



Te Kaunihera-ā-Rohe o Ngāmotu

New Plymouth District Council

NOTIFICATION REPORT AND NOTIFICATION DECISION *SUB20/47579*

Applicant:	Scott and Kelsey Kearns
Site Address:	249C Tukapa Street, New Plymouth
Legal Description:	Lot 2 DP 7532 held in TN202/76
Site Area:	1139m ²
Zone:	Operative District Plan: Residential A Proposed District Plan: General Residential
District Plan Overlays:	Operative District Plan: N/A
Date consent application received:	24 August 2020
Further information requested/report commissioned:	N/A
Further information/report received:	N/A

PURPOSE OF THIS REPORT

1. The purpose of this notification report is for the Council to decide whether or not the public or specific parties should be notified of a proposal requiring resource consent to give them an opportunity to have their say on the proposal. This report is not to consider whether or not resource consent should be granted; that will be a matter for a subsequent report.

PROPOSAL

2. The applicant proposes to subdivide 249C Tukapa Street, New Plymouth which has an area of 1139m² into two lots (refer to Figures 1 and 2 on the following page). The subdivision will create:
 - Lot 1 of 460m² (+145m² ROW) containing the existing habitable building; and
 - Lot 2 of 455m² (+104m² ROW and 47m² access) to the rear of the site.
3. Proposed Lots 1 and 2 will share the same access from the shared ROW off Tukapa Street with Proposed Lot 1 having a 12.2m ROW easement over Proposed Lot 2. The minimum carriageway and legal width is achieved for the proposed ROW, as is the existing ROW. The attached garage/shed to the west of the existing dwelling will be removed to allow for access to Proposed Lot 2. Parking for proposed Lot 1 will therefore be moved 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 manoeuvring.
4. As the proposed subdivision requires consent to add a further dwelling to an existing ROW the applicant has sought to obtain written approval from the other existing ROW users. Written approval was obtained from the owner of 249A Tukapa, however the neighboring allotment, 249B Tukapa, has not provided written approval. This is despite consultation efforts and mitigation measures proposed by the applicant. The site (249C), 249A and 249B Tukapa Street are all identified on Figure 1 below.
5. Through the consultation carried out by the applicant the applicant has proposed the following mitigation to help mitigate effects on 249B Tukapa Street.
 - Construct a new close board 1.8m high fence along the common boundary of the two properties and at the applicants cost;
 - Construction of any new dwelling in Proposed Lot 2 is to be undertaken within 12 months of the foundations being laid (covenant);
 - Adherence to all NPDC bulk, height and location requirements when constructing a dwelling within Proposed Lot 2;
 - Maintain existing entrance way location of the ROW;
 - Enter into a covenant restricting building heights to a single storey within Proposed Lot 2;
 - Pay for any ROW upgrades deemed necessary by NPDC during the subdivision consent process; and
 - Pay for any infrastructure upgrades deemed necessary by NPDC during the subdivision consent process.

The owners of 249B Tukapa Street are amenable to the items described above. However, they consider that the mitigation measures proposed do not fully alleviate their concerns and have requested several additional measures which the subdivider is not willing to accept.

6. As such the applicant has only been able to obtain the written approval of one of the two other ROW users.

SITE AND SURROUNDING AREA DESCRIPTION

7. The subject site is generally flat and contains an existing dwelling with connections to Council reticulated sewer and reticulated water. Vehicle access will be made available to the north of the subdivision site via the ROW described above. An existing garage/shed is located to the western side of the dwelling which is proposed to be removed as part of this development to form the access leg to Proposed Lot 2. The front of the existing house includes a small deck and a paved parking area. The site is fenced and there are also large well established trees along portions of both the eastern and southern boundaries of the site.
8. The immediate and surrounding area is typical of a Residential Environment Area with many dwellings being setback from boundaries, landscaped and one or two stories in height. The site is in close proximity to shops on the corner of Wallath Street and Tukapa. Tukapa Street is identified as an Arterial Road.
9. The subject site is one of three allotments served by the ROW. Each of the three allotments currently contain a single dwelling and the allotments are of a comparable size to the subject site.



Figure 1: Location Plan



Figure 2: Subdivision Scheme Plan

ADEQUACY OF THE APPLICATION

10. The applicant has provided an assessment of effects of the activity on the environment (AEE). The AEE is supported by the written approval of one of the remaining two ROW users and also details the consultation carried out with the remaining ROW user who has not provided written approval. The consultation documentation includes the correspondence between the applicant's lawyer and the owners of 249B Tukapa Street (Mike and Sarah Wood).
11. The AEE concludes that the subdivision is an appropriate use for the land and is consistent with the principals of sustainable resource management and is consistent with the relevant objectives and policies contained in both the Operative and Proposed District Plans. However, and as the written approval from the owners of 249B has not yet been obtained the applicant has requested that the application be Limited Notified to the owners of 249B Tukapa Street.
12. I have assessed the application under Section 88 of the Resource Management Act 1991 (RMA) and have determined that the application is complete and contains sufficient information to allow for an assessment of effects as required for notification.

STATUTORY PROVISIONS AND STATUS OF THE ACTIVITY
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National Environmental Standards

13. Regulation 5(5) of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES) describes subdivision as an activity to which the NES applies where an activity that can be found on the Ministry for the Environment Hazardous Activities and Industries List (HAIL) has occurred.
14. I have checked the TRC Selected Land Use register and NPDC's record systems and there is no evidence that the site has contained an activity listed on the HAIL. Therefore the NES does not apply.

Operative New Plymouth District Plan (2005)

15. The site is located within the Residential A Environment Area and contains no overlays.
16. The site does not contain a Statutory Acknowledgement Area.
17. The proposal requires consent under the following District Plan rules:

Rule #	Rule Name	Status of Activity	Comment
Res54	Increased use of an existing ROW	Discretionary	The proposed subdivision will increase the number of users by one allotment.
Res56	Minimum allotment size in Residential A Environment Area	Controlled	Both lots are less than in excess of 450m ² excluding land used for access purposes.
Res59	Requirement to provide practicable vehicular access from a road	Discretionary	The minimum carriageway width of 3m and minimum legal width of 4m for a right of way serving three lots is achieved. However the existing access point to the ROW is within 30m of an intersection and therefore requires consent under Res59.
Res61	Requirement for services – stormwater disposal, water	Controlled	The existing dwelling has connections to Council's reticulated sewer and water. There is existing capacity for Proposed Lot 2 to also

	supply and sewage disposal		connect to water and sewer and both lots are sufficiently sized to dispose of stormwater onsite.
Res62	Requirement for a building platform	Controlled	Proposed Lot 1 contains an existing dwelling. Given the size, flat contour and absence of any flooding risks it is considered that a suitable building platform on Proposed Lot 2 can be achieved.
Res63	Requirement for existing buildings to meet standards in relation to new boundaries	Controlled	Proposed Lot 1 contains an existing dwelling. The application confirms that the dwelling within Proposed Lot 1 will meet all the relevant bulk and location rules when the new boundaries are created. Further there is considered to be suitable space within Proposed Lot 2 to enable a dwelling to be constructed of which meets all of the relevant bulk and location requirements set out in the plan.

18. In circumstances where there are differing activity statuses, the most severe applies in determining overall activity status. The proposal is therefore a Discretionary Activity under the Operative New Plymouth District Plan being the highest status under the above Operative Plan and NES rules.

Proposed New Plymouth District Plan (Notified 23 September 2019)

19. The site is located within the General Residential Environment Area and contains no overlays.
20. No decisions have yet been made on the Proposed Plan.
21. There are no rules with immediate legal effect that apply to this proposal.

NOTIFICATION DECISION

22. The Council as consent authority must follow the steps set out in the section below, in the order given, to determine whether to publicly notify an application for a resource consent (s95A(1)).

PUBLIC NOTIFICATION ASSESSMENT

EFFECTS DISREGARDED

The following effects have been disregarded for the purposes of the notification decision and s104 assessment (s95D, 95E and 104(2)&(3)(a)):

- The permitted baseline has not been applied as subdivision cannot occur as a permitted activity under the Operative or Proposed District Plan in any circumstance. Furthermore the District Plan specifically lists the establishment of an additional residential activity relying on access via a right of way as a restricted discretionary activity so therefore as second dwelling could not be established on the subject site as a permitted activity.
- Effects on persons who own or occupy the site and nearby sites who have provided written approval have been disregarded for the notification assessments. This includes the owners of property identified in blue in Figure 3 below (239A Tukapa Street).
- Overall, the application is for a Discretionary Activity and therefore the assessment of adverse effects has been restricted to the matters of which Council have restricted their discretion to.

23. I am not aware of any trade competition effects relating to this application.



Figure 3: Written Approvals

Public Notification (s95A)

Step 1: mandatory public notification in certain circumstances

- The applicant has not requested that the application be publicly notified.
- The applicant has not refused to provide further information or refused to agree to commission a report under s95C.
- The application is not made jointly with an application to exchange recreation reserve land.

Step 2: if not required by step 1, public notification precluded in certain circumstances

- The application is not subject to a rule or national environmental standard that precludes notification.
- The application is a Discretionary Activity subdivision of land and is precluded from public notification.

Step 3: if not precluded by step 2, public notification required in certain circumstances - N/A

Step 4: public notification in special circumstances

- No special circumstances exist that warrant the application being publicly notified.

Conclusion on public notification

24. It is concluded under s95A of the RMA that the application does not need to be publicly notified.

Limited Notification (s95B)

Step 1: certain affected groups and affected persons must be notified

- No protected customary rights groups or customary marine title groups are affected by the activity.
- The proposal is not on land that contains a Statutory Acknowledgement Area for iwi.

Step 2: if not required by step 1, limited notification precluded in certain circumstances

- The application is not subject to a rule or national environmental standard that precludes notification.
- The application is not precluded from limited notification.

Step 3: if not precluded by step 2, certain other affected persons must be notified

25. The Council must decide that a person is an affected person if the activity's adverse effects on them are minor or more than minor (but are not less than minor), except for those effects to be disregarded as discussed above.

- A person is affected if the consent authority decides that the activity's adverse effects on the person are minor or more than minor but not less than minor. I have identified the property addresses discussed in the following paragraphs as being potentially affected by the proposed subdivision, largely due to their proximity to the site. Each property has been considered, where the effects are of a similar nature and extent the properties have been grouped. I refer to Figure 3 above which clearly identifies the addresses including 249, 251, 251A, 253A, 257 and 259 Tukapa Street. 249A Tukapa Street has not been considered in this section as the applicant has already identified that the effects on this person are minor (or more than minor) and has requested limited notification be served on the owners of 249B Tukapa Street. An assessment against 249A Tukapa Street has not been made in this Section as the owners of 249A Tukapa Street have provided their written approval and therefore effects must be disregarded.

Assessment of affected parties

249 & 251 Tukapa Street & 8 Trafalgar Street

26. The effects of the proposal on 249 and 251 Tukapa Street and 8 Trafalgar Street have been considered conjointly as they are the three properties which adjoin the existing ROW. The existing ROW currently serves three allotments and the proposal adds a fourth. As such this will increase traffic movements along the ROW associated with the new residents and any additional visitors.
27. Increased traffic movements may result in adverse noise effects associated with the increased use of the ROW. On inspecting the site the ROW is formed of a reasonably smooth asphalt surface and it is anticipated that the surface will need to be maintained in this form in perpetuity with regular maintenance. Further the southern boundary of the ROW access leg is lined by a 1.8m tall close boarded fence and the northern boundary is also fenced, although of a slightly lesser height. The dwelling to the north (249 Tukapa) is separated by their own driveway and therefore living spaces are distanced from the ROW. Similarly the property at 8A (Trafalgar) is well screened by well-established vegetation and a close boarded fence. Given the smooth surface of the existing ROW, which will need to be maintained, and the existing fencing, it is considered that any additional adverse noise effects on persons occupying these properties will be less than minor.
28. The property at 249 Tukapa Street has a driveway access which is in close proximity to the existing ROW. Consideration has been given to any potential conflict associated with vehicles using the ROW while any occupier/s of 249 Tukapa are trying to enter or leave their site. On inspection the vehicle crossings are in good condition and no visual obstructions are present. Therefore the increased use of the ROW associated with the proposal will have a less than minor effect on any person/s occupying the property at 249 Tukapa Street.
29. Assessing the effects on residential character and amenity values is also necessary. The properties at 249 and 251 Tukapa Street and 8A Trafalgar Street are suitably

distanced from the location of the additional lot proposed (Proposed Lot 2). In addition, Proposed Lot 2 meets the ODP requirements for bulk and location and to minimize the effects on the immediate neighbor to the east the applicant has proposed to limit buildings within Proposed Lot 2 to a single storey. As such any effects on the residential character amenity values enjoyed by persons at 249 and 251 Tukapa Street will be less than minor.

251A, 253A 257 and 259 Tukapa Street

30. The potential adverse effects of the proposal on the persons at the properties identified above primarily relate to residential character and amenity values. Residential character can be affected by the bulk, height and location of residential dwellings and other buildings. Residential character and amenity can also be affected by an increase in density of which is an inevitable result of subdivision. If buildings are inappropriately designed or located, they may not only detract from the visual amenity of the area but also adversely affect neighboring sites by shading, crowding or overlooking.
31. The Management Strategy of the District Plan considers the adverse effects of activities on the character of area and on other activities:

"The character of each area has been determined, to a large extent, by the nature of the activities taking place within it, their operational requirements, and the community's perception of an appropriate level of amenity."
32. In this case the surrounding environment is typical of the Residential A Environment Area with homes that are set back from boundaries, well landscaped and are one or two storeys in height.
33. This proposal will result in allotments that meet the minimum allotment size requirements for a Controlled Activity, of which is 450m² in the Residential A Environment Area.
34. The properties at 251A, 253A 257 and 259 Tukapa Street adjoin the site and are in reasonably close proximity to the additional allotment proposed (Proposed Lot 2) which will eventually contain a single dwelling. Proposed Lot 1 meets the ODP requirements for bulk and location. Further, and as specified above, the applicant has proposed to limit buildings within Proposed Lot 2 to a single storey through a covenant. Further, consent notices will also be imposed to restrict the duration of any build time to less than 12 months and ensure that any future dwelling conforms to all of the NPDC's district planning requirements associated with bulk, height and location. The covenants proposed are to mitigate effects on the neighboring property to the east who has been identified as an affected party due to the fact that they share the ROW with the subdivision site. However the covenants will also mitigate effects on those additional adjoining properties identified.

35. Further mitigation includes the existing perimeter fencing, which will be maintained by the applicant. As such any effects on the residential character amenity enjoyed by persons at 251A, 253A 257 and 259 Tukapa Street will be less than minor.

Effects on other adjacent persons

36. Due to the screening effects of the existing dwelling, fencing and ROW I consider the effects on persons associated with the remaining adjacent properties to the north to be less than minor. Similarly to any properties across of Tukapa Street to the west.

Step 4: further notification in special circumstances

- No special circumstances exist that warrant the application being limited notified.

Conclusion on limited notification

It is concluded under s95B of the RMA that the application does not need to be limited notified on the owners and occupiers of 249C Tukapa Street.

Therefore, it has been determined that the application is to be processed on a **limited notified** basis in accordance with section 95B, and that notice of the application be served on all the owners/occupiers of 249C Tukapa Street, New Plymouth.

Report by:

Luke Balchin
SENIOR ENVIRONMENTAL PLANNER



Date: 18 September 2020