

**BEFORE THE NEW PLYMOUTH DISTRICT COUNCIL**

**INDEPENDENT HEARINGS COMMISSIONER**

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

**AND**

**IN THE MATTER** retrospective land use consent to allow for a dwelling on 26 Woolcombe Terrace, New Plymouth, that does not meet a limited number of rules/ standards under the Proposed District Plan.

**STATEMENT OF EVIDENCE OF KYLE ARNOLD ON BEHALF OF THE  
APPLICANT, BRYAN & KIM ROACH & SOUTH TARANAKI TRUSTEES LIMITED  
(AS TRUSTEES OF BRYAN & KIM ROACH FAMILY TRUST)**

**12 March 2025**

**1. INTRODUCTION**

- 1.1 My name is Kyle Arnold. I am an associate director of Boon Ltd, an architectural and landscape design firm which has been in business in New Plymouth for over 50 years.
- 1.2 I have been involved in the design and delivery of architecture projects for the past 25 years in New Zealand and abroad. Over this time, I have undertaken a myriad of project types, including residential, commercial, industrial, cultural and education.
- 1.3 Comparable new build residential projects I have been involved with over last 10 years include:
  - The Duff House Oakura – 2017;
  - The Shaw house, Waitata – 2022;

- Broomhall house, Strandon 2019;
- The Raikes House, Henwood Road 2021;
- Caretakers cottage Opito Bay 2023;
- Tom Boon House, Smith Road 2017.

1.4 I confirm that I have read, and agree to comply with, the Environment Court's Code of Conduct for Expert Witnesses (Environment Court of New Zealand Practice Note 2023). This evidence I am presenting is within my area of my expertise, except where I state that I am relying on the evidence of another person. To the best of my knowledge, I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.

## 2 **OUTLINE OF EVIDENCE**

2.1 This evidence provides:

- The project description;
- The Design outcome - an overview of the process undertaken in designing this project;
- The Project Development Overview -Post Consent;
- Mediation; and
- Review of Whyte Submission & Officers report response.

## 3 **PROJECT DESCRIPTION**

3.1 Boon Ltd was initially engaged in 2017 by the applicant to undertake a significant redevelopment of the existing house they own at 24 Woolcombe Tce.

3.2 Over the next 18 months, we explored various options and configurations for this redevelopment. During this time the adjacent cottage (at 26 Woolcombe Terrace) which shared a driveway with 24 Woolcombe Tce was purchased by Mr and Mrs Roach with the intention of removing this single level dwelling and building a new home suitable for their extended family.

3.3 The brief was for a 4 bedroom dwelling with living spaces to the seaward views, a garage to the rear of the site which was to utilise the existing shared driveway and level access and a lift to accommodate the needs of Mr Roach's elderly mother.

## **4 THE DESIGN OUTCOME**

- 4.1 The intent was to design a building that maximised the potential of the site. Mr and Mrs Roach requested a two level dwelling with high ceilings to the upper level to ensure the extensive sea views were maximized, with extensive glazing to the frontage and for the dwelling to provide first floor balcony space, ground floor decking and a courtyard for shelter and a possible future spa pool.
- 4.2 The proposal is a 4 bedroom home with study, living spaces and allows for extended family to stay for extended periods and accommodate the future needs of the family.
- 4.3 We discussed the potential opportunities and early on noted a New Plymouth District Council (NPDC) sewer ran from the Whyte's house at 28 Woolcombe Tce toward the west through the Roach's property which did not have any formal covenant or easement. At the time we discussed if we should review the design concepts to avoid building over this impediment but noted this would likely require a resource consent to achieve the spatial brief.
- 4.4 Mr & Mrs Roach noted that their early interactions with Mr Whyte at 28 Woolcombe Tce suggested that they would be unlikely to receive neighbours support for any development that required a resource consent and therefore we should work on a design that met the requirements of the New Plymouth Operative District Plan 2005 (OPD).
- 4.5 Geosync Ltd provided the site survey data to our team to complete the site analysis and Boon Ltd commenced preliminary design in 2019, whilst Mr Roach and BTW company worked directly with NPDC to finalise a solution for the sewer at the southern portion of the development site.
- 4.6 The final design outcome is a close collaboration between the design team at Boon Ltd and Mr & Mrs Roach.
- 4.7 The intent was the house would be sited to utilise the existing access driveway between 24/26 Woolcombe Tce and to provide level access from the south for Mr Roach's elderly mother, and avoid the existing NPDC sewer main.
- 4.8 The materials used were carefully considered to complement the surrounding architecture, which primarily is dominated by large architectural homes of varying style and character.
- 4.9 The use of stone, dark roof cladding and sections of dark 'timber' cladding were selected to complement the colours of the adjacent walkway boulders and dark sand found along the local coastline. The white plaster was selected for its low maintenance - and to provide relief from, and contrast to, the dark sections of cladding - and to define the gable form of the house with contrasting cedar soffits also

adopted to provide a natural element and connection to the interior ceilings of the gable roof when viewed from the street.

- 4.10 The gable roof and extensive glazing to the north, with covered outdoor balcony, provides articulation to the north façade - whilst also providing for shelter with the proposed slat aluminums fins at the eave line - for privacy to both the Roachs and neighbours at the upper-level balcony from the side boundaries. Note these are yet to be installed (but are intended to be so).
- 4.11 Window placement was carefully considered with slender 'slot type windows' to the west designed to ensure that the internal spaces received light - however our intention was both the Roachs and Whytes would have a sense of privacy due to the orientation, location and size. Dark tinted glass was also selected to further provide privacy to all.
- 4.12 Two vertical windows elements were orientated as triangle 'pop' outs to provide glimpses of the sea from further back in the house and to ensure that they did not overlook directly to the Whyte's, and to break up the façade, and provide visual interest when viewed from the adjacent 28 Woolcombe Tce and street view.
- 4.13 The larger glazing sections to the west and east were intentionally set back further from adjacent boundaries and are positioned in circulation areas only to provide good natural lighting, visual connection from the exterior - but not in locations where the residents would typically dwell for longer periods of time to mitigate any privacy concerns.
- 4.14 The site and built platform is above street level - and it was key to a good outcome to redesign the existing retaining wall and outdoor space with quality materials, which complement the house and connection with the coastal location. The wall was rebuilt and clad with local stone and a glass balustrade was set back to allow visual transparency into the outdoor area and dwelling beyond - which I believe provides a positive visual connection and interaction with the street.
- 4.15 The house design is in keeping with the surrounding environment and is a similar scale and form of similar developments. The house is set back from the boundary as much as possible, while still maintaining the spatial requirements and vehicle access and landscaped external spaces.
- 4.16 Whilst this design and build were undertaken with the intent to align with the New Plymouth Operative District Plan (ODP) at that time, of note is that the New Plymouth Proposed District Plan (PDP) now provides for a building to be constructed up to 11m in this very location (compared to 9m of the current proposal), with the potential for a much larger structure to be realised. However, at the time of the

design we were focused on a design outcome aligned with the ODP and fitting within this plan.

## **5 THE PROJECT DEVELOPMENT**

### **The team and obtaining building consent**

- 5.1 The Boon Ltd engagement for the new dwelling commenced in August 2019.
- 5.2 Aside from the client and their contactor, Chris Bell Construction and Project Management Ltd, the team consisted of BTW Company Ltd for Civil and Structural Design, Geosync for Survey, Boon Ltd and Daniel McEwan for Landscape Architecture.
- 5.3 The architectural team was:
  - Kyle Arnold as project lead;
  - Krystel Cudmore – architect (no longer at Boon Ltd);
  - Connor Stockman design technician (no longer at Boon Ltd); and
  - George Tamati – architectural graduate (no longer at Boon Ltd).
- 5.4 Between August 2019 – 2021 our team worked on the building consent documentation for the new dwelling with Daniel McEwan working independently on the landscape design from mid 2021. The project delivery was disrupted by the covid lockdowns and remote working arrangements over this period were enforced. The building consent was lodged and approval for the development was received 27th January 2022.

### **Site Setout**

- 5.5 The existing cottage was cleared from site and some minor excavations were undertaken at the top of the driveway.
- 5.6 Boon Ltd was not engaged to undertake formal site supervision or observation, however, as with any typical project, we will receive queries from site which we will endeavour to answer.
- 5.7 From our project file notes shared with me by Mr Connor Stockman, I understand Geosync ltd surveyors were engaged to provide a site set-out for the proposed dwelling by the contractor. The proposed level shown on the consented architectural drawings notes the ground floor slab level as **19.020m**.
- 5.8 The site foreman contacted our office and spoke with Mr Connor Stockman and noted the floor slab as documented was approximately 250mm higher than the adjacent garage floor slab at 24 Woolcombe Tce; and that he would, therefore, like to lower the

level onsite following discussions with Mr Roach - to ensure that the vehicle access between the two dwellings could be maintained without replacing the existing driveway.

- 5.9 As this would result in the overall dwelling being lower than the current consented documents, we agreed that this was ok from our perspective. The 'new' level was recorded at the time as **18.775m**.

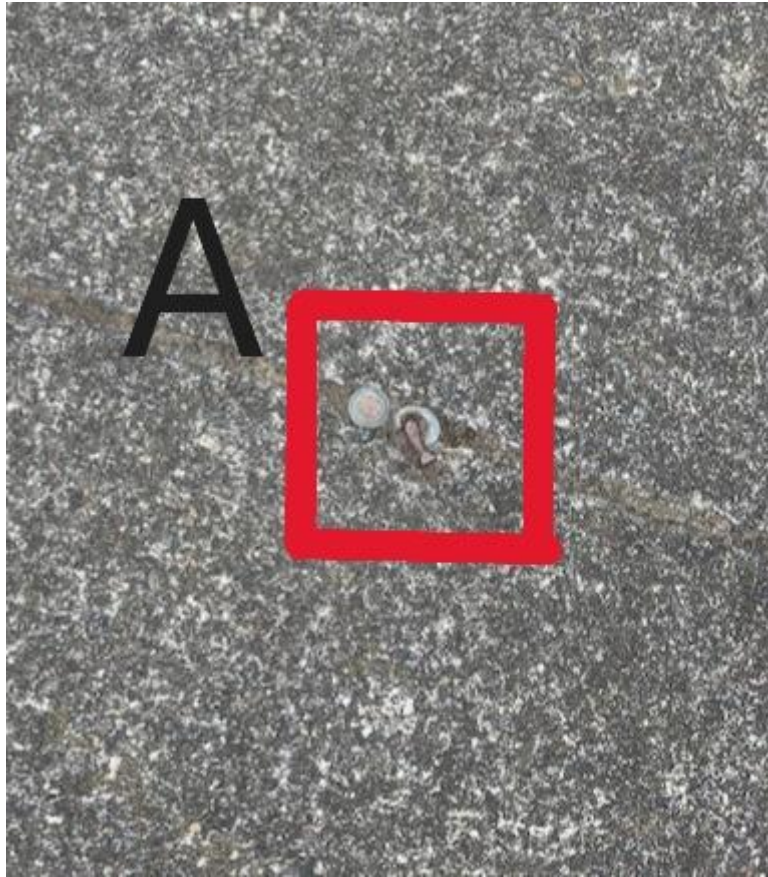
### **Redesign**

- 5.10 Later in 2022, I was contacted by Mr Roach following the erection of the steel portal frames for the upper level.
- 5.11 He had been in discussion with Mr Whyte who believed the west elevation was breaching the height to boundary day recession angles under the ODP, which is 50deg at 3 meters above ground level for this elevation.
- 5.12 I reviewed the consent drawings and reviewed the survey data and daylighting planes, and noted that the western elevation set-outs were taken from the top of the retaining wall between 26 and 28 Woolcombe Tce based on the survey data provided by Geosync in 2019.
- 5.13 Whilst in our view at the time we believed the 'ground' level could be taken from the retaining wall, or retaining structure where it intersects the boundary - we felt there was enough risk that, rather than following this line of thinking or seeking a resource consent, we would redesign this part of the house using the ground levels inside the retaining wall within the Roach's property - rather than the boundary position interpretation our team had previously used.
- 5.14 The contractor removed the steel frames and we revised the project documentation for the consent update, and as part of this rework we reset the building slab level at **18.775m** as we understood at the time this was the 'as built level' and commenced a redesign of the house between grids A – E.
- 5.15 We understand Mr Roach explained the situation, and presented the revised concept design to the Whytes, and the feedback was generally positive at the time. Mr Roach may be better placed to recall the detail of this discussion.
- 5.16 Following this feedback our team electronically rechecked all levels, and checked the new datum with the foreman and reviewed historic levels used for Mr and Mrs Whyte's property (28 Woolcombe), and the development site (26 Woolcombe and 24 Woolcombe). We updated the drawings to what we believed was compliant with the ODP - which was submitted as an amendment to the original building consent, and subsequently approved by NPDC in December 2022.

Of note the daylight envelope shown on the consented documentation for 28 Woolcombe Tce indicated the exiting ground level of the Roach's site to be approximately 300-500mm above what has been estimated by BTW Company as described below in 5.18. If this is an accurate representation of the historic ground level, then there may not be any encroachment on this boundary.

#### **The boundary fence & survey review**

- 5.17 In August 2023, Mr Ross Lilly from NPDC made contact with Mr Connor Stockman following a complaint from 28 Woolcombe Tce in regard to the height of the boundary fence Mr Roach was constructing. At the commencement of the project there was no requirement to consent such a fence under the ODP provided in was under 2.5m in height. We noted to Mr Roach that first 800mm of the fence would need to be modified by 2 blocks to meet the NPDC rules at the time of commencement of this work being started.
- 5.18 However, following this, and in discussion with NPDC, we instructed BTW Company to undertake a determination of the approximate existing ground level, as the site was now excavated due to the nature of the building works. This undertaking was commissioned to try and establish if there was in fact any issue as raised by Mr Lilly.
- 5.19 Once this information was to hand, we issued the BTW Report dated 12 December 2023 to NPDC.
- 5.20 Our review of the levels provided by BTW Company at the time did not raise any concerns with the building.
- 5.21 We also visited the site and asked the contractor (Chris Bell construction) to verify the house levels were built as documented and consented. The contractor noted that at the time of the original set out - the survey datum had been removed due to the preliminary earthworks prior to set out - and the surveyor had established a new datum on the northern footpath with a steel nail pin. Refer to **photo A** below.



*Image new nail datum (A) added next to existing in footpath.*



*Approximate location of nail datum (A) on footpath and survey level 17.18m (B) on roadway*

5.22 Chris Bell construction proceeded to calculate the levels back from this steel nail pin to the ground floor slab - which corresponds to the



floor slab level we were provided in 2022 for the revised consent drawings.

- 5.23 We notified NPDC that we believed to the best of our knowledge that the house construction was generally in accordance with the approved building consent drawings. That certainly was our understanding at the time.
- 5.24 NPDC informally notified us that they would undertake a survey check by Mr Dave Armstrong to confirm this. Mr Armstrong notified the contractor at this time that the datum level the contractor was using, which had informed our consent amendment level, was not correct.
- 5.25 As Geosync Ltd was no longer operational and trading, we approached McKinlay and Co Surveyors (Mr. Alan Doy) on behalf of Mr & Mrs Roach to undertake an independent check of the levels and height to boundary. Unfortunately for all, as a result of the survey review by McKinley and Co, and Dave Armstrong for NPDC, we discovered the 'new' datum or bench mark was in fact not correct - and that the floor slab as built is at **19.020m** approximately **245mm** above what is documented on the Boon Ltd drawings.
- 5.26 The following excerpt is below from Mr Armstrong's report dated 8<sup>th</sup> April 2024 (see section 6, a full copy of that report is attached as **Annexure A**):

***Alternative site benchmark***

*When arranging access to the 26 Woolcombe Terrace site and house I liaised with Chris Bell of Chris Bell Construction, being the primary contractor on the job. Chris then met us on site and identified what he understood to be the alternate vertical benchmark for the site following the destruction of the original site benchmark during installation of a soakage pit. The mark that Chris identified was a small nail in the concrete footpath on the northern side of Woolcombe Terrace. Chris believed that this nail had an RL of 17.18m, and was labelled on the site plan (see snippet below). He also pointed out 2 other nails along the footpath that approximately lined up with other RL's shown on the plan (being 17.21 and 17.17m).*





*Simulation of ODP breach based on survey data provided by others*

## **6 MEDIATION**

- 6.1 Mr & Mrs Whyte filed an application for interim enforcement orders with the Environment Court in March 2024 with concerns raised regarding the height in relation to boundary and the site boundary fence (Wall).
- 6.2 Both Mr McEwan and I attended the mediation session on the 9th April 2024. It was also attended by the applicants (ie Mr & Mrs Whyte), their lawyer (Mr Cameron) and Mr Roach, Mr Grieve, Mr Alan Doy and planning and legal representatives from NPDC.
- 6.3 I understand that the details of mediation, other than as agreed in a mediation agreement are confidential. I have therefore relied on or summarised the relevant aspects of the mediation agreement for the purpose of this section of my evidence.
- 6.4 Mr Roach agreed in good faith to lower the boundary fence to 2m above existing ground level and this would be later verified by Mr Dave Armstrong NPDC surveyor. His letter of 20 June 2024 confirms this remedial work was undertaken by Mr Roach.

- 6.5 It was also confirmed that a retrospective resource consent, under the PDP, would be applied for the height to boundary encroachment that had been identified at the time.
- 6.6 It was noted by all that they were agreed that the relevant rules for both the wall and the dwelling were now in the PDP, not in the ODP. I understand that this included that the PDP alternative height to boundary rule could be applied to this development, as it meets this criteria, but that detail is not recorded in the mediation agreement and so I cannot say if others agree with that interpretation.
- 6.7 The construction work continued for the dwelling and landscape treatments with the main contractor Chris Bell receiving Code of Compliance in October 2024. At the risk of stating the obvious, this means that the development meets the requirements of the building code and building act. We understand that this is not the same as obtaining a resource consent, however.

## **7 REVIEW OF THE WHYTE SUBMISSION**

- 7.1 The PDP provides for a range of design options which could potentially be up to 11m in height. This compares to the height of the constructed dwelling being just 9.25m approximately at the north ridge roof flashing. As shown in the above image, this is a small portion of the ridge only at the northern end.
- 7.2 The PDP also allows for alternatives that could result in a building or development with different outcomes which, based on Mr and Mrs Whyte's concerns, are now unlikely due to the development of the Roach dwelling. But they are still appropriate forms for comparison to understand the effects of the Roach dwelling compared to what other outcomes could result.
- 7.3 In my opinion, the shading of an alternative development envisioned under the PDP generally (under either MRZ-S4 consent pathway or the MRZ-S3 permitted standards) could greatly exceed that which is generated from this building. As the sun moves westward, the shadow cast by a taller building (up to 11m) becomes more pronounced. This means that areas to the west of the ridge or upper roof would result in shading earlier in the afternoon. The higher the roof the earlier and more intense this shading effect could be. Furthermore, an alternative design could result in a building that is much closer to the eastern boundary, which, again, could result in an increase in shading to the Whyte's house.
- 7.4 The overall encroachment and the impact of this is negligible under the PDP and the majority of the house other than the main bedroom complies with the alternative rule MRZ-S4 under the PDP as discussed in Mr McEwan's evidence

- 7.5 The PDP allows for a 30m long dwelling and through articulation of the layout mitigates the overall scale of this dwelling.
- 7.6 Landscape planting was proposed for the western boundary however this is on hold. Mr McEwan refers to this in his evidence.
- 7.7 The gable roof is typical of housing in this area and is not at odds with the local context. For example, refer to similar developments at 39 Buller St, 10 Eliot St (under construction), and the corner of Octavious Place and Eliot St. This form reduces the overall bulk of the dwelling.
- 7.8 Louvres are proposed for the front deck which were included on the approved building consent drawings. I understand Mr Roach intends to install these which will provide additional privacy. These louvres would be compliant with the PDP. **MRZ-S4** alternative height in relation to boundary provision and the original ODP daylight plane.
- 7.9 The front wall levels are taken from the existing ground level, not the footpath, which is outside the Roach's property and irrelevant to this matter.
- 7.10 The construction of the boundary fence commenced in 2022 with the foundation and ground works which were shown by BTW Company and consent approved by NPDC. This is built entirely within the Roach property.
- 7.11 This information has been highlighted to NPDC. We do note, however, that the retaining wall constructed by the Whyte's appears to encroach into the Roach's property for a portion of the boundary. At the time of preparing this evidence I have not found any agreement between the two parties for this or a resource consent for the excavation and construction of this retaining wall or clearing the site levels by the Whytes.
- 7.12 There was no intent to misrepresent the documentation presented to NPDC for building consent approval and, if it were not for a minor datum error, the house would have complied with all relevant regulations at the time of approval. The information and levels we have been provided appeared to confirm that the contractor had installed the ground floor slab at 18.775m, and it has taken a number of experts to identify this error in datum. Post construction we found the contractor had actually installed the ground floor slab at 19.020m, being just 24.5 cm higher than we had shown on the revised consented drawings. On a building of some 9m in height that is a 2.9% increase in height, and I doubt anyone would be able to notice this difference with the naked eye. In comparison the 11m permitted height under the PDP is a 22% increase in height above the 9m permitted height under the ODP.
- 7.13 The officers report notes the entire building encroaches the daylight plane. This is incorrect. Refer to the drawings included with Daniel

McEwan's evidence which clearly illustrate the level of encroachment.

## **8 CONCLUSION**

- 8.1 The Roach house is a family home designed and developed to meet the needs of the Bryan and Kim's family - and sits comfortably within its context. This building has been finished to a high specification and has met the requirements of the Building Act.
- 8.2 Albeit for a minor datum error the house would have complied with the relevant NPDC planning rules at the time of consenting. Whilst the PDP has introduced a number of new planning regulations, and this site is now considered medium density, I don't consider this house to be remotely out of context with the intent of those new requirements
- 8.3 I do consider the purpose of the Medium Density Residential Zone is to provide opportunities for developments up to three stories in height with a mixture of detached, semi-detached and terraced housing and low-rise apartments which has the potential to result in a development that has a much greater impact on the adjacent properties. For this reason, I consider the Roache's multi - generational home should be considered a welcomed addition to Woolcombe Terrace.

Kyle Arnold  
Director, BOON Limited  
12 March 2025