

**IN THE MATTER** of the Resource Management Act 1991 (RMA or Act)

**AND** an application pursuant to Section 88 of the RMA, to the New Plymouth District Council, by Ms Kelsey Kearns for a two-lot subdivision, in respect of a property legally described as Lot 2 DP 7582, and located at 249C Tukapa Street, New Plymouth.

## **1. INTRODUCTION**

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### **1.1 APPLICATION**

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The applicant has sought consent to undertake a two-lot subdivision and to add a further dwelling with rights to access a ROW, and is summarised as follows in the s42A report<sup>1</sup>:

*“Lot 1 (front lot) of 460m<sup>2</sup> (excludes 145m<sup>2</sup> ROW); and Lot 2 (rear lot) of 455m<sup>2</sup> (excludes 104m<sup>2</sup> ROW and 47m<sup>2</sup> access) to the rear of the site.*

*Lots 1 and 2 will share access from the existing ROW off Tukapa Street described. An additional 12.2m long and 4m wide ROW is also proposed off the existing ROW which will be exclusive to the lots proposed. The existing ROW will achieve the minimum carriageway and legal width formation requirements necessary for a ROW serving 3 to 6 properties including the following:*

- *Minimum legal width of 4.5m – currently the ROW has a 5.5m wide legal width widening to 6m 27m down the ROW*
- *Minimum Carriageway width of 3m – currently the sealed carriageway (drive) is 2.5m wide and is proposed to be widened to 3m*
- *A passing bay per every 50m of ROW – no passing bay exists but one is proposed as 249C is located approximately 55m down the ROW.*

*The proposed ROW will have a minimum legal width of 4m and formed width of 3m.*

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<sup>1</sup> S42A Report- Paras 9-11

*The attached garage/shed to the west of the existing dwelling will be removed to enable access to be obtained to proposed Lot 2. Parking for proposed Lot 1 will be reconstructed to the north of the existing dwelling. Parking for proposed Lot 2 is yet to be determined, however the lot size indicates that there is sufficient space to provide for a building platform, two parks, and on-site manoeuvring.*

*As the proposed subdivision requires a consent to add a further dwelling to an existing ROW the applicant sought to obtain written approval from the other persons who are entitled to utilise the ROW. Written approval was obtained from the owners of 249A and 251 Tukapa Street.”*

## 1.2 SITE & SURROUNDING ENVIRONMENT

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The section 42A report<sup>2</sup> describes the site as follows:

*“The site is flat and currently contains an existing dwelling with connections to Council reticulated sewer and water. The site is accessed from Tukapa Street via an existing right of way (ROW) which serves three established dwellings. An existing garage/shed is located within the western third of the site and attached to the main dwelling. It is proposed to remove this garage/parking area as part of the proposal to provide an access leg to the proposed rear lot. The front of the existing house includes a small deck, paved parking area, a small front yard. The site also has a large back yard. The site is fully fenced and there are several well- established trees within the site.*

*Adjoining properties are typical of the Residential A Environment Area with dwellings setback from boundaries, generally 450m<sup>2</sup> to 1000m<sup>2</sup> in area, outdoor living areas and mostly single storey. Residential allotments adjoin the site in all directions. The site is in close proximity to the shops and the NPD service station on the corner of Wallath Street and Tukapa Street. Tukapa Street where adjacent to the site is identified as a Collector Road. Further to the north is the main entry to Francis Douglas school at approximately 350 metres away.”*

## 1.3 RIGHT OF WAY

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The following extract from the section 42A report<sup>3</sup> provides a description of the right of way, relevant rights, and its current use:

*“The subject site is one of three allotments that have rights to, and currently utilise, the ROW. 251 Tukapa Street also has rights to utilise the ROW, but it currently does not use it. Legally,*

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<sup>2</sup> S42A Report- Paras 6-7

<sup>3</sup> Ibid-Para 8

*there are currently four allotments which have the right to use the ROW. Each of the three allotments currently utilising the ROW, contain a single dwelling and are comparable in size to the subject site. The subject site is the first property currently utilised by the ROW and is illustrated in red on Figure 1 below. 251 Tukapa Street to the west of the site has an existing right to the ROW but has never exercised this right and instead obtains access to/from Tukapa Street.*

*Recently a Controlled Activity subdivision consent (SUB22/48135). has been lodged with regards to 251 Tukapa Street. The existing dwelling will maintain its existing access from Tukapa Street while the proposed rear lot will use the right to the ROW, which the parent title has existing rights to. The application (SUB22/48135) includes the proposed surrender of the right for proposed Lot 1 to utilise the ROW. Therefore, a total of 5 allotments would be accessed off the ROW if consent were approved for this proposal. As this application SUB20/47579 was considered complete and ready for notification prior to lodgement of SUB22/48135, this application (SUB20/47579) takes precedence and the effects of SUB22/48135 on the right of way do not need to be taken into account when considering this proposal.”*

#### 1.4 APPOINTMENT

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I was appointed by the Council as an Independent Commissioner in terms of section 34A of the Resource Management Act 1991 (“the RMA”) to hear the applicant, submitter, and the Council’s reporting officer and to determine the application. The information available to me prior to the hearing included the application, assessment of environmental effects (AEE) report and other information; the submission and a report prepared by Council’s reporting officer, being the section 42A report, and expert technical evidence.

#### 1.5 BUNDLING PRINCIPLE AND ACTIVITY STATUS

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The proposal involves District Plan rules that cannot be complied with that have discretionary (rules Res 54, Res 59, and Res 63) and controlled (rules Res56, Res61, Res 62, & Res 63) activity status in respect of the District Plan.

The principle of bundling applications, a concept developed by the Environment Court, applies in respect of this matter. Where an activity is unable to comply with multiple District Plan provisions of differing activity status, they must be considered at the most onerous activity status and assessed using the more stringent criteria (King & Ors v Auckland City Council; [2000] NZRMA 145). In respect of this application, the status of individual rules that are infringed include restricted discretionary, discretionary, and non-complying activities.

The reporting officer has advised that in this instance, it is appropriate to use the bundling approach given the more stringent activity status which in this case, is discretionary.

Having considered this matter, I concur with that conclusion, and have therefore considered the proposal as a discretionary activity. The applicant concurred with this approach.

The subject site is located within the General Residential Environment Area of the PDP. There are no rules with immediate legal effects applying to the proposal.

## 1.6 LIMITED NOTIFICATION

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The s42A report recorded that a notification decision on the application was made on 18 September 2020. It was considered that as the potential effects on the wider environment beyond adjacent sites, were not more than minor under s 95A and s95D of the RMA, that the application is not publicly notified, but that limited notification was appropriate.

Only one party was served limited notification being the owner of 249B Tukapa Street, Mr Michael Wood.

## 1.7 DEFINITIONS

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In this Decision, I use the following terms:

AEE	-	Assessment of Effects on the Environment report
Applicant	-	Ms Kelsey Kearns
ODP	-	New Plymouth Operative District Plan
PDP	-	New Plymouth Proposed District Plan
RMA	-	Resource Management Act 1991 and its amendments
S42A	-	Section 42A report
Submitter	-	Mr Michael Wood

## **2. HEARING**

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The hearing was conducted on 29 July 2022 in the Plymouth Room, Civic Centre, Liardet Street, New Plymouth. Appearances were from:

### **2.1 APPLICANT**

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- Mr Scott Grieve- Counsel
- Ms Kelsey Kearns- Applicant
- Mr Andrew Skerrett- Traffic Engineer
- Ms Louise McLay- Planner

### **2.2 SUBMITTERS**

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- Mr Michael Wood

### **2.3 COUNCIL**

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- Mr Luke Balchin- Planner & s42A Reporting Officer

In attendance to provide hearing support was Ms Jane Hickmott, Committee Adviser.

### **2.4 SITE VISIT**

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I conducted a site visit alone prior to the hearing to understand the context and location of the subject site and the submitter property, and the right of way. I did not go onto any property.

### **2.5 CLOSURE OF HEARING**

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I formally closed the hearing on the 29 August 2022 after I had concluded that I had sufficient information by which to determine the application.

## **3. SUBMISSION & MAIN ISSUES RAISED**

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The section 42A report and submission, highlighted matters that were of concern to the submitters in opposition to the application. These are summarised as follows:

#	Name	Key Submission Points Raised	Status of Submission
1	Michael & Sarah Wood	<p>Safety concerns associated with the use of the ROW which will be exacerbated by the introduction of additional users.</p> <p>Scale of infrastructure required/proposed by the applicant.</p> <p>Parking in relation to proposed lots 1 and 2.</p> <p>Construction effects.</p> <p>Financial liabilities of ROW upgrades and/or any damages.</p> <p>Impacts on ROW agreement.</p>	Oppose

#### **4. STATUTORY PROVISIONS CONSIDERED**

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In considering the application, I have had regard to the matters to be considered as set out in section 104 of the RMA and recognising consideration of the proposal as a discretionary activity. Activity status is discussed in section 1.6 of this decision.

I have had regard to the provisions of the District Plan and to Part 2, being the purpose and principles of the RMA.

In respect of a discretionary activity, section 104D of the RMA states that a consent authority may grant or refuse consent and if granted, conditions may be imposed under section 108 of the RMA.

#### **5. PRINCIPAL MATTERS IN CONTENTION**

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Having considered the application, submissions and evidence provided, and being guided by the assessment criteria of the District Plan, I consider that the principal issues of contention are:

- Residential character and amenity effects
- Operational and traffic safety effects associated with increased use of the ROW
- Site servicing- stormwater and wastewater

These matters are discussed in section 7 of this Decision.

#### **6. SUMMARY OF EVIDENCE & SUBMISSIONS**

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The following summary is not intended to be a full coverage of all matters raised at the hearing. Relevant parts of the evidence and submissions presented by the parties are referred to in the Main Findings section of this decision, where it forms a component of the findings by me, in deciding the application.

## 6.1 APPLICANT

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**Mr Grieve** outlined that it was important in my consideration of the proposal, to take account of the situation that a second dwelling could be erected as of right on the subject site; there is an existing dwelling and buildings already established on the site; there are mitigation measures proposed, and written approvals have been received from most neighbours. He also noted that there were numerous positive effects that would likely be created if consent is granted.

Mr Grieve outlined that the mitigation measures included upgrading of the ROW which would mitigate any adverse effects of the proposal.

He noted that both Ms McLay and Mr Balchin were in agreement, that the proposal be approved and that the mitigation measures were appropriate.

Mr Grieve concluded that based on the evidence, the proposal was consistent with the objectives and policies of the relevant planning instruments and provided for the appropriate use of natural and physical resources without significant adverse effects, and any effects can be mitigated.

**Ms Kearns** outlined the background to the proposal and why it had taken so long to progress it since lodgement. She outlined that she had purchased the property because it was affordable and had subdivision potential and provided scope to move family to New Plymouth.

Ms Kearns outlined the consultation process with neighbours. She was of the view that the proposal would be positive for the area, was consistent with the Council's planning direction and can occur without negatively impacting on her neighbours.

**Mr Skerrett** outlined why the proposal can appropriately manage traffic effects including the ROW, in a way that would not generate any significant adverse effects on the submitters' property or the ROW, or the environment generally.

He noted that the proposal and likely increase in traffic movements, would not materially change the level of risk on the ROW nor would it affect the safety and efficiency of the road network. Any effects were considered to be no more than minor.

**Ms McLay** provided in her evidence, an extensive analysis of the planning instruments and had concluded that the proposal was consistent with objective and policy frameworks contained therein. She also noted her agreement with Mr Balchin's analysis of the planning instruments, and that the proposal would promote the sustainable management purpose of the RMA.

## 6.2 SUBMITTERS

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**Mr Wood** highlighted concerns about safety of the ROW with an additional property being served by it. He also outlined a concern regarding ROW maintenance. Mr Wood noted a concern about safety issues with cars entering the ROW when arriving from the CBD side of it and cars exiting.

## 6.3 COUNCIL

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**Mr Balchin's** s42A report was taken as read. He considered that the proposal was in accord with the objectives and policies of both the ODP and PDP and in alignment with the relevant provisions of the RPS and the NPS-UD.

Furthermore, he stated that the concerns of the submitter regarding additional ROW traffic and safety could be appropriately addressed through the imposition of consent conditions to upgrade the ROW as proposed by the applicant, to Council standards.

He recommended that consent be granted.

## 6.4 RIGHT OF REPLY

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**Mr Grieve** provided a formal right of reply that addressed several matters that had been raised at the hearing. These included responses to questions I had posed related to fencing and whether any further consents were required for the upgrading of the ROW.

He also outlined Mr Skerrett's view that while parked in proximity to the ROW entrance would obstruct visibility to some degree, that was a normal situation with many ROWs and driveways. He further noted that there was visibility beyond as vehicles approached the ROW.

Mr Grieve also addressed matters related to ROW maintenance and attached relevant provisions of the Property Law Act 2007 and Land Transfer Regulations 2018 relating to such matters.

A final version of draft conditions were attached to the reply as per my request, and these had been agreed by the applicant and Council.

## 7. MAIN FINDINGS

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The main findings that have led to this decision are as follows.



## 7.1 DISTRICT PLAN

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The New Plymouth District Plan is an operative document, and it was common ground that the proposal was to be considered as a non-complying activity, because it did not comply with several District Plan rules. Matters relating to the District Plan, are discussed elsewhere in this decision.

## 7.2 EFFECTS: RESIDENTIAL CHARACTER & AMENITY

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In respect of residential character and amenity, it is noted that s95 notification report had considered these matters and had concluded that any effects would be less than minor.

Ms McLay did not raise any matters related to residential character and amenity, and the Wood submission focussed on matters related to the ROW.

Mr Balchin had assessed matters related to residential character and amenity and observed as follows:

*“Proposed Lots 1 and 2 are both in excess of 450m<sup>2</sup> in area. Lots of 450m<sup>2</sup> in area or greater are anticipated by the ODP and PDP as controlled activities. Under the ODP the minimum lots size for a Controlled Activity is 450m<sup>2</sup>, in the PDP lots of 400m<sup>2</sup> in area are provided for as controlled activity (decisions yet to be made). Any future buildings within proposed Lot 2 would be restricted by the building controls contained within the District Plan. These include height limits, setback requirements, daylighting controls and site coverage controls. The application of these would in my opinion ensure any actual and potential effects on residential character and amenity values would be less than minor in nature. Similarly, this reflects the assessments made within the notification assessment made in 2020 which considered all immediately adjoining properties whose owners had not provided written approval<sup>4</sup>.”*

I note that the PDP requires well- functioning living areas and Mr Balchin advised that the subject site has sufficient space for such provision, though this is not required currently.

Having regard to the above assessment and noting that no concerns had been raised at the hearing regarding residential character and amenity, I conclude that any effects on residential character and amenity would be less than minor.

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<sup>4</sup> S42A Report- Para 36

### 7.3 EFFECTS: SERVICING

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It is proposed that the Lot 2 be connected to Council wastewater and water services, and the Council confirmed that was practicable.<sup>5</sup> In addition, both proposed lots are flat and appropriately sized to enable on-site disposal of stormwater.

A suitable flood free building platform for a dwelling on Lot 2 can also be provided.

Having regard to the above matters, I conclude that any effects resulting from the proposal in respect of wastewater, water, or stormwater, would be less than minor.

### 7.4 EFFECTS: TRAFFIC, RIGHT OF WAY AND CARPARKING

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- **Traffic Movements**

Mr Skerrett in his evidence was of the view that the proposal would generate potentially an additional 10 trips/day with an additional 1 trip at peak hour. This would be in addition to the current estimated 30 trips/day and 3 peak hour trips. He further noted that the increase in traffic movements on the ROW would not materially change the level of risk.

He was of the view that Tukapa Street had sufficient capacity to cater for the increased traffic without impacting on its efficiency or safety.

Mr Wood had highlighted his concern about traffic turning left into the ROW and safety concerns when traffic exits. Mr Skerrett noted that the ROW has 'excellent' sight distance in both directions which are well in excess of the relevant ODP requirements.

Mr Grieve in his reply further discussed the matter of parked cars potentially obstructing visibility for vehicles entering and exiting the ROW. He referenced Mr Skerrett's response to a question at the hearing where he noted that parked cars do obstruct visibility to some degree especially to the north of the ROW but that was a normal situation with ROW's and driveways/intersections around New Zealand. Apart from an area where two vehicles can park, the area further to the north toward the intersection is a no-stopping zone which provides for longer distance visibility. Mr Skerrett also believed that there was sufficient space for a vehicle wishing to enter the ROW to pull onto the shoulder in front of 249 Tukapa Street.

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<sup>5</sup> S42A Report- Paras 39-41

I further note the advice and conclusions reached by Mr Balchin in respect of ROW access onto Tukapa Street where he states:

*“One of the triggers for consent being required as a discretionary activity status is due to the crossing being located within 30m of an existing intersection. The intersection in question is the one between Tukapa Street and Nursery Place. Cross-roads, where crossing or intersections are directly across of another intersection are not preferred, however there are mitigating factors in this scenario which includes that Nursery Place is a short cul-de-sac street servicing residential-dwellings only.*

*A majority of these dwellings are independent aged living units. These factors overall contribute towards lessening the risk profile as detailed by Mr. Skerrett within the Traffic Assessment provided. Overall, it is my opinion that when compared to the existing environment that the addition of a single dwelling to the ROW would only result in additional adverse traffic safety effects at the crossing location at less than minor levels.”*

Having considered the evidence of Mr Skerrett and the assessment of Mr Balchin, I conclude that the additional traffic movements will not create any adverse effects that will be no more than minor. It is not considered that any increase in traffic will affect traffic capacity of the street or create safety concerns.

Based on the evidence of Mr Skerrett, I am satisfied that vehicles can enter and exit the ROW as done in many situations with care and that any effects from a traffic safety perspective are no more than minor.

- **Right of Way**

I was advised that the District Plan required a minimum legal access width of 4m and minimum carriageway width of 3m for rights of way serving two allotments. For a driveway the District Plan required a minimum legal access width of 3.6m and a formed width of 3m.

I have noted the advice of Mr Skerrett and Mr Sangar and that the ROW sealed width is required to be increased to 3m from the road entrance to the entrance of 249C. A passing bay is also to be installed and the ROW works are to include the provision of stormwater control measures.

As noted in the s42A report, the upgrade works would be solely the responsibility of the consent holder and there is no obligation or requirement for any other party to contribute to such works.

Mr Balchin outlined that the construction material for the width upgrades, or complete replacement, would be designed to resemble the existing sealed drive and a strip drain or nib

kerb would be required to address stormwater. Mr Skerrett at the hearing and in response to a question regarding the upgrade, advised that he recommends resealing of the ROW for its total width of widening, which includes the passing bay.

The upgrades proposed and reinforced by conditions of consent, would bring the standard of the ROW up to what would be expected for a ROW serving 3 to 6 allotments and likely improve operational arrangements. Given the legal width, grass berms will also be able to be retained in keeping with the existing residential character of the ROW though it is noted that it can be formed to a wider width than the 3m minimum.

Given the scope of the ROW upgrade, and that it comply with the Council's relevant requirements, I am of the opinion that this would address the concerns of Mr Wood.

I note however that maintenance of the ROW falls to the parties who have rights of access to it, and this applies regardless of this subdivision proposal. Therefore, maintenance matters are outside of the RMA process and are a civil matter and would already apply to the parties.

- **Carparking**

As outlined by Mr Balchin<sup>6</sup> the provision of carparking is no longer required due to the provisions of the NPS-UD. It is noted however, that when considering a discretionary activity Council can assess potential effects associated with the provision of parking. If parking was not to be provided on-site, then vehicles associated with the activities on the lots would need to park on Tukapa Street.

Mr Balchin was satisfied that sufficient space was available on Tukapa Street for vehicles to park and no concerns were raised with me about such an occurrence adversely impacting on the safe and efficient operation, provided parking is undertaken in a legal manner.

Due to the length of the ROW (50m) it is considered necessary that each of the proposed lots provides for on-site manoeuvring so that vehicles enter the existing ROW in a forward manner where on-site parking is provided. This has been imposed as a condition of consent to be registered on the Records of Title as a consent notice.

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<sup>6</sup> S42A Report- para 49

## 7.5 EFFECTS: CONSTRUCTION

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Any construction effects related to the proposal would be temporary in nature and would be able to be managed through the implementation of sediment and erosion controls as well as construction management plan which would also ensure measures are in place to allow for vehicles to pass during construction/upgrades.

Overall, any effect would be temporary, and in my opinion, will have a no more than minor effect.

## 7.6 EFFECTS: POSITIVE

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The proposal provides for an additional dwelling in an existing residential area that is in proximity to schools, shops, recreation, and employment opportunities. As noted by Mr Balchin and Ms McLay it promotes the objectives of the NPSUD which is a positive effect, notwithstanding the proposal is only for one additional dwelling.

The proposal will also be a catalyst for upgrading of the ROW including the provision of a passing bay and an increased seal width to serve the additional property.

## **8. OPERATIVE DISTRICT PLAN AND PROPOSED DISTRICT PLAN : OBJECTIVES & POLICIES**

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Mr Balchin set out a detailed assessment of the proposal against the District Plan policy framework in his s42A report which I concur with. I further note that Ms McLay agreed with this assessment.

Given this situation and that I was not presented with any views to the contrary I adopt Mr Balchin's assessment and conclude that the proposal is consistent with the relevant objectives and policies of the ODP.

In respect of the PDP, consideration is required to be given to it under s104(1)(b). However, while submissions have been heard, no decisions had been issued at the time of the hearing and therefore I have accorded little weight to it.

Notwithstanding this situation, I have noted Mr Balchin's assessment that the proposal would be able to achieve consistency with all of the relevant policies and objectives outlined in his s42A report. Ms McLay also agreed with that assessment. On that basis I do not consider it necessary to discuss the PDP further.

## **9. SECTIONS 104 & 104B: RESOURCE MANAGEMENT ACT 1991**

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Section 104 outlines the matters that the consent authority must have regard to, subject to Part 2 of RMA which include the following;

- Any actual and potential effects on the environment of allowing activity; and
- Any relevant provisions of a national environmental standard;
- Other regulations;
- Any relevant provisions of a national policy statement;
- Any relevant provisions of a regional policy statement, or proposed regional policy statement;
- Any relevant provisions of a plan or proposed plan; and
- Any other matters the consent authority considers relevant and reasonably necessary to determine the application.

Section 104C provides that the consent may be granted or refused, and, if consent is granted, that conditions may be imposed on the consent under section 108.

Any effects of the proposal can be appropriately mitigated; and that the District Plan provisions have been considered and the proposal does not offend the policy and objective framework.

From all of the above, I have considered matters to be given regard to in considering the proposal in terms of the RMA and conclude that having regard to the matters outlined above, that consent can be granted to the proposal.

## **10. OTHER MATTERS**

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### **10.1 NATIONAL POLICY STATEMENTS**

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I am required to consider the National Policy Statement for Urban Development 2020 (NPS-UD 2020) which came into effect in August 2020. It seeks to promote that Councils provide a sufficient supply of residential and business land to facilitate continued urban growth and the demands of the community to provide for their social, economic, and cultural wellbeing.

The proposal in my opinion generally aligns with the NPS-UD through the provision of additional residential living opportunities albeit one additional dwelling, and therefore is consistent with it. No alternative views were presented to me, and I noted the extensive analysis provided by Ms McLay, and that both she and Mr Balchin had reached the same

conclusion that the proposal was in alignment with it.

## 10.2 TARANAKI REGIONAL POLICY STATEMENT

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No matters were highlighted requiring any particular consideration of the RPS provisions. Both planners were of the opinion that the proposal was consistent with the relevant provisions of the RPS and the proposal consistent with the concept of sustainable management given the location of the subject site within the Residential Environment zone.

## 11. PART 2: RESOURCE MANAGEMENT ACT 1991

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I have had regard to all Part 2 matters. The purpose of the RMA is to promote sustainable management by enabling people and communities to provide for their social, economic, and cultural wellbeing, while avoiding, remedying, or mitigating any adverse effects of activities on the environment.

- **Section 5 - Purpose**

Section 5 details the purpose of the Act which is to achieve sustainable management. Sustainable management is defined as '*... means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety...*'.

Having considered the purpose of the RMA, the proposal allows for the management and development of natural and physical resources through the subdivision and use of land for residential purposes. This enables effective use of the land resource within the existing residential area.

The imposition of consent conditions will in my opinion mitigate, avoid, or remedy any potential effects and that any such effects would be no more than minor. The proposal does enable people to provide for their economic and social well-being, but at the same time ensuring any effects are able to be mitigated such as those relating to the upgrading of the ROW to meet appropriate Council requirements.

Therefore, the sustainable management purpose of the RMA can be achieved.

- **Section 6 - Matters of National Importance**

This section of the RMA outlines matters of national importance that should be recognised and provided for. No such matters were raised with me.

- **Section 7 - Other Matters**

Section 7 outlines various matters that decision makers shall have regard to achieve the purpose of the RMA.

Three matters of relevance include *“the efficient use and development of natural and physical resources,”* and *“the maintenance and enhancement of amenity values.”*

In respect of s7(b) and s9(c), the proposal has demonstrated that it is consistent with surrounding residential land uses and that any potential adverse effects associated with the ROW can be mitigated through conditions of consent.

- **Section 8 - Treaty of Waitangi**

This section requires those involved in exercising RMA functions and powers relating to managing the use, development and protection of natural and physical resources shall take into account, the principles of the Treaty of Waitangi.

No matters relating to the Treaty of Waitangi were brought to my attention.

Having considered s5-7 of the RMA, I believe the proposal is consistent with Part 2 and promote the sustainable management purpose of the RMA.

## **12. CONCLUSION**

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I have considered all matters placed before me including all application documentation, evidence, submissions, and subsequent statements made by the various parties at the hearing and the section 42A report and associated reports from Council staff, together with the relevant RMA and District Plan provisions.

I have relied on the expert technical evidence presented by the applicant and the Council, and no alternative expert evidence was presented that challenged that evidence.

Overall, I consider that the proposal will not result in any actual or potential effects on the environment that would be contrary to promoting sustainable management of natural and physical resources in accordance with sustainable management purpose of the RMA.



I am of the opinion that any effects can be appropriately addressed through the mitigation proposed by the applicant and the imposition of relevant consent conditions particularly in respect of upgrading of the ROW to address the concerns of the submitter, and therefore it is appropriate to grant consent to the proposal.

### **13. DECISION**

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***Pursuant to sections 104, 104B and 108 of the Resource Management Act 1991, the New Plymouth District Council grants consent to the resource consent application of Ms Kelsey Kearns, being a subdivision of Lot 2 DP 7532 and located at 249C Tukapa Street New Plymouth, in accordance with the application documentation and any subsequent amendments made to it, except as modified by any condition of consent; and subject to the following conditions:***

#### **General Accordance**

1. The use and development of the land shall be as described in the application submitted to Council by Bland & Jackson entitled “Resource Consent Application: 2-Lot Residential Subdivision” 24 August 2020 and subsequent evidence to and any decisions arising from the New Plymouth District Council Planning Hearing held on 29<sup>th</sup> July 2020 on application SUB20/47579 & in accordance with the approved scheme plan prepared by Bland & Jackson entitled “Lots 1 and Being a Proposed Subdivision of Lot 2 DP 7582” – Revision R01 – Project No. 9566 – Date 30/01/20.

#### **Prior to Commencement of Construction**

2. At least 10 working days prior to the commencement of construction works along the ROW the consent holder shall notify all other Right of Way users of the commencement date of works and provide;
  - A contact number for the site manager/contactor;
  - Details regarding the provision of pedestrian passing at all times; and
  - Details regarding any anticipated disruption to the provision of vehicle access.
3. Prior to commencement of construction works, the consent holder shall provide evidence to the Council’s Environmental Planner – Monitoring Team that that the above engagement has occurred in accordance with condition 2 above.

#### **Section 223 Approval**

4. The final survey plan shall conform with the subdivision scheme plan submitted with application no: submitted with application **SUB20/47579** submitted to Council by Bland & Jackson and entitled “Lots 1 and Being a Proposed Subdivision of Lot 2 DP 7582” – Revision R01 – Project No. 9566 – Date 30/01/20.

5. A memorandum of easements shall be shown on the survey plan for the purposes of conveying water, draining sewer, power, telecommunications, and the Right of Way (ROW).

#### **Section 224 Certification**

6. The application for certificate under section 224(c) of the RMA shall be accompanied by certification from a professionally qualified surveyor or engineer that all the conditions of the subdivision consent have been complied with and that in respect of those conditions that have not been complied with.
  - i. a completion certificate has been issued in relation to any conditions to which section 222 applies;
  - ii. a consent notice has been or will be issued in relation to any conditions to which section 221 applies; and
  - iii. a bond has been entered into by the subdividing owner in compliance with any condition of subdivision consent imposed under section 108(2)(b).

#### **Water Supply**

7. An individual water connection incorporating a manifold assembly shall be provided for all new lots within the development in accordance with the NPDC Development & Subdivision Infrastructure Standards.
8. A water meter shall be provided for all new lots within the development.
  - a) An application for the connection will need to be lodged with the Council with the appropriate fee.
  - b) Upon approval, the connection is to be installed by a Council approved contractor at the consent holder's cost.
  - c) An As Built Plan shall be submitted to the Reticulation Engineering Officer.
9. Where required, existing water connections shall be upgraded to a manifold assembly type. Confirmation of this is required.
10. Confirmation that there are no cross-boundary water connections shall be provided to Council.

#### **Advice Notes**

- a) An application for the connection will need to be lodged with the Council with the appropriate fee.
- b) Upon approval, the connection is to be installed by a Council approved contractor at the consent holder's cost.
- c) An As Built Plan shall be submitted to the Reticulation Engineering Officer.

- d) The consent holder shall cover the cost of each water meter as part of the service connection fee. Each meter shall be supplied and installed by Council.

### **Wastewater**

11. A sewer connection shall be provided for all lots within the development. All new reticulation shall be designed and constructed to the requirements of:
- i. The Building Act,
  - ii. The NPDC Consolidated Bylaws 2014 Part 14 Wastewater Drainage,
  - iii. The Council's Land Development & Subdivision Infrastructure Standard.

#### **Advice Note**

- a) For new connections an application with the appropriate fee is to be made to Council, and upon approval this connection is to be installed by a Council approved contractor at the consent holder's cost.

### **Stormwater Disposal & Building Platforms**

12. A report shall be provided from a suitably qualified person to confirm that there is available within Lot 2, a stable flood free building platform suitable for building foundations in accordance with the requirements of the New Zealand Building Code B1. The report shall include:
- i. That a stable flood free building platform suitable for building foundations in accordance with the requirements of the New Zealand Building Code B1 is available within Lot 2.
  - ii. Detail any recommendations requiring specific building foundations or stormwater controls that shall be subject to Consent Notice under Section 221 of the Resource Management Act 1991.
13. Confirmation is required that existing soak holes are contained wholly within the boundaries of Lot 1.
14. Secondary flow paths shall be shown on a plan and shall not be across private property.

### **Right of Way (RoW) Upgrades**

15. The existing right-of-way up to the western boundary of proposed Lot 1 shall be upgraded so it is formed to the requirements of the New Plymouth District Plan and the Council's Land Development & Subdivision Infrastructure Standards including;
- Widening of the sealed portion of RoW to 3m;
  - The pavement widening and surfacing shall be designed and constructed to industry standards to form a homogeneous pavement, free from exposed joints;

- Provision of on-site storm water control; and
  - Installation of a single passing bay (widen to 5.5m) at the location recommended within the traffic assessment undertaken by AMTANZ Ltd and dated 27<sup>th</sup> April 2022
16. Any excavation works as part of the subdivision must be kept wholly within the boundaries of the site including the right of way, and not encroach on to neighbouring land or road reserve.
  17. The consent holder responsible for earthworks must repair, to the satisfaction of Council, damaged roads, channels drains, vehicle crossings and other assets vested in council adjacent to the land where the building/construction work takes place. The consent holder is required to pay for any damage to the road or street that results from their development and must employ a council approved contractor to carry out such work.
  18. Works undertaken on site associated with the subdivision shall employ the best practical means of minimising the escape of silted water or dust from the site. Sediment and erosion controls shall detail the following.
    - i. Measures to avoid silt and sediment runoff from all enabling earthworks into any adjoining sites;
    - ii. Measures to minimise dust generation;
    - iii. Remedial measures for exposed earthworks areas.
    - iv. Measures for preventing tracking of material onto the Road network, and if any occurs measures to clean up such material;

**Advice notes:**

1. **Consent Lapse Date:** *This consent lapses on **19 September 2027** unless the consent is given effect to before that date; or unless an application is made before the expiry of that date for the Council to grant an extension of time for establishment of the use. An application for an extension of time will be subject to the provisions of section 125 of the Resource Management Act 1991.*
2. *Any retaining wall that falls outside the scope of Schedule 1 of the Building Act (2004) shall require a building consent*
3. *A Development Contribution for off-site services of \$9049.86 plus GST is payable by the applicant and shall be invoiced separately. The 224 release of this subdivision will not be approved until payment of this contribution is made.*
4. *Any excavation taking place within road reserve will require an approved Corridor Access Request (CAR). For additional information refer to the “National Code of Practice for Utility Operators - Access to Transport Corridors”. A CAR along with a Traffic Management Plan*

*must be submitted a minimum of 5 working days before an operator intends to start work and all costs incurred shall be at the consent holder's expense.*

***Reasons are outlined in the decision but include;***

- a. The proposal is in accord with the policies and objectives of the District Plan. It provides for the sustainable management of natural and physical resources through the provision of an additional residential lot in an existing residential area.*
- b. Having regard to section 104(1) of the Resource Management Act 1991, the actual and potential adverse effects on the environment of granting consent will be able to be avoided, remedied, or mitigated by the imposition of conditions of consent. This is particularly so in respect of the requirements to upgrade the ROW serving the proposal and existing properties to mitigate any potential traffic safety and generation issues.*
- c. The proposal meets the various statutory provisions to be given regard in terms of the Resource Management Act 1991 including the threshold tests as outlined in s104D.*
- d. In all the circumstances, the proposal considered to be consistent with the purpose and principles of the Resource Management Act 1991.*



William Wasley  
**Commissioner**  
**19 September 2022**