

**BEFORE THE NEW PLYMOUTH DISTRICT COUNCIL**  
**INDEPENDENT HEARINGS COMMISSIONER MARK ST. CLAIR**

**UNDER**

the Resource Management Act  
1991 ("**RMA**")

**IN THE MATTER**

of an application under section  
88 of the Act by **ROBE &  
ROCHE INVESTMENTS  
LIMITED** to the **NEW  
PLYMOUTH DISTRICT  
COUNCIL** for a subdivision to  
create 113 residential lots and  
additional road and recreational  
reserves at 56 Pohutukawa  
Place, Bell Block.  
(SUB21/47803)

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**RIGHT OF REPLY FOR THE APPLICANT  
ROBE & ROCHE INVESTMENTS LIMITED**

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**MAY IT PLEASE THE INDEPENDENT HEARINGS COMMISSIONER**

**Right of Reply Introduction**

1. These submissions in reply respond to matters arising at the hearing, as well as address further information and evidence provided in response to the Commissioner's Directions/Minutes #5 and #6 of 15 April 2025 and 30 April 2025 respectively and/ or by way of reply. The fact that not every aspect of Mr Whittaker's Supplementary Planning Statement dated 15 April 2025 is addressed in reply should not be taken as accepting all of that Supplementary Planning Statement. Much of what Mr Whittaker covered (in the context of issues in contention) had been anticipated and addressed in the applicant's opening submissions and/or in their expert evidence.
  
2. For example, the applicant sees no need to revisit the land use consent earthworks (requiring a new separate land use consent application) issues – given that those issues have been well covered now – and, moreover, given the Commissioner's directions near the close of the hearing on 15 April 2025 - that the applicant's opening legal submissions (and related expert evidence) in this context had been accepted and was unchallenged – and that the original application did provide scope etc – and that the final consent conditions (to be provided by the expert planning witnesses following conferencing and preparation of their Joint Witness Statement JWS (with the proposed set of conditions addressing the matters raised at the hearing and as directed by the Commissioner on 2 May 2025) – were to factor in the Commissioner's directions in that regard (as they now do). However, this reply does of course address the scope of what those earthworks (and conditions) cover as directed by the Commissioner (and as canvassed by counsel for the applicant both at the hearing (following those directions) – and now in this reply (as further directed after further comment from Mr Whittaker (and Messers Zieltjes and Lawn)).



### **Earthworks Applied For**

3. As accepted - earthworks were always part of the original application - and they are within the scope of the original application – and, therefore, are within the scope of the consent conditions in respect of same in the context of both subdivision and land use (avoiding a future new land use consent application re same); as canvassed at the hearing on 15 April 2025.
  
4. The Commissioner will recall that Mr Whittaker noted that he was still uncertain as to what those earthworks conditions would cover – and counsel for the applicant was directed to advise the Commissioner in respect of same at the hearing – which he did. Due to further subsequent queries by Mr Whittaker, however, the Commissioner also directed counsel to include same in the applicant's Right of Reply.
  
5. As advised at the hearing, earthworks will entail, as per the original application, the following matters:
  - a) Earthworks – bulk earthworks – as per the amended Red Jacket Plan/Drawings included in the evidence of Luke Bunn for, and discussed and provided at, the hearing i.e. the latest version that responded to submitters with the new road alignment. Those earthworks were in respect of roading (and the infrastructure underneath the roading).

The Commissioner will further recall that opening legal submissions, inter alia, referred to the original application and the *Site Earthworks Plan Drawing No. 100-433, Job No. 3917, dated for approval on 25/05/21.*

The updated version of that plan, which responded to the submitters in the context of the new road alignment in this context, being *Site Earthworks Plan, Sheet No. C8-1 Rev A, File No. DWG-3917-C-01, dated 12/03/25* (being the

version that Mr Bunn provided in evidence prior to the hearing – and which was discussed and referred to at the hearing).

- b) Regarding cultural aspects – land disturbance across the entire site which is covered under SASM-R17 – which concerns land disturbance within 50 metres of a SASM.

As Mr Zieltjes helpfully noted at the hearing (on 15 April 2025 in response to Mr Whittaker after his supplementary evidence) – such earthworks are to be in the context of skimming the top layer of soil only (and leaving the ground deeper underneath). Mr Lawn advised that he also agreed with Mr Zieltjes' view.

As such, bulk earthworks are limited to the roading layout as shown in *Site Earthworks Plan, Sheet No. C8-1 Rev A, File No. DWG-3917-C-01, dated 12/03/25*, and any earthworks outside of this is limited to the stripping of topsoil for archaeological/cultural investigation only under SASM-R17. This has been addressed in the draft conditions prepared under the JWS of the planning witnesses dated 9 May 2025, which outlines the scope of the land use consent under draft conditions 3 (a) and (b).

- c) Finally, counsel confirmed that any bulk earthworks under PDP Rules EW-R10 or EW-R13 for building activities on individual lots in the future – will be applied for in the future, if and when required (i.e. as separate land use consents), at the relevant time(s).

#### **Reply Evidence Lawrence McIlrath**

- 6. As the Commissioner will recall, on 14 April 2025 the Commissioner asked Mr McIlrath to provide further evidence with this reply in respect of his primary Statement of Evidence dated 28 March 2025 – and, in particular, paragraph 7.3 thereof.



7. In order to address those matters - Mr McIlrath has produced a Reply Brief of Evidence which is now included with this Right of Reply for the applicant.

#### **Section 176 RMA Written Consent of Requiring Authority**

8. Also during discussions at the hearing on 14 and 15 April 2025 the Commissioner directed counsel for the applicant to obtain the written consent of the New Plymouth District Council, as requiring authority in respect of land within the application subject to a designation, pursuant to section 176(1)(b) of the RMA.
9. That written consent has now been obtained – and included with this Right of Reply are copies of counsel's letter to New Plymouth District Council dated 1 May 2025 in respect of same – and the written consent of the New Plymouth District Council, as requiring authority, accordingly provided by way of letter dated 5 May 2025. For avoidance of doubt, Mr Lawn notes that the plan included in the Council's section 176 letter of written consent dated 5 May 2025 has the same lot boundaries as the same plan in the planning JWS, 9 May 2025 (albeit those plans have different dates of 01/05/2025 and 08/05/2025). Mr Lawn further notes that the planning JWS plan (dated 08/05/2025) was updated to show the staging and balance lot of each stage as per Mr Watkins' request.

#### **Planning JWS 9 May 2025 Issues**

10. Counsel received a copy of the planning JWS on 9 May 2025.

#### ***Issues Raised***

11. The JWS records at paragraphs 6.1 – 6.4 and 7.1(c) as follows:

"6.1 During conferencing, the issue of consent term was raised.

6.2 Mr Lawn raised this matter in his evidence to the hearing (Appendix G, Mark up to conditions, comments under General Advice notes), and during the hearing confirmed that a 10 year consent term is sought by the applicant.

6.3 The planning experts were unsure if there was scope for the consent term to be extended, and proposed that this be addressed in the applicants closing submissions.

6.4 The matter was discussed and providing there is scope, the planning experts settled on a consent term of 7 years, which provides for a total timeframe of up to 10 years to complete title under the RMA.

7.1 All planning experts agree:

(c) that a consent term of 7 years is appropriate, subject to legal submissions confirming scope."

12. Also provided with the abovementioned planning JWS in Appendix 3 Proposed Conditions of Consent was new consent condition 5 which provides:

"5. This consent lapses on XXXXXXXX 2032 unless the consent is given effect to before that date; or unless an application is made before the expiry of that date for Council to grant an extension of time. An application for an extension of time will be subject to the provisions of section 125 of the Resource Management Act 1991."

13. The abovementioned JWS wording was, with respect, confusing to counsel - in that this is an issue in respect of the lapse date – rather than term - of the consent; for reasons elaborated on below.

14. Counsel has since discussed matters with Ms Hooper and Mr Lawn (on or about 15 May 2025) who have both confirmed that abovementioned condition 5 was being drafted in the context of an appropriate lapse date period (or term) – not the "term" of the consent (as per the JWS wording); and, they have also confirmed that the discussion between the planners in respect of same was related to the lapse date rather than the "term" as (erroneously) stated in the JWS. It appears,



however, that abovementioned proposed consent condition 5 is worded correctly in this context (and in the context of section 125 RMA).

### ***Facts and Evidence***

15. The Applicant (in the application for consent dated 26 May 2021) did not specify the term of consents it sought; nor did it specify that it sought to limit its consents term (which is not sought by the applicant). The starting point, therefore, in this case, is that – if consents are granted – the RMA provides that the terms are unlimited (if they are given effect to before they lapse) - which is normally the case (for subdivision and land use consents) – and counsel notes that there is no requirement under section 88 or Schedule 4 RMA to include a term of consent or a lapse date for a consent in the application – and in counsel's experience most applications don't include same.
16. Neither did the original application specify any lapse date (as is commonly the case in such applications). Clearly the evidence provided throughout this case, however, has requested and outlined in this context that the subdivision contemplated is likely to take 5 to 8 years – and effects assessments, recorded in some of the evidence in this case, have been based on that timeframe.
17. The original application dated 26 May 2021 at paragraph 3.4 (and throughout the application generally) clearly discusses staging of the development over time; and, the subsequent Addendum at paragraph 2.1 also discusses sequential development over time. A staged development, therefore, was expressly provided for in the consent application – and the time frame of that staging now required has been well ventilated throughout the evidence and hearings process in this case.
18. Further to the original application and subsequent Addendum in this context, also, see in this regard the primary evidence dated 28 March 2025 of Ben Hawke (paragraphs 6.2, 6.3); Lawrence McIlrath (in the context of consistency of scale

and anticipated annual growth and likely realisable yield at paragraphs 8.2(b) and 8.7); Ben Lawn (at paragraphs 8.13, 8.14 and 8.21 – and Appendix G – Draft Conditions, General Advice Note, f), page 15). And the JWS Transport evidence dated 7 March 2025 (at paragraphs 5.4, 6.14 and 10.3(b) – also being relied on in terms of the traffic experts effects analyses). The Officers Report dated 21 March 2025 in this regard also notes, for example, the staging of the development (paragraph 26), and that the additional traffic from the development will be introduced over a number of years (at paragraph 97 referring to the JWS Transport) – and notes matters such as design and approval of final engineering design (paragraph 120) – which it is submitted will take reasonable time to complete.

19. The Commissioner will also recall questions to Mr Hawke and Mr Lawn (on 14 April 2025 during the hearing) about the likely timeframe for the development - which was advised to be some 5 to 10 years after the grant of consent.
  
20. The Commissioner will recall questioning Mr Hawke about the development stages and whether or not he thought he could have it all done in 6 to 9 years? Mr Hawke discussed that time frame and the necessity of that time frame in his view – influenced by the current restraint regarding some services and infrastructure at the moment – such as sewer and water – which needs to be developed and completed in the early stages of the subdivision and development. Mr Hawke advised that those matters would take some time to complete – meaning that later stages would, therefore, be potentially within that 6 to 9 year time frame. The Commissioner also discussed with Mr Hawke section 8.3 of his evidence and the roading in terms of the Parklands to Sampson Avenue connection to be completed – which Mr Hawke noted would be another infrastructure development to be completed in the later stages of the subdivision. Relative to those discussions the Commissioner also discussed with Mr Bunn the main sewer line upgrade required during the course of questioning him – and the timing of same. Mr Bunn during that questioning noted that the options assessments had been completed for the renewal – but final design needed to be confirmed – and that those options



assessments also factored in and included Summerset Retirement Village. Mr Bunn also noted that while the draft consent conditions within his discipline (as discussed at the hearing at that time) had received input by the Council from Mr Sanger – Mr Bunn understood that that input was based on the original designs proposed in 2021 -- and that over the last 4 years there had been changes to those designs (such as stormwater systems – amended in response to consultation with Puketapu Hapu) – and Mr Bunn observed that consent conditions needed to be amended to better align with the new designs. The Commissioner will also recall discussing with Mr Miller the matters discussed with Mr Hawke in terms of section 8.3 of Mr Hawke's evidence as noted above.

21. Mr Lawn was also specifically queried (by the Commissioner) on his suggested 10 year lapse period (in his abovementioned Appendix G, Draft Conditions, General Advice Note f) page 15, of his primary evidence) – and the Commission noted to Mr Lawn that the TRC consents lapsed after 5 years in this context. The Commissioner will also recall discussing with Mr Lawn the staged subdivision process and the interplay with section 224 RMA – and various matters that needed to be completed or achieved, by the consent holder, prior to 224 in that regard.
22. Therefore, all parties were squarely on notice, and well aware, that the subdivision (and its effects) would likely take that amount of time for the reasons extensively canvassed in evidence (and including at the hearing) – and there is, therefore, no issue, it is respectfully submitted, with now imposing condition 5 in terms of a 7 year lapse date. In this regard it should also be recalled that some effects are potentially less over a longer period (for example – traffic effects as per the abovementioned JWS Transport).
23. It must also be borne in mind that the application was lodged over four years ago – and the consultation undertaken by the applicant and matters agreed with key stakeholders, such as Puketapu Hapu, has resulted in far more requirements on the applicant as agreed – than were envisaged by the applicant and its consultants when the application was lodged in 2021.

24. It is submitted that this is evident in, for example, some of the proposed consent conditions now tabled with the planning JWS dated 9 May 2025 - such as the following: conditions 6-10; conditions 11-16; conditions 17 and 19; conditions 20-23; conditions 34-36.
25. Also – there are conditions which require certification of management plans – such as conditions 28 and 29 – which require the Council to certify such plans for the consent holder – and, with respect, in counsel's experience (and in the experience of various other professionals that work in the RMA industry in New Plymouth) – Council is not always that quick to certify such plans in a timely manner. Things, such as this, take time (and often more time than might be anticipated).
26. As noted, some of those consent condition amendments have come about due to amendments to design and other details of the application (largely due to good faith consultation with Puketapu Hapu) – and, as the Commissioner will be aware – such amendments may be made until the close of a hearing (if they are within the scope of an original application).

### ***Law***

27. The predominant relevant provisions of the RMA in the context of these issues are sections 123 and 125:

#### **123 Duration of Consent**

Except as provided in [section 123A or 125],-

- (a) ....
- (b) Subject to paragraph (c), *the period for which any other land use consent, or a subdivision consent, is granted is unlimited, unless otherwise specified in the consent.*
- (c) The period for which any other coastal permit, or any other land use consent to do something that would otherwise contravene section 13, is granted is such period, not



exceeding 35 years, as is specified in the consent and if no such period is specified, is 5 years from the date of the commencement of the consent under section 116:

- (d) The period for which any other resource consent is granted is the period (not exceeding 35 years from the date of granting) specified in the consent and, if no such period is specified, is 5 years from the date of commencement of the consent under section 116.

(emphasis added)

28. Therefore, the starting point for subdivision and land use consents, under section 123, is at the term for which they are granted is unlimited – unless otherwise specified in the consent. Section 125 provides as follows:

**125 Lapsing of consent**

[(1) A resource consent ***lapses on the date specified in the consent or, if no date is specified,***

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- (a) 5 years after the date of commencement of the consent, if the consent does not authorise aquaculture activities to be undertaken in the coastal marine area: or
- (b) 3 years after the date of commencement if the consent does authorise aquaculture activities to be undertaken in the coastal marine area.]

[(1A) However, a consent does not lapse under subsection (1) if, before the consent lapses,-

- (a) The consent is given effect to; or
- (b) An application is made to the consent authority to extend the period after which the consent lapses, and the consent authority decides to grant an extension after taking into account-
  - (i) whether substantial progress or effort has been, and continues to be, made towards giving effect to the consent ; and
  - (ii) whether the applicant has obtained approval from persons who may be adversely affected by the granting of an extension; and
  - (iii) the effect of the extension on the policies and objectives of any plan or proposed plan.]

[(1B) Sections 357A and 357C to 358 apply to subsection (1A)(b).]

[(2) For the purposes of this section, a subdivision consent is given effect to when a survey plan in respect of the subdivision has been submitted to the territorial authority under section 223, but shall thereafter lapse if the survey plan is not deposited in accordance with section 224.]

[(3) This section is subject to section 150G.]

(emphasis added)


29. Therefore, section 125(1) is clear (in the circumstances of this case) that a default lapse period of 5 years applies – if the consent does not expressly specify a longer or shorter period – and if not given effect to within that 5 years (after the date of commencement of the consent). In terms of section 125(2), a subdivision consent is given effect to when a survey plan in respect of the subdivision has been submitted to a territorial authority under section 223, but thereafter lapses if the survey plan is not deposited in accordance with section 224.
30. Given that a consent can lapse “*on the date specified in the consent*” (unless given effect to) – this wording clearly contemplates expressly providing a longer or shorter period in the consent - as a matter of law - other than the 5 year default period – and does not impose an upper (or lower) limit on the specified date within the section itself.
31. In this regard – section 34A RMA provides the Commissioner with delegated authority and the powers to hear the application - and to impose conditions on the consent, if granted, pursuant to section 108 RMA.
32. Under section 108(1) the Commissioner may (within certain parameters) grant the resource consent on any condition that the consent authority considers appropriate.
33. It is submitted for all the reasons provided in all of the evidence canvassed in this case and in this Right of Reply that is appropriate for the Commissioner to impose abovementioned proposed condition 5 if the consents are granted – and the applicant respectfully requests that the consents be granted with that condition imposed on that basis – particularly to allow reasonable time for the applicant to perform or satisfy the conditions of consents – which is required to give effect to the consents.



34. And, it is respectfully submitted, that proposed condition 5 is also appropriate in the circumstances of this case – given the scale and district and regional importance of the proposal – and given the lengthy and exacting consenting process – and the significant infrastructure to be developed when moving between stages.
35. It is logical, and entirely appropriate, to have a slightly longer lapse period of 7 years (rather than the default 5 years) for all of these reasons.

**Concluding Comments**

36. It is respectfully submitted that all other issues raised in the hearing have been thoroughly canvassed in the application, all of the evidence and further evidence, legal submissions, and discussions during the course of, and after, the hearing.
37. Finally, the agreed consent conditions (tabled by the planning witnesses with their JWS of 9 May 2025) are accepted by the applicant; and provide future certainty for all parties, and achieve sustainable management, in my respectful submission.



**SWA Grieve**  
**Counsel for Applicant**  
**23 May 2025**