

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

UNDER

the Resource Management
Act 1991 ("RMA")

IN THE MATTER

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

**SUPPLEMENTARY STATEMENT OF EVIDENCE OF BENJAMIN
RICHARD LAWN ON BEHALF OF BRYAN & KIM ROACH**

1. INTRODUCTION

- 1.1 My name is Benjamin Richard Lawn. My qualifications, experience and conduct are set out in my primary statement of evidence dated 12 March 2025.
- 1.2 I have read the statements of evidence of Ms McRae and Ms Hooper both dated 19 March 2025 and provide the following supplementary evidence.
- 1.3 I am authorised to present this supplementary evidence on behalf of the applicant.
- 1.4 I confirm that I continue to comply with the Code of Conduct for expert witnesses discussed in paragraph 3.1 of my primary statement of evidence.

2. MS MCRAE'S STATEMENT

- 2.1 I wish to address the following points raised in Ms. McRae's statement

Permitted Baseline

- 2.2 Ms. McRae has addressed the permitted baseline in her statement of evidence, with the conclusion that the permitted baseline analysis provided

in Mr. McEwan's evidence is not correct, and that for a compliant building to be constructed, it would need to be setback further.¹

- 2.3 I note that the permitted baseline is included in the methodology to assess landscape and visual effects, as stated in the '*Landscape and Natural Character Effects Method Statement*' included in her Appendix 1.

Landscape Effects

A landscape effect relates to the change on a landscape's character and its inherent values and in the context of what change can be anticipated in that landscape in relation to relevant zoning and policy. The level of effect is influenced by the size or spatial scale, geographical extent, duration and reversibility of landscape change on the characteristics and values within the specific context in which they occur.

Visual Effects

Visual effects are a subset of landscape effects. They are consequence of changes to landscape values as experienced in views. To assess where visual effects of the proposal may occur requires an identification of the area from where the proposal may be visible from, and the specific viewing audience(s) affected. Visual effects are assessed with respect to landscape character and values. This can be influenced by several factors such as distance, orientation of the view, duration, extent of view occupied, screening and backdrop, as well as the potential change that could be anticipated in the view as a result of zone / policy provisions of relevant statutory plans.

Figure 1: Landscape and Natural Character Effects Method Statement (Permitted Baseline Highlighted)

- 2.4 Ms. McRae provides an alternative permitted baseline, concluding that a compliant building's facade would need to be setback between 688mm and 1505mm from the eastern boundary². This is using the same design of the as-built dwelling, with its location moved westward to be wholly within the HIRB profile. I note that this design would mean the building would block the vehicle access to the site which is relied on for both dwellings and therefore is not practical.
- 2.5 This alternative permitted baseline is then used in Ms. McRae's analysis of the 'sense of enclosure' to 28 Woolcombe Terrace, which results in a differing conclusion to Mr. McEwan and Mr. Bain, with the effects being determined as 'low-moderate' compared to 'low'. Ms. McRae states that for an 11m high structure to be built, it would need to be setback further from the boundary, reducing the sense of enclosure and dominance effects.³

¹ Ms. McRae's Evidence – para 8.11, 8.12, 13.19, 13.20, 13.22, 13.29, 13.34

² Ms. McRae's Evidence – para 8.12, 13.22

³ Ms. McRae's Evidence – para 13.22

- 2.6 I disagree with this permitted baseline scenario as it utilises the existing dwelling which was designed under the Operative District Plan (ODP) rules at the time.
- 2.7 Mr. Arnold has provided an updated permitted baseline model in his supplementary evidence which shows in more detail a compliant building under the PDP in the MDRZ. This supports the baseline model used by Mr. McEwan.
- 2.8 I would like to note that whilst it has not been included in Mr. McEwan's or Mr. Arnold's permitted baseline model, under the MDRZ, landowners have the right to build within the 1m setback of the side boundary for a length of 12m or 50% of the boundary, whichever is lesser, under MRZ-S5. This was also allowed under the ODP⁴, however included the condition that the wall of any habitable room facing the boundary shall have no windows or doors. This reduced the use by applicants and was generally used for garages. This requirement for no windows/doors was removed in the PDP, which again allows for an increase in density and overlooking compared to the ODP as described in my initial evidence.
- 2.9 Therefore, it is very likely that we will see an increase in buildings (or parts of buildings) being built against the side boundaries to utilise land more effectively, which would create a far greater sense of enclosure and overlooking to adjoining neighbours. However, without utilising the setback within 1m, I am of the opinion that Mr. Arnold and Mr. McEwan have demonstrated a non-fanciful permitted baseline that could easily be built if the applicant was to 'start over' under the PDP. The permitted baseline as shown, allows for a much larger building, that would result in a sense of enclosure, dominance and overlooking greater than the as-built dwelling, or the permitted baseline used by Ms. McRae.
- 2.10 In my opinion, the majority of Ms. McRae's assessment of dominance and sense of enclosure is based on the comparison of the as-built dwelling to her alternative permitted baseline which would have a much larger setback from the side boundary. As stated, I do not consider this baseline is correct. Therefore, in my opinion, the assessments of Mr. McEwan and Mr. Bain are more appropriate.

Overlooking and Privacy

⁴ ODP – Res16

- 2.11 Ms. McRae addresses the overlooking and privacy on 28 Woolcombe in her evidence. I note the assessment includes many compliant parts of the building or unrelated permitted activities. Whilst the building activities requires resource consent and is a discretionary activity, I consider the effects from the activity need to be taken into context with what the PDP allows for and anticipates in the MDRZ.
- 2.12 When assessing the privacy impacts under MRZ-S3, Ms. McRae bases her assessment on the front and rear decks, the eastern deck as well as the windows from the passageway⁵. These are all compliant aspects of the building which are able to be achieved without the infringement of MRZ-S3.
- 2.13 When assessing the privacy impacts under MRZ-S4, the eastern deck area is referred to by Ms. McRae as providing the greatest area of overlooking to 28 Woolcombe Terrace as it views 7 windows on the neighbouring house⁶, and notes that there is no screening between the properties. This then forms her conclusion of the effects on overlooking and privacy as being low-moderate⁷. I note that this outdoor area is compliant under the PDP, and does not form part of the building that requires resource consent.
- 2.14 Whilst I consider the comments from Ms. McRae have value from a landscape design perspective, in the context of the PDP, this level of privacy and overlooking is allowed for, with the majority of her assessment being on the permitted aspects of the building. In my opinion, there is no basis that the infringement of MRZ-S3 provides the applicant with any additional ability to overlook 28 Woolcombe Terrace, and as such the proposal is not contrary to the objectives and policies of the PDP in relation to these.
- 2.15 Regarding the comments of Ms. McRae on the boundary fence, I do not consider this to be relevant to the application. The boundary fence was altered to be a compliant height and as such is a permitted activity under the PDP.

3. MS HOOPER'S STATEMENT

- 3.1 I agree with Ms. Hooper's statement that the MRZ-R4 is applicable to the application; and also agree with her comment that it is largely inconsequential to the s42a report, as the framework of the rules and matters of discretion are the same in MRZ-R4.

⁵ Ms. McRae's Evidence – para 8.8-8.9

⁶ Ms. McRae's Evidence – para 9.8

⁷ Ms. McRae's Evidence – para 9.10

- 3.2 Regarding Ms. Hooper's comments on the permitted baseline, I refer to my above comments which address this.
- 3.3 I do not agree with Ms. Hooper's conclusion that MRZ-R33 is only applicable to a building wholly within the first 20m of road frontage⁸. As explained in my evidence, the PDP specifically states under MRZ-S3 that the standard HIRB does not apply to "*Buildings or parts of buildings that utilise MRZ-S4*". I do not agree that this needs to be repeated under MRZ-S4 for it to have effect, for the reasons outlined in my evidence.
- 3.4 I partially agree with Ms. Hooper's comments regarding the difference if the proposal is assessed by MRZ-S3 or MRZ-S4⁹, with a similarity in assessment against the same objectives and policies. However, I note that matters of discretion are different between MRZ-S3 and MRZ-R33, with MRZ-S3 including 'sense of enclosure', whereas MRZ-R33 does not. In my opinion, this is intentional as the PDP anticipates a greater dominance or sense of enclosure from buildings that utilise MRZ-S4.
- 3.5 Regarding Ms. Hooper's comment on paragraph 9.30 of my evidence,¹⁰ I consider the above difference in matters provides explanation. In this paragraph I also addressed the dominance effects under MRZ-S3 for the front 20m of the road frontage, taking into account the assessments of Mr. McEwan and Mr. Bain which concluded less than minor effects.
- 3.6 I note that the assessment by Ms. McRae states a maximum effect of low-moderate, which equates to a maximum of 'minor' effect under the RMA using the 7-point scale from NZILA. Ms. Hooper also does not determine the effects to be more than minor anywhere in her evidence.
- 3.7 Overall, I do not agree with Ms. Hoopers conclusion, which is based on the assessment of Ms. McRae's effects as adopted by Ms. Hooper, that the building is contrary to the objectives and policies of the PDP or the Regional Policy Statement for Taranaki (RPS). I maintain agreement with Mr. Robinson's analysis in the s42a report as well as my evidence that the activity is not contrary to and is anticipated by these objectives and policies.

4. CONCLUSION

- 4.1 From reviewing the evidence of Ms. McRae and Ms. Hooper, I understand that all experts are in agreement that the impacts of shading and planned

⁸ Ms. Hooper's Evidence – para 42

⁹ Ms. Hooper's Evidence – para 45

¹⁰ Ms. Hooper's Evidence – para 115

character of the area, from the building and front fence, are less than minor. Therefore, the contention remains on privacy, outlook and dominance effects.

- 4.2 I confirm my earlier views that I agree with the assessments of Mr. McEwan and Mr. Bain which determine the impacts of privacy, outlook and dominance on 28 Woolcombe to be 'low' or less than minor using the MRZ-S3 standard only. In my opinion the exceedance of the MRZ-S3 standard is minimal and does not allow for any additional dominance or privacy implications that are not already allowed for and anticipated under the MDRZ.
- 4.3 If the MRZ-S4 is utilised, I consider the matters under MRZ-R33 are able to be met, and this results in the impacts of the MRZ-S3 infringements as being negligible, being confined to the rear section of the building.
- 4.4 I agree with the evidence from Mr. McEwan and Mr. Arnold that describe the architectural mitigation efforts that have gone into designing the dwelling, ensuring window designs and placement in regard to privacy was well thought through, as well as providing a large set back area in the middle section of the building, well beyond the required side boundary setback, which provides a break in the bulk and form of the dwelling, reducing the dominance. These are factors that mitigate the infringement, and result in a building with lesser effects than what can be achieved as a permitted activity under the PDP.
- 4.5 Although satisfactory mitigation measures have been achieved through the current architectural design, the applicant has offered to have conditions requiring the installation of the louvers on the front balcony, as drafted in my evidence, and in addition the installation of a pergola in the eastern outdoor area and additional louvers on the east-facing bay window, as detailed in Mr. Arnold's and Mr. McEwan's supplementary evidence. Taking these additional conditions also into account, it is my conclusion that the effects will be less than minor in all aspects and consent is able to be granted, subject to the conditions.

Benjamin Richard Lawn
McKinlay Surveyors Limited

27 March 2025