs, and failure by NPDC in issuing a building amendment without resource consent and without identifying the change in RLs as requiring a further amendment.
  - (g) Failure on the part of NPDC to assess the fourth revision of the proposed building (to provide for the bay window) as requiring compliance with the PDP standards, which had taken legal effect by that time.
  - (h) A failure on the part of the NPDC to act on the fence and house exceedances in a timely matter, which may have avoided the situation we are in today.
  - (i) A further failure on the part of the applicants to provide information on the resource consent application in a timely manner, including the updated shading analysis and landscaping matters referenced (but not provided) as part of the proposed plans for consent.
- 6.3 Moreover, the pre-hearing report writer and the applicants' witnesses now appear to suggest that we should be responsible for providing solutions to mitigate the adverse effects on us. That is deeply unfair, and in my view, inappropriate.
- 6.4 We are extremely concerned about the effect that the large, overbearing, and visually dominant property will have on our residential amenity, our sense of privacy, and our enjoyment of our property. We also are concerned that, if the status quo were simply allowed to remain, it would have an adverse effect on the value of our property, which, as noted above, is our single biggest investment.
- 6.5 Fundamentally, Jo and I are not convinced that the infringements of the PDP, whether viewed individually or cumulatively, are an acceptable design solution where the landowner has sought to maximise the available developable land and to build as close (or beyond) the permitted envelope as they can along

almost the entire length of a 30 m long building. I repeat, it is not for us to solve the Roaches' problems for them, by offering solutions. We are always open to communication.

- 6.6 The easiest solution is to comply with the requirements of the District Plan, which, as the Roaches state, was their intention all along. That is fundamentally the outcome we seek, in the absence of any other appropriate mitigation.

**Geoff Whyte**

27 March 2025

**Subject:** RE: ENV-2024-AKL-000043 G & J Whyte v Roach & New Plymouth District Council  
**Date:** Thursday, 16 May 2024 at 3:41:50 PM New Zealand Standard Time  
**From:** Scott Grieve  
**To:** Techsound, Aidan Cameron  
**CC:** BKRoach  
**Attachments:** image001.png

Hi Geoff,

Thanks for getting back to us.

Yes, that certainly is a different set of facts than I was advised by some of my client's expert consultants and please accept my apologies on that basis and I will let them also know re below.

Thank you for your ongoing cooperation and noted re below as to progress etc, which sounds positive.

Regards Scott



**Scott Grieve**

Director

**E:** [scottg@connectlegal.co.nz](mailto:scottg@connectlegal.co.nz)

**P:** +64 6 769 8051 0800 733 837

Powderham Chambers, 136-138 Powderham Street  
Private Bag 2031, New Plymouth 4340, New Zealand

**[www.connectlegal.co.nz](http://www.connectlegal.co.nz)**

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**From:** Techsound <[techsound@extra.co.nz](mailto:techsound@extra.co.nz)>

**Sent:** Thursday, May 16, 2024 3:00 PM

**To:** Scott Grieve <[scottg@connectlegal.co.nz](mailto:scottg@connectlegal.co.nz)>; [aidan@bankside.co.nz](mailto:aidan@bankside.co.nz)

**Cc:** BKRoach <[bkroach@extra.co.nz](mailto:bkroach@extra.co.nz)>

**Subject:** Re: ENV-2024-AKL-000043 G & J Whyte v Roach & New Plymouth District Council

Hi Scott

It appears that you have been mis-informed over the details and communications for the de-construction works of the fence.

Below is a timeline of the actions and communications to the contractor:

- As requested, we arranged for the driveway to be cleared of all vehicles on Monday 6th May.
- At 12.09 Monday 6th May, Shawn Ryan from Egmont Concrete visited our house and discussed how he was going to perform the works and protect our property. He advised that he would require the builders to build a frame to attach a protective tapoline to minimise the concrete cutting slurry from our driveway and drainage system. Shawn also advised that he

was unavailable the following Tuesday 7th and Wednesday 8th to complete the works.

- Shawn phoned later in the afternoon requesting to perform the works on Saturday 11th May. Initially I thought that would be ok as we expected to be away, however, after discussing with Jo shortly after, I found that our plans for the weekend had changed and we were now expecting visitors. I immediately phoned (2.20pm on 6th May) Shawn and requested that the works be performed during the working week to minimise disruption. Shawn agreed that it would be disruptive and noisy and said he would reschedule the works.
- Chris Bells workman installed the frame that Shawn requested on Thursday 9th May.
- Shawn again visited our place on 14th May at 8.48am and advised that the works had been scheduled for Thursday 16 May. He advised that they would start on the front section and remove sections using a Hyab crane. I accepted and said we would ensure access was clear.

It is noted that the communications from the contractor, Egmont Concrete, in respect of organising the works have been very considerate and is appreciated.

Below are photos of the the works at approx 2pm on the 16th May for your records.

We have agreed to the rear pillars to be completed on Saturday 18th may

Regards

Geoff

On 14/05/2024 3:48 pm, Scott Grieve wrote:

Hi Geoff/Aidan

Concerningly I have just learnt today, following our email agreements a couple of weeks ago recorded below, from my client's architects that you, Geoff, unilaterally postponed the wall cut down without my or my client's knowledge!?

They advised me as follows at 3.14pm today:

*"Hi Scott & Bryan*

*Just a quick note to say the contractor Chris Bell scheduled the block wall to be cut down last week however when contacting Mr Whyte to inform him he asked for it to be postponed. Chris may have more detail on why.  
It is now scheduled for late this week."*

With respect this is unacceptable, and we enquire what is going on (particularly given you wanted the wall cut down in the first place and we'd agreed on times/dates)?

The weather here was perfect for the wall cut last week with sun every day – conversely this week the weather is not looking good and so later this week may not even be feasible?

This is now just adding more time and costs for my client as well and is entirely unreasonable.

You were well aware of the arrangements – and had agreed to them – and our client's

contractor was there to do the work when scheduled as agreed.

You are also aware of the deadlines agreed to at mediation which our client is trying to adhere to.

We would be pleased to hear from you about these matters with urgency?

Yours faithfully,



**Scott Grieve**

Director

**E:** [scottg@connectlegal.co.nz](mailto:scottg@connectlegal.co.nz)

**P:** [+64 6 769 8051](tel:+6467698051) [0800 733 837](tel:+6467698051)

Powderham Chambers, 136-138 Powderham Street  
Private Bag 2031, New Plymouth 4340, New Zealand

[www.connectlegal.co.nz](http://www.connectlegal.co.nz)

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**From:** Scott Grieve

**Sent:** Wednesday, May 1, 2024 11:09 AM

**To:** 'Geoff Whyte' <[techsound@xtra.co.nz](mailto:techsound@xtra.co.nz)>

**Cc:** BKRoach <[bkroach@xtra.co.nz](mailto:bkroach@xtra.co.nz)>; [aidan@bankside.co.nz](mailto:aidan@bankside.co.nz)

**Subject:** RE: ENV-2024-AKL-000043 G & J Whyte v Roach & New Plymouth District Council

Thanks Geoff very much appreciated and we look forward to completing matters, cheers



**Scott Grieve**

Director

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**From:** Geoff Whyte <[techsound@xtra.co.nz](mailto:techsound@xtra.co.nz)>

**Sent:** Wednesday, May 1, 2024 10:34 AM

**To:** Scott Grieve <[scottg@connectlegal.co.nz](mailto:scottg@connectlegal.co.nz)>

**Cc:** BKRoach <[bkroach@xtra.co.nz](mailto:bkroach@xtra.co.nz)>; [aidan@bankside.co.nz](mailto:aidan@bankside.co.nz)

**Subject:** Re: ENV-2024-AKL-000043 G & J Whyte v Roach & New Plymouth District Council

Hi Scott

Thankyou for the notice, all sounds good. We will ensure that our driveway is clear for the works to proceed as planned.

Geoff

On 1/05/2024 8:46 am, Scott Grieve wrote:

Dear Mr & Mrs Whyte,

With reference to the correspondence below I'm instructed to advise you that our clients have made arrangements with their contractors for the wall concrete to be cut to 2 metres on Monday 6th May, Tuesday 7th May and Wednesday 8<sup>th</sup> May 2024 between 8 am and 5pm (weather permitting).

Our clients kindly request please that you keep vehicles and people off your driveway adjacent to the wall to be cut down during those times - or park your car(s) at the rear to allow this work to be completed in a safe manner – otherwise our clients instruct me that their contractors would have to stop work and return at a another date – which I'm sure you will agree would be highly inefficient - and also potentially problematic in terms of the timeframes we are working to under the mediation agreement dated 9 April 2024.

Once the cut down is completed I've asked our clients to let me know immediately - as I'll then let the parties know - and the council can get its surveyor Dave Armstrong to confirm with survey results by 24 June 2024, as per paragraph 2.1 a. iii. of the mediation agreement.

If any issues, please let us know urgently. Thanks for your assistance with these matters, regards



**Scott Grieve**

Director

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**From:** Aidan Cameron [<aidan@bankside.co.nz>](mailto:aidan@bankside.co.nz)

**Sent:** Thursday, April 11, 2024 7:52 AM

**To:** Scott Grieve [<scottg@connectlegal.co.nz>](mailto:scottg@connectlegal.co.nz)

**Subject:** Re: ENV-2024-AKL-000043 G & J Whyte v Roach & New Plymouth District Council

Good morning Scott

I've taken instructions and my clients' preference would be for a week's notice, just to make sure that they are available as they have plans to be away over the coming months.

They also request that any concrete cutting is performed from your clients' side to minimise runoff into their soak hole system and to reduce the need for any clean up.

My clients are happy to liaise directly with you in relation to this, and ask that you (and/or the contractors) forward any future correspondence in relation to the wall to them directly at [techsound@xtra.co.nz](mailto:techsound@xtra.co.nz).

*Ngā mihi / Regards*

**AIDAN CAMERON**

BARRISTER | **BANKSIDE** CHAMBERS  
LLB/BA

p: +64 9 307 9955

m: +64 21 043 7482

Level 22, 88 Shortland Street, Auckland 1010, New Zealand

PO Box 1571, Shortland Street, Auckland 1140

[Personal LinkedIn](#)

[bankside.co.nz](http://bankside.co.nz) | [LinkedIn](#)

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**From:** Scott Grieve <[scottg@connectlegal.co.nz](mailto:scottg@connectlegal.co.nz)>

**Date:** Wednesday, 10 April 2024 at 3:40 PM

**To:** Aidan Cameron <[aidan@bankside.co.nz](mailto:aidan@bankside.co.nz)>

**Subject:** Re: ENV-2024-AKL-000043 G & J Whyte v Roach & New Plymouth District Council

Hi Aidan

Following yesterday's mediation agreement, I've been instructed to contact you in advance to arrange matters regarding the wall / fence height reduction works.

My clients have instructed me to enquire of yours via you that on the days that their contractor is cutting down the wall - that your client's please don't use their driveway between 8am and 5pm or park anything on their driveway or around the back of their house at that time - due to a risk of damage to their vehicles/property – otherwise I'm advised that the contractor will have to stop work causing delays (and further expense) if there is risk in this context.

Of course, we can give you/your client advanced notice of say a minimum of 24 hours notice before such works if that is acceptable?

I've asked my clients to see if they can do better than that and let us know dates as far in advance as possible, but I've not heard back as yet – and of course the pre-survey won't be available from NPDC until 19/4/24 in any event - so arrangements potentially can't be finalised until after that?

Also, my clients note that they/their contractor will also need please (and respectfully request) access to your client's property to clean up any stones (if any) that apparently may accidentally fall over onto their property during the works.

My clients just want to make sure that there are no further issues in this regard - so if any of the above suggestions are unacceptable to your clients - then please provide reasonable pragmatic alternatives to avoid such issues as soon as possible so the job can be done well in a timely manner?

I look forward to hearing from you again shortly.

Thanks, regards



**Scott Grieve**

Director

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