

**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)

**ADDITIONAL INFORMATION AS REQUESTED IN POST HEARING MINUTE DATED 28/3/25 – PROPOSED PERGOLA**  
Tracked Changes version (Changes and comments) made by Kathryn Hooper – Planner for the submitter (G & J Whyte Family Trust)

**1. INTRODUCTION**

- 1.1 A pergola, inclusive of planting details for the central outdoor deck area, has been designed by Mr. McEwan. This design is intended to meet the intent of the offered condition to mitigate privacy and overlooking effects.
- 1.2 On review of the PDP definitions, it is my opinion that the designed pergola meets the definition of a structure, as defined below:
- (a) *means any building, equipment, device, or other facility, made by people and which is fixed to land; and includes any raft.*
- 1.3 I do not consider the designed pergola to meet the definition of a building under the PDP below:
- (a) *means a temporary or permanent movable or immovable physical construction that is:*
- (i) *partially or fully roofed, and*
- (ii) *is fixed or located on or in land, but*

**Commented [KH1]:** I agree that the pergola meets the definition of Structure.

- (iii) *excludes any motorised vehicle or other mode of transport that could be moved under its own power.*

1.4 The designed pergola is not 'partially or fully roofed' in any way, as it contains no solid materials creating shelter. The connecting wires between the posts are intended solely to guide the plant foliage as it grows from the planter boxes at the base of the structure. The plant foliage will remain permeable and, in my opinion, will not constitute a 'roof'.

**Commented [KH2]:** I agree that the pergola would be unlikely to meet the definition of a building.

1.5 Based on this, I have performed an assessment of the pergola structure against the relevant rules and standards of the PDP, as are outlined below.

## 2. PDP PROVISIONS

Rule #	Rule	Compliance	Activity Status
<i>Medium Density Zone Rules</i>			
MRZ-R31	Building Activities	<p>The pergola meets the definition of a 'structure', and therefore MRZ-R31 is applicable, as 'building activities' is defined under the PDP as <i>'undertaking or carrying out any of the following building works: Erection of a structure - erection of new buildings and structures.'</i></p> <p>All MDRZ effects standards are <u>not</u> able to be complied with <u>as the activity does not comply with MRZ-S10.</u></p>	<del>Permitted</del> <u>Restricted Discretionary</u>
<i>Medium Density Zone Effect Standards</i>			
MRZ-S1	<i>Maximum structure height - 11m maximum.</i>	The maximum height of the structure is below 11m, with the height from ground level being 3.515m.	Complies
MRZ-S2	<i>Maximum building coverage - 50% maximum.</i>	The structure is not considered to be a building, therefore MRZ-S2 is not applicable as this relates only to 'building footprints'.	Complies

MRZ-S3	<i>Height in relation to boundary –</i> Buildings must not project beyond a 45-degree recession plane measured from a point 3m vertically above ground level.	The structure is not considered to be a building, therefore MRZ-S3 is not applicable, however the design from Mr. McEwan shows it is within the daylight angle regardless.	Complies
MRZ-S4	<i>Alternative height in relation to boundary</i>	Not applicable.	Complies
MRZ-S5	<i>Minimum building setbacks –</i> <ul style="list-style-type: none"> <li>• From a road boundary: 1.5m</li> <li>• From a side boundary: 1m</li> </ul>	The structure is not considered to be a building, therefore MRZ-S5 is not applicable.	Complies
MRZ-S6	<i>Outdoor living space requirements</i>	Not applicable.	Complies
MRZ-S7	<i>Minimum outlook space</i>	Not applicable.	Complies
MRZ-S8	<i>Minimum landscaped permeable surface area –</i> 25% minimum.	The structure is permeable, with the plant foliage and planter boxes being located on the current permeable deck, therefore there will be no change in permeable surfaces.	Complies
MRZ-S9	<i>Outdoor storage requirements</i>	Not applicable.	Complies
MRZ-S10	<i>Maximum fence or wall height –</i>	The pergola is considered to be a structure under the PDP, however	Complies

	<p>Within the front yard: 1.4m in height above ground level.</p> <p>Within the side and rear yard: 2m in height above ground level.</p>	<p>MRZ-S10 only relates to the structures of fences or walls. This is due to the wording of MRZ-S10 being: <i>No fences or walls or a combination of <u>these</u> structures (whether separate or joined together).</i></p> <p>It is my opinion that MRZ-S10 is worded to only apply to 'fences or walls' rather than any structure, as it specifically references only these two, whilst MRZ-S1 applies to all structures.</p> <p>There are no definitions of 'fence or wall' under the PDP. In my opinion, the pergola design is not a 'wall' as it consists of plant foliage which is not a solid or rigid element, and it is not a 'fence' as it does not function to enclose a property in the way fences typically do. The open framework of the pergola, together with the permeable nature of the climbing plants, does not exhibit the characteristics commonly associated with fences or walls.</p> <p>Accordingly, it is my opinion that the proposed pergola does not fall within the scope of MRZ-S10. While it is a structure, it is not a fence or wall, nor a combination of those, and therefore the standard is not triggered by this element of the proposal.</p>	
MRZ-S10	Maximum fence or wall height –	Many fences and walls would meet the definition of structure under	Does not comply.

**Commented [KH3]:** I disagree and have added my opinion in the line below via tracked changes.

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K Hooper	<p>Within the front yard: 1.4m in height above ground level.</p> <p>Within the side and rear yard: 2m in height above ground level.</p>	<p>the PNPD, as per the definition in para. 1.2 above.</p> <p>Therefore this effects standard cannot be dismissed on the basis that the pergola is either a FENCE/WALL or a STRUCTURE. It is, and is able to be, both.</p> <p>In my opinion the structure meets the definition of fence or wall in addition to STRUCTURE. In the absence of a definition of "FENCE or WALL" in the PNPD, or in the National Planning standards; the definition of 'Fence in the Fencing Act (1978) (Version at 23 December 2023<sup>1</sup>) is relevant:</p> <p><i>"fence means a fence, whether or not continuous or extending along the whole boundary separating the lands of adjoining occupiers; and includes all gates, culverts, and channels that are part of or are incidental to a fence; and also includes any natural or artificial watercourse or live fence, or any ditch or channel or raised ground that serves as a dividing fence"</i></p> <p>As is the dictionary definition of 'fence':</p> <p><i>"A Structure that serves to enclose and area such as a garden or field, usually made of posts or timber, concrete or metal, connected by wire netting, rails, or boards"</i><sup>2</sup></p>	
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<sup>1</sup> <https://www.legislation.govt.nz/act/public/1978/0050/latest/whole.html#DLM21813>

<sup>2</sup> Collins Concise English Dictionary

		<p><u>The dictionary definition of 'wall' is also useful:</u></p> <p><i><u>"A vertical construction made of stone, brick, wood, etc., with a length and height much greater than its thickness, used to enclose, divide or support"</u></i><sup>3</sup></p> <p><u>As such, the proposed structure is in my opinion a fence or wall, it is within the side yard, and it exceeds 3.0m in height, as shown in the plans.</u></p>	
<b>Coastal Environment</b>			
CE-R5	Building Activities where all underlying zone rules and effects standards are complied with.	The proposed structure is able to comply with all underlying zone rules and effects standards.	Complies

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### 3. CONCLUSION

3.1 Following this review of the pergola design prepared by Mr. McEwan, it is the opinion of Ben Lawn (Planner for the applicant) my opinion that the proposal meets all relevant provisions of the PDP and qualifies as a permitted activity. On this basis, no resource consent is required to construct the pergola.

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3-13.2 Following a review of the pergola design prepared by Mr. McEwan, provided on 11 April 2025 (Drawing: LD.01 Dated: 7 April 2025, Drawing Title: Foliage Climbing<sup>4</sup>) for review along with Mr Lawns opinion, it is the opinion of Kathryn Hooper (Planner for the submitter) that the pergola meets the definition of a 'fence or wall' and therefore, at 3.0m in height above original ground level,

<sup>3</sup> Collins Concise English Dictionary

<sup>4</sup> <https://www.npdc.govt.nz/media/ntzn43yb/5-b-i-roach-foliage-frame-pergola-rev1.pdf>

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[breaches effects standard MRZ-R10, and therefore requires land use consent under MRZ-R31.](#)

**Benjamin Richard Lawn**  
**McKinlay Surveyors Limited**

**11 April 2025**

[Tracked Changes and additional comments in this document provided by:](#)

[Kathryn Hooper](#)  
[Landpro Limited](#)  
[15 April 2025](#)

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