

BEFORE THE NEW PLYMOUTH DISTRICT COUNCIL

Independent Hearing Commissioner(s)

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER In the Matter of an application by Bryan
and Kim Roach & South Taranaki
Trustees Limited for construction of a
new dwelling and associated fencing
and retaining walls (retrospective) at
24/26 Woolcombe Terrace, New
Plymouth

STATEMENT OF EVIDENCE OF Emma McRae

NZILA Registered | Principal Landscape Architect

19 March 2025

1.0 QUALIFICATIONS AND EXPERTISE

- 1.1 My name is Emma McRae, and I am a NZILA Registered | Principal Landscape Architect at Boffa Miskell Limited, a national firm of consulting planners, ecologists, urban designers and landscape architects. I hold the qualifications of Bachelor of Design (Hons) in Landscape Architecture, and I am a Registered Member of the New Zealand Institute of Landscape Architects.
- 1.2 I have been a landscape architect for almost 20 years, practicing both in New Zealand and the United Kingdom and have been employed in the landscape planning team by Boffa Miskell in Wellington since 2018, providing consultancy services for a wide range of clients around New Zealand, including local authorities, land developers, and the infrastructure and renewable energy sectors.
- 1.3 I have experience in preparing landscape and visual effects assessments for residential developments, including most recently an assessment for a proposed minor dwelling in the Coastal Environment and High Natural Character overlays on the South Wairarapa Coast. I have also been involved with providing landscape advice to various Councils in relation to proposed residential developments, including for New Plymouth District Council in relation to Private Plan change 48 in Oakura and Private Plan Change 49 in Waitara.
- 1.4 My other experience in coastal environment matters as is one of the co-authors of the Porirua Coastal Natural Character Assessment. My work in the energy sector has also considered solar and wind developments in the coastal environment. I am authorised to give this evidence on behalf of the submitters, Geoff and Jo Whyte.
- 1.5 My involvement has been:
- Review of the application dated 7 June 2024 and associated plans, the amended application dated 14 August 2024 and

associated plans, and the most recent version of the plans for consent dated 20 September 2024.

- Review of the notification decision and application.
- Review of the s42A Report prepared by Mr Robinson.
- Review of the evidence for the applicant, in particular that relating to landscape matters. This includes the evidence of Mr Daniel McEwen, Landscape Architect for the Applicant, and the evidence and Peer Review of Mr Richard Bain, also appointed by the Applicant.

1.6 In preparing this evidence, I rely on and refer to the evidence of the following witnesses for the submitters;

1.6.1 Ms Kathryn Hooper, Landpro (Planning);

1.6.2 Mr Geoff Whyte – submitter, which I understand will be provided at the hearing.

2.0 CODE OF CONDUCT

2.1 I have read the Code of Conduct for Expert Witnesses issued as part of the Environment Court Practice Notes. I agree to comply with the code and am satisfied the matters I address in my evidence are within my expertise. I am not aware of any material facts that I have omitted that might alter or detract from the opinions I express in my evidence.

3.0 SITE VISIT

3.1 I visited the property at 28 Woolcombe Terrace on 25-26th February 2025, and viewed the Application site and building from both inside and outside the Whytes' property, including from the north-facing balconies, the outdoor area at ground level at the south of the site, the Whytes' driveway, and from internal windows on the North, West and Southern sides of their dwelling.

- 3.2 On 26th February 2025 I visited the ground level outdoor areas of the Applicant's property at 26 Woolcombe Terrace. I have also viewed the application site from the street.

4.0 BACKGROUND

- 4.1 Geoff and Jo Whyte own the site and dwelling at 28 Woolcombe Terrace, New Plymouth. Their property is located immediately east of the application site.
- 4.2 The property, which is their family home, was purchased and their dwelling constructed in 2013-2014.
- 4.3 The Whytes were notified on 8 November 2024 as an affected party¹ to the application. They have opposed the application for a retrospective consent to authorise the dwelling that is now located at 24 and 26 Woolcombe Terrace, New Plymouth.
- 4.4 I was engaged by Geoff and Jo Whyte in February 2025 to undertake a visit to their property and to 26 Woolcombe Terrace, to provide initial landscape and visual advice to them following this site visit and subsequently to prepare this evidence.

5.0 SITE AND EXISTING ENVIRONMENT

- 5.1 The properties at 26 and 28 Woolcombe Terrace are located in New Plymouth city, fronting the coastal foreshore to the east of the city centre. Both dwellings are located within the Medium Density Residential Zone within the PDP. They are also located within the Coastal Environment, as mapped under the PDP.
- 5.2 The purpose of the Medium Density Residential Zone is to provide areas for medium density residential development up to three stories in height with a mixture of detached, semi-detached and terraced housing and low-rise apartments.

¹ Identified in the Notification Decision Report prepared by Mr Robinson for the NPDC, dated 30 October 2024, see Appendix 1 to the s42A report.

5.3 Woolcombe Terrace is characterised by single to two storied dwellings which face the street, taking advantage of the sea views. There are a range of building forms and architectural styles along the street, with many dwellings sharing the typology of large front windows or balconies which face the street and the coastline. There is little vegetation present along the street front, with planting to the north beyond the road reserve restricted to flax (*Phormium tenax*).

6.0 SCOPE OF EVIDENCE

6.1 My evidence sets out the following:

- A review of the notification report and s42A report.
- An assessment of the as-built development against the relevant Rules and Standards in the Proposed New Plymouth District Plan (PNDP) including:
 - Effects Standard MRZ S3;
 - Effects Standard MRZ S4, including Rule MRZ R33;
 - A review of other relevant MRZ policy; and
 - An assessment in relation to the breach of Height Standards in relation to fencing.
- Review of the landscape evidence of Mr Daniel McEwen for the Applicant.
- Review of the Peer Review of the landscape evidence of Mr Richard Bain for the Applicant.
- Conclusions and Recommendations.

6.2 Although I have not prepared a full landscape and visual assessment of the proposal, this evidence and the assessment findings within it, along with my review of the two landscape architects' evidence for the Applicant have been carried out in

accordance with the concepts and principles outlined in *Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines*.² A full methodology is outlined in **Appendix 1** of my evidence. In summary, the adverse effects ratings are based upon a seven-point scale which ranges from very low to very high.

7.0 THE NOTIFICATION REPORT

7.1 The Notification Report dated 30 October 2024 notes the following:

- The development fails to meet the effects standards under the MRZ and therefore fails to meet the permitted activity criteria under Rule CE-R5.
- The development fails to comply with two separate MRZ effects standards and therefore triggers requirement for land use consent.
- The as-built dwelling does not comply with effects standard MRZ-S3.
- The Notification Report states that the as built dwelling does comply with the alternative height in relation to boundary standard MRZ-S4. As this is a matter of planning evidence, I have deferred to Ms Hooper, the expert planning witness for the Whytes, on the applicability or otherwise of MRZ-S4. However, and to ensure a complete assessment, I have considered the proposal against both rules (MRZ-R31 and MRZ-R33) and standards (MRZ-S3 and MRZ-S4).
- The as-built dwelling does not comply with maximum fence/wall heights in MRZ-S10.

7.2 The following sections provide a high-level overview of the landscape and visual effects of the proposal in relation to the above rules and standards. As a landscape architect, I have not

² *Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines*, Tuia Pito Ora
New Zealand Institute of Landscape Architects, July 2022.

attempted to interpret which of the height in relation to boundary standards applies in this instance, but rather have assessed the landscape and visual effects of the Application against both standards, comparing these to the effects of what could be expected with a permitted building in relation to MRZ-S3, and the planned built form for the MRZ (which includes compliance with MRZ-S4).

8.0 EFFECTS STANDARD MRZ-S3

- 8.1 In relation to Standard MRZ-S3, the as-built development fails to comply with the setback standards as illustrated in Boon Drawings SK1 and SK3. Under this standard, the building breaches the Height in Relation to Boundary (HIRB) envelope along the first 14663mm of the building from the road at a height of between 2m (at the road end, measuring just past the proposed louvres) to 1000mm. It also breaches the envelope along the rear 7.863m of the building between 1505mm at the widest point and 668mm at the narrowest point. This engages the matters of discretion in MRZ-R31, as well as those identified under MRZ-S3.
- 8.2 In relation to the effects on the streetscape and planned character of the area, the effects of this breach are low adverse. As the breach affects the eastern boundary of the site, it does not have a particular influence over the streetscape, as views from the street are limited to narrow glimpses between the buildings.
- 8.3 In relation to the extent to which topography, site orientation and planting can mitigate the effects of the height of the building or structure (as opposed to the potential for overlooking and privacy effects, which I discuss further below), there is little opportunity for this. There is no change in topography between the house at 26 Woolcombe Terrace and the neighbouring house at 28 Woolcombe Terrace. The neighbouring property at 28 Woolcombe Terrace sits at a lower level than the as built dwelling at 26, due to a retaining wall. The dwelling at 28 is orientated in the same direction as all dwellings on Woolcombe Terrace – with primary views facing the

sea to capture views. Given the proximity of 28 Woolcombe Terrace to 26, there is little opportunity for planting to mitigate the height of the structure. It can generally be observed that there is little in the way of planting along the street frontage or in between the dwellings along Woolcombe Terrace (see **Figures 1 and 2**).



Figure 1: View of dwellings along Woolcombe Terrace looking southwest



Figure 2: View of dwellings along Woolcombe Terrace looking northeast

- 8.4 In relation to effects from shading, the shading diagrams presented by Boon Architects illustrate only minimal shading effects in plan view. The axonometric views provided are, as I understand then, intended to demonstrate the shading effects to the front outdoor living space at 28 Woolcombe Terrace.
- 8.5 In that regard, I note there will be additional shading to the façade of 28 Woolcombe Terrace as a result of the HIRB breach. A comparison below illustrates the modelled time of 22nd September at 4pm which states “no shading effect” to the front balcony is presented alongside a photograph taken from 28 Woolcombe Terrace which does demonstrate shading to the lower side of the building from the rear HIRB envelope exceedance.
- 8.6 Further shading effects to the building façade/windows and the rear yard form part of my consideration in determining the overall level of effects associated with the infringements. In particular, and in reliance upon discussions with Mr Whyte, I understand that the rear yard is used by the submitter as an outdoor entertainment area on occasions, particularly when their primary outdoor living spaces to the front of the property are unsuitable due to the prevailing north/northwesterly coastal winds at the property. I also understand that the area is used by the submitters’ grandchildren to ride bikes etc. I understand that Mr Whyte will say that as he and his wife retire, they will look to make greater use of the rear part of this property for outdoor living, particularly when the northern façade is unavailable.
- 8.7 However, and having reviewed the applicant’s shading analysis, I confirm that given the levels of additional shading over this area compared with a compliant 11m high building, I agree with Mr McEwan and Mr Bain for the applicant that the effects of any additional shading on this area are considered to be low adverse. Effects of shading on the building façade are also low adverse, given the level of shading that could be achieved by a fully compliant 11m high building.

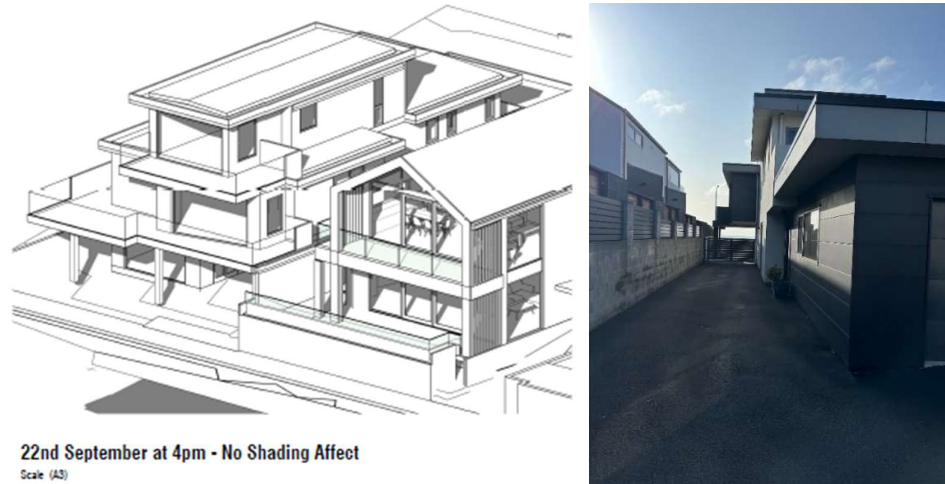


Figure 3: Boon shading diagram 22nd Sept 4pm and actual view of 28 Woolcombe Terrace, 22nd Sept 4pm

- 8.8 In relation to privacy, the Boon drawings illustrate the presence of louvres along the eastern elevation (see **Figure 4**). The s95 report describes that the louvres “effectively avoids any overlooking or privacy loss from this aspect of the infringement.” However, these louvres were not present on the as-built dwelling during the site visit on 26th February 2024, as illustrated below in **Figure 5**.
- 8.9 There is also overlooking from large windows present in the eastern façade in the centre of the building towards the Whytes’ property. The eastern deck area at 26 Woolcombe Terrace also diminishes the sense of privacy and overlooking, as it directly views 7 windows of the neighbouring 28 Woolcombe Terrace’s habitable rooms. Finally, the rear upstairs deck of 26 Woolcombe Terrace also provides overlooking to the rear section of 28 Woolcombe Terrace.
- 8.10 Without mitigation, my expert opinion is that the proposed building gives rise to privacy and overlooking effects along almost the entire length of the building, from front to rear. I conclude that effects in relation to privacy and overlooking are **low-moderate adverse**. I return later in my evidence to potential options to mitigate this effect.

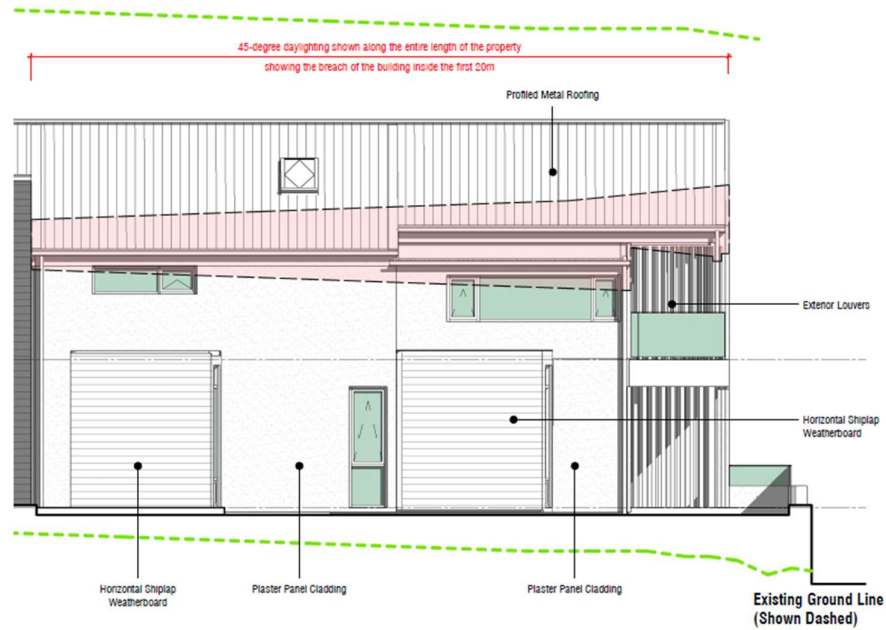


Figure 4: Excerpt from Boon drawing SK3.0 illustrating breach of 45 degree recession plane along first 20m of dwelling, and illustrated proposed exterior louvers to provide screening.



Figure 5: Photograph from outside 28 Woolcombe Terrace, looking towards 26 in location of proposed louvers.

- 8.11 The greatest effects on amenity in relation to 28 Woolcombe Terrace are in relation to 'sense of enclosure'. The height in relation to boundary infringement in relation to Standard S3 extends along over a total length of 22.5m of the c. 30m long building. A building of the same design which fitted within the HIRB envelope

would have the eastern façade further setback from the boundary of 28 Woolcombe Terrace, which would reduce the sense of overlooking and enclosure that the as-built dwelling creates.

- 8.12 Alternatively, a building of a different design which fit the HIRB envelope would be between 688mm and 1505mm further back from the boundary for the upper part of the façade, which would increase the level of daylight between the two buildings and reduce the sense of enclosure. I consider this sense of enclosure effect to be **low-moderate adverse**, given the depth of the breach (from 668mm up to 2m) and the length of the boundary which it occupies (over 22.5m) under this standard.

9.0 EFFECTS STANDARD MRZ S4

- 9.1 I note the Whytes' position (and that of Ms Hooper) is that, because part of the building extends beyond the first 20m of the boundary, MRZ-S4 does not apply to the proposal. That said, I have undertaken an assessment against the relevant standard, as well as the relevant rule (MRZ-R33) and its associated matters of discretion.

MRZ-R33 – Matters of discretion for building activities which do not comply with MRZ S3

- 9.2 MRZ-R33 is relevant to building activities that do not comply with MRZ-S3 Height in Relation to boundary, but comply with MRZ-S4 Alternative Height in Relation to Boundary. There are three matters over which discretion is restricted under MRZ – R33:

- a) Sunlight access;
- b) Attractiveness and Safety of the Street; and
- c) Overlooking and privacy.

- 9.3 Matters in relation to sunlight access and attractiveness and safety of the street have been addressed above. In relation to overlooking

and privacy, MRZ-R33 requires the consideration of “the extent to which direct overlooking of a neighbour’s habitable room windows and outdoor living space is minimised to maintain a reasonable standard of privacy, including through the design and location of habitable room windows, balconies or terraces, setbacks, or screening.”

- 9.4 **Figure 6** illustrates the view from the eastern deck at 26 Woolcombe Terrace looking towards 28 Woolcombe Terrace. The level of this outdoor living space in relation to 28 Woolcombe Terrace means that almost all the windows on the western façade of 28 Woolcombe Terrace are directly overlooked by this space (a total of seven windows, plus two bathroom windows).
- 9.5 Effects in relation to sunlight access are similar to the compared Standard S3 for shading and are anticipated to be **low adverse**, for the reasons outlined above. Similarly, any effects in relation to attractiveness and safety of the street are considered to be **very low adverse**.



Figure 6: view from eastern deck area at 26 Woolcombe Terrace. Softening hard surfaces through some form of planting/planter boxes could be a potential option which would provide amenity to both properties.

- 9.6 Effects in relation to privacy and overlooking have the greatest impact on the neighbouring property at 28 Woolcombe Terrace. As

I understand matters, the dwelling at 28 Woolcombe Terrace was designed to fit into the HIRB envelope under the previous District Plan. This included a requirement that the building's windows minimised overlooking effects on neighbours, through their design and placement.

- 9.7 In relation to the as-built building at 26 Woolcombe Terrace, the design and location of habitable room windows has given some consideration to the privacy of the neighbours. The design includes alcove windows at ground floor level which are designed to provide a view out towards the coastline, without providing a view towards the neighbouring property. The outdoor living at the front of the property is proposed to have louvres covering the western side, however these have not been installed so there is currently overlooking from this front outdoor living space.
- 9.8 The eastern deck area at 26 Woolcombe Terrace provides the greatest area of overlooking, as it directly views 7 windows of the neighbouring 28 Woolcombe Terrace's habitable rooms.
- 9.9 In relation to setbacks and screening, no particular attempt has been made to provide any screening (such as planting) between the outdoor living areas of the property and the neighbouring property.
- 9.10 Therefore, I do not consider that sufficient design consideration has been given to privacy and screening of the neighbouring property, even if the building is found to be compliant with MRZ-S4. I therefore consider the effects on overlooking and privacy to be **low-moderate adverse**.

10.0 ASSESSMENT AGAINST RELEVANT OBJECTIVES AND POLICIES

- 10.1 I understand that, as a restricted discretionary activity, objectives and policies which are relevant to the matters of discretion are also an important part of the assessment under s 104. I comment on those below, to the extent that they are relevant to my area of

expertise. I otherwise leave conclusions on the relevant planning provisions to Ms Hooper:

10.2 MRZ P6 is to “Allow residential development that is consistent with the role, function and planned residential character of the Medium Density Residential Zone”. The as-built dwelling complies with the number of residential units per site, building height, bulk and location, site coverage and outdoor living space and boundary setbacks. However, it does not comply with the HIRB over (at least) part of the as-built dwelling, and the effects, particularly in relation to visual dominance, overlooking, privacy and sense of enclosure are, in landscape terms, low-moderate adverse – regardless of whatever standard is applied. Insofar as I am able to comment, from a landscape perspective, there are in my view a number of inconsistencies which, in my opinion, do not reflect the planned residential character of the MRZ.

10.3 MRZ P8 “Requires that development provides well-designed streetscapes, suitable residential amenity for surrounding properties and public places and does not result in overdevelopment of sites”. In relation to this policy, I note the following:

- The height, bulk and form of the as-built dwelling mostly complies with the permitted envelope for development under the MRZ. Under the HIRB standard, only the rear section of the building exceeds the envelope. However, the building design, due to its proximity to the boundary, the location of the outdoor deck space on the eastern boundary, and the positioning of windows and outdoor living spaces does create an overlooking/privacy effect on the property at 28 Woolcombe Terrace which contributes to a sense of enclosure or dominance caused by the as-built dwelling. This effect is considered to be **low-moderate adverse** in nature. Mitigation of these effects would be recommended.
- The as-built dwelling has variation in façade, materials and roof form, and so is consistent with this clause.

- The as-built dwelling has been orientated to face the street, which is consistent with other dwellings along Woolcombe Terrace, and therefore meets this aspect of the policy.
- There are no accessory buildings which detract from or obscure the dwelling as viewed from public places.
- The new boundary wall constructed within 26 Woolcombe Terrace does have the effect of creating low amenity for the neighbouring 28 Woolcombe Terrace. The height and solidity of the as-built boundary wall has the effect of creating a “tunnel” to the entrance of 28 Woolcombe Terrace (see **Figure 7**), and obscures light in the late afternoon. While I understand that the height of this wall was reduced as a result of the earlier enforcement order proceedings to comply with the permitted height, it too contributes to the sense of enclosure created by the as-built dwelling. A ‘lighter’ structure with increased permeability would reduce this effect.



Figure 7: Tunnel effect at the driveway entrance to 28 Woolcombe Terrace

- The as-built dwelling has created a passage of hard surfaces all along the eastern boundary, see **Figure 8**). Though the deck surface is considered permeable, there is little opportunity for planting or softening the transition between the two dwellings with the current design. Dependent on the

ground conditions below this deck, there could be opportunity to achieve some type of planting (or planter boxes) along this area to provide some softening and amenity for both properties. There are low stainless steel trusses installed along this boundary and it was unclear from the site visit what the purpose of these elements are and whether another structure is proposed in this location. I also note references in the evidence of Mr McEwan to a landscape design, and a foliage screen (at paragraph 9.5) which may reference a previous intention to provide some screening along this part of the boundary. This is also referred to in the evidence of Mr Arnold, who describes other landscape planting on the western boundary as being “on hold”.³ Finding suitable plant species to achieve the desired effect of screening is important, with the south facing aspect and coastal winds.

- Reviewing historic aerial and Google Earth imagery, it does not appear that any significant vegetation was removed to construct the as-built dwelling.

10.4 MRZ P9 relates to the development having well-designed on-site amenity, having regard to sunlight access, separation distances between buildings and the availability of private outdoor living space.

10.5 MRZ P9 (1) considers whether “a reasonable level of sunlight access and privacy is achieved”. As discussed above, the position is that a reasonable level of sunlight access has been achieved, however a reasonable level of privacy has not.

11.0 BREACH OF HEIGHT STANDARDS IN RELATION TO FENCING

11.1 The as-built fence along the front boundary of 26 Woolcombe Terrace exceeds the permitted height by 0.9m. The top portion is a glass balustrade, with the lower portion of the fence being a stone

³ Mr Arnold says this is addressed in the evidence of Mr McEwan, but the only reference to any planting I can identify is the reference to a “foliage screen”.

wall. I agree with the evidence of Mr McEwan and Mr Bain that the adverse effects of the front wall infringement are **very low adverse** both on the wider receiving environment, and neighbours.

12.0 CONCLUSIONS ON LANDSCAPE ASSESSMENT

- 12.1 The greatest effects on amenity in relation to 28 Woolcombe Terrace are in relation to 'sense of enclosure' and privacy and overlooking effects. These effects are anticipated to be **low-moderate adverse** in relation to an assessment under both Standard MRZS3, and Standard MRZ S4.
- 12.2 Options to avoid, remedy or mitigate those effects, include the following:
- A redesign of building's eastern facade further away from boundary so it does not exceed (or reduces the extent of the exceedance of) the HIRB envelope.
 - Reduction in height/angle of roof plane so it does not exceed HIRB envelope
 - Installation of louvres/window tinting in appropriate locations to reduce overlooking/increase privacy.
 - Introduction of planting/planter boxes to soften the transition between the two properties and reduce overlooking/privacy effects from the eastern deck.
 - Increased permeability in materials of the boundary fence to remove tunnelling effect and allow increased sunlight into undercroft space.

13.0 REVIEW OF EVIDENCE OF MR DANIEL MCEWEN

- 13.1 Mr McEwen outlines his role in relation to the application – that he has developed and prepared “a landscape concept” for the amalgamated lots at 24/26 Woolcombe Terrace, which included key

privacy aspects, but does not appear to attach that concept to his evidence. Mr McEwen's background and experience in the landscape architecture industry relates to the design of various commercial, public realm, and larger residential developments.

13.2 Mr McEwen states that he has provided a visual assessment/analysis methodology and outcomes in Section 7 of his evidence and discussed the visual impact on 28 Woolcombe Terrace in Section 9 of his evidence.

13.3 Mr McEwen's assessment has been carried out in accordance with Te Tangi a te Manu – Aotearoa New Zealand, Landscape Assessment Guidelines, which is best practice guidance for carrying out any landscape assessment. Mr McEwen has the seven point scale which is industry best practice in defining his levels of effect. Where his assessment of effects is "low" against the seven point scale, he equates this to "less than minor effects."

13.4 Mr McEwen states in paragraph 7.4 of his evidence that he has "completed a desktop study of all relevant design, survey and statutory planning documentation. This assisted in cross-reference checks to affirm my opinions on all contested potential adverse effects".

13.5 Although, like myself, Mr McEwen has not provided a full landscape and visual assessment of the proposed development, he has provided his opinion on the effects of the key landscape and visual matters in relation to the as-built building; those being:

- shading effects;
- sense of enclosure and privacy effects; and
- effects in relation to the streetscape and planned character of the MRZ.

13.6 To inform his assessment, Mr McEwen undertook 3D modelling, using the BOON architectural model with the new PDP-AV 45

degree daylight angle (MRZ-S3), and the alternative daylighting provision (MRZ-S4).

- 13.7 Mr McEwen notes that *“This technique was used as the 2D plans provided as part of the application, I believe, can be easily misinterpreted - in terms of what portions of the structure breaches afford actual effects - i.e. the area of the breach in the plan views within the application appear far greater than the actual highest points of the breach which affords any potential adverse effects.”*
- 13.8 In paragraph 7.6 of his evidence Mr McEwen details the length and heights of the breach measured in the s42A report. The s 42A report states that the breach measures 29.1m in length and 1.9m in height. Mr McEwen states that the breach measures “3/4 of the length of the building” and that the greatest breach is 0.74m (Profile C MRZ-S3) with the northern most breach being 0.62m (Profile A MRZ-S3).
- 13.9 I agree with Mr McEwen that the breach does not extend the entire length of the building, with no breach occurring in the middle. I measure the total length of the breach to be 22.5m. In relation to the “height” of the breach, this depends upon how one is measuring this. Boon drawings SK.1 and SK3 provide plan and elevation views of the breach with the areas of the breach highlighted in red. The latest version of Boon SK1 (dated 6/08/2024) does not show the full extent of the breach in relation to Standard S3, this is only shown in elevation.
- 13.10 An earlier version of this drawing (20/9/2024, also illustrated on Mr McEwen’s Appendix B Sheet 1 and the s42A report on Page 7) does illustrate the full breach in relation to MRZ-S3. Measuring the greatest height of the breach along the façade in the elevation drawing SK3, this measures 2m, as highlighted in **Figure 8** below. This is the widest point of the breach in elevation, and it is not dimensioned on the elevation. Measuring this breach in plan view off Boon drawing SK1, it measures 2m in depth, see **Figure 9**.

- 13.11 I note that the Boon drawing SK1 label notes the “extent of infringement” at 1500mm, but this is measuring infringement at only the front of the building edge, not at the greatest depth of the breach. The accompanying cross sections on Boon drawing SK1 demonstrate the dimension of the breach at 688mm depth (at the rear end of the building), and 1505mm depth (at the northern end of the rear section of the building). Mr McEwan’s evidence underplays the extent of this breach by not illustrating it at its greatest depth or height.
- 13.12 In Appendix B Sheet 4 of his evidence, Mr McEwen has supplied a view of the 3D model which illustrates the breach in relation to MRZ-S3. The rear breach measures 7863mm, with the front breach measuring 14663mm. The angle of this 3D view has foreshortened the length of the front breach, meaning that it appears similar in scale to the rear breach in the view, even though it is nearly twice the length. Nevertheless, this model view is a useful tool in understanding the scale of the breach and I would recommend the model itself is made available to the commissioner to view in a model viewer to understand the area of the breach.

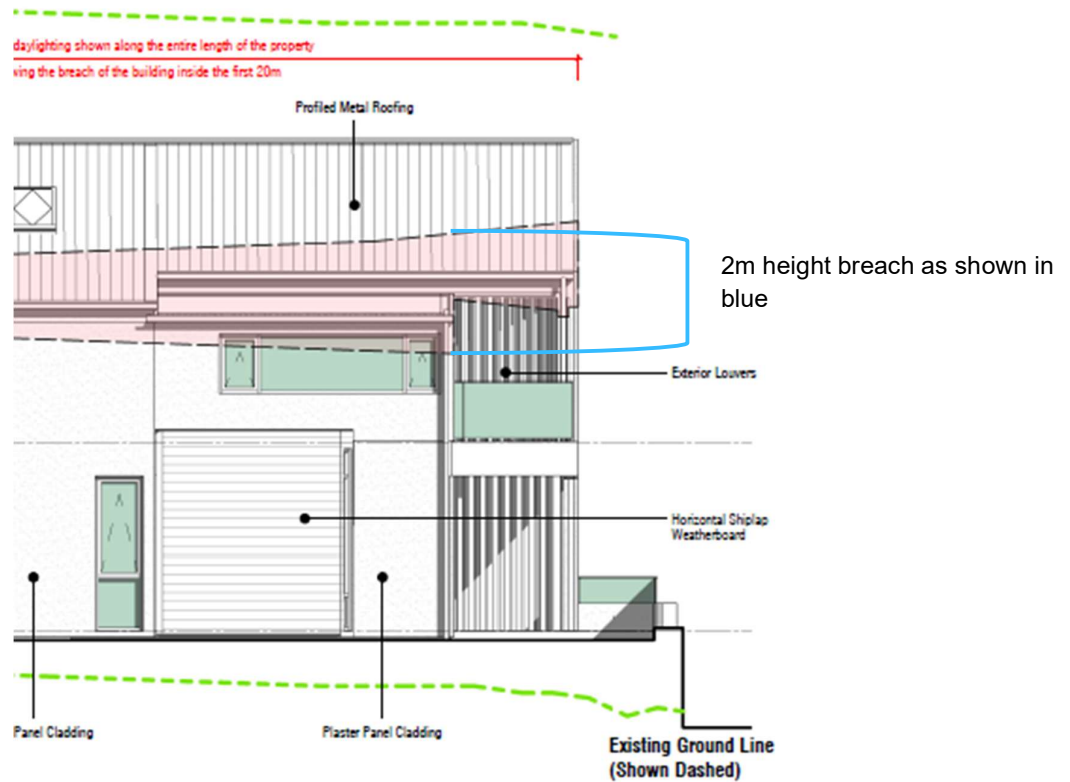


Figure 8: Inset View of elevation of Boon drawing SK3 illustrating location of 2m high breach in elevation marked in blue.

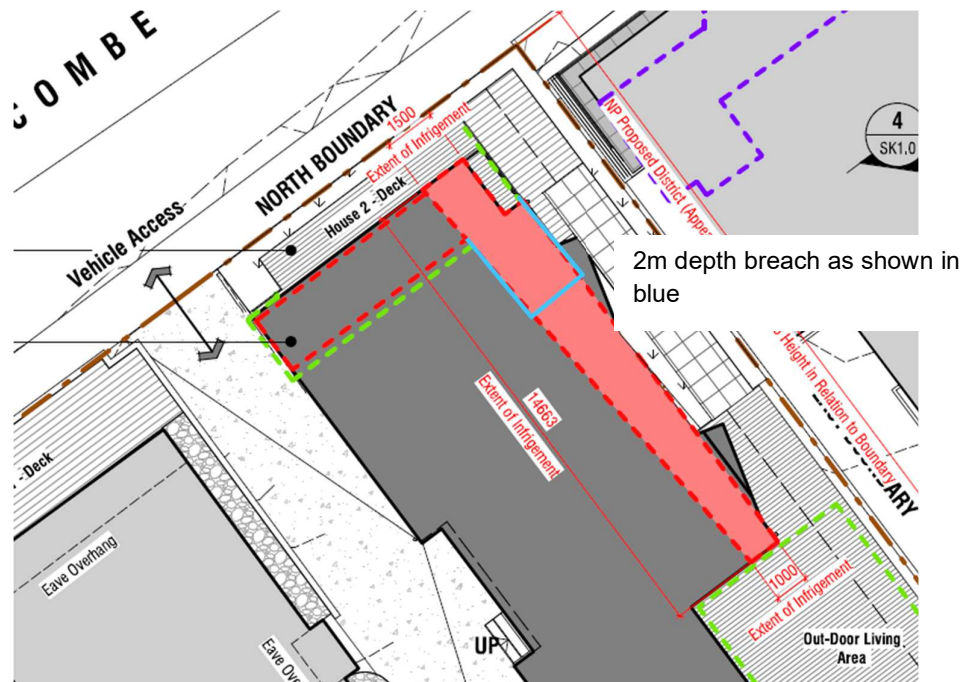


Figure 9: Inset View of Boon drawing SK1 illustrating "depth" of breach at 2m width marked in blue. Boon drawing label notes "extent of infringement at 1500mm, but is measuring infringement at only the front of the building edge, not the greatest depth of the breach."

- 13.13 In paragraph 7.6 of his evidence Mr McEwen states that *“The highest breach according to the profiles provided by Armstrong Surveying (Paragraph 5.26 in Kyle Arnolds’ evidence and attached to his evidence as Annexure A) is 0.74m (Profile C MRZ-S3) with the northern most breach being 0.62m (Profile A MRZ-S3).”*
- 13.14 Reviewing the profiles in Mr Arnold’s evidence I note that Profile B contains a greater level of breach than 0.72m. In profile B the building breaches twice, but only the lower portion of the breach has been dimensioned, not the upper portion as well. The bottom breach of Profile B measures 0.59m and I measure the upper part of the breach to be 0.4m. This totals a breach height of 0.99m, much greater than the 0.72m referred to by Mr McEwen. On Mr Armstrong’s plan view of the location of the Profiles, Profile B is located 2.135m from the front of the building or 3.81m from the front boundary. I measure the 2m breach to be around 2.2m from the front of the building on the Boon plans. Therefore, in order to show the greatest height of the breach, a profile is required 2.2m from the building’s frontage (or 3.945m front the front boundary). I believe this will more accurately represent the maximum height of the breach. I note that the full height of the breach may be less than 2m because at this point the profile cuts through part of the building that is recessed where a window is located. Nevertheless, the maximum height of the breach is greater than 0.72m and at least 0.99m.
- 13.15 Mr McEwen concludes in paragraph 7.7 that *“It is my opinion when considering the potential adverse effects on 28 Woolcombe Terrace from the constructed dwelling at 26 Woolcombe Terrace that the resulting effects on shading, privacy loss, dominance and sense of enclosure, and the wider receiving environment including streetscape, are all considered ‘Low’ - which in the ‘real world’ means various forms of built form, colour and material choices would provide a greater sense of dominance and sense of enclosure.”*
- 13.16 In relation to effects from shading and effects on the wider receiving environment, Mr McEwen and I are in agreement that effects will be

low adverse. We are also in agreement that effect as a result of the over height front boundary wall are low and less than minor.

13.17 In relation to privacy loss, dominance and sense of enclosure we differ in opinion, and I will discuss these matters further below.

13.18 In paragraph 8.8, Mr McEwen concludes that *“that a development complying with all permitted standards, under MRZ-S3, would afford the same, or greater, potential adverse effects than the constructed dwelling. In relation to the breached portions of the constructed dwelling, from my assessment, they provide no additional adverse effects than a development complying with all permitted standards.”*

13.19 I do not agree with this statement. As per my analysis above, the length (22.5m), depth (2m) and height (2m) of the breach constitute a low-moderate adverse effect on sense of enclosure, above and beyond what a permitted building would create. This is because in order to fit within the HIRB envelope a building of the same design would either need to be located substantially further back from the boundary within 26 Woolcombe Terrace to fit in the envelope, or be a building of a completely different design that had a lower roof angle or lower in height boundary walls which does not afford the same length and level of breach which contributes to the overbearing effect. **Figure 10** demonstrates the MRZ S3 HIRB envelope which a permitted building could occupy shaded in yellow. The green hatch indicates the offset a building of the same design would be required to fit in the envelope. This would set the eastern wall of the building around 1.5m further back from the shared boundary.

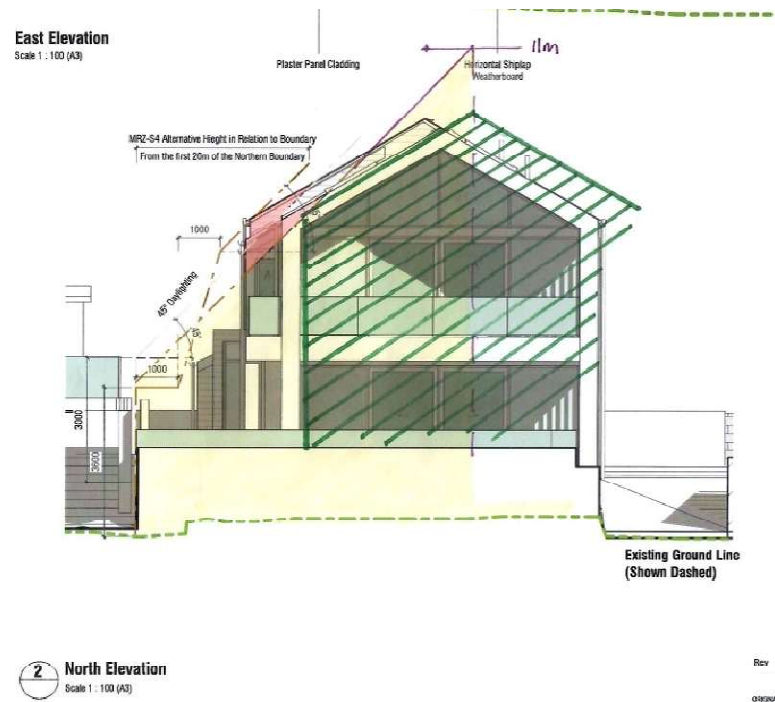


Figure 10: Front elevation of 26 Woolcombe Terrace showing MRZ S3 HIRB envelope in yellow, and the same building design moved to fit within the envelope. This places the outer front wall approximately 1.5m further away from the neighbouring 28 Woolcombe Terrace.

13.20 In paragraph 8.8 of his evidence Mr McEwen states that “a structure could also likely be built up to the 1m boundary offset and fill the volume along the eastern boundary up to 11m as described as a compliant MRZ-S3 activity within the PDP-AV. The end result would be a structure that affords a sheer wall effect with greater dominance and sense of enclosure than the constructed dwelling including those portions that breach the permitted activity standards.” **Figure 10** clearly demonstrates that this is not the case, as in order for a complaint building of 11m to be built it would need a steep roof pitch which would involve a design which does not bring the eastern wall as close to the boundary as the as-built building does.

13.21 In relation to the views of Taranaki Maunga, I also accept that a compliant building could screen such views.

13.22 Paragraph 9.3 of Mr McEwen’s evidence addresses visual dominance and sense of enclosure, stating that “*it is of my opinion that the bulk and form of the building has been mitigated - and*

sheer wall dominance, or sense of enclosure, is an appropriate level". I disagree with this, given the length of the scale of the breach, and the effects compared to what a permitted building could occupy, considering that to fit a 11m high structure, a different design would be required which would likely set the building further back from the boundary, reducing the sense of enclosure and dominance effects.

13.23 In paragraph 9.4, Mr McEwen discusses the design and placement of windows of the as-built building as being "*designed in such a way that minimises potential effects on privacy*." However, he does not mention the overlooking and privacy effects generated by the outdoor living spaces of the building, as I have outlined above. If Mr McEwen has "prepared a landscape concept" for the amalgamated lots as described in paragraph 2.1 of his evidence, it is not apparent that this has involved the design of the outdoor spaces of the property (often the domain of the landscape architect, rather than the architect) and how these might contribute to overlooking and privacy of the neighbours. As proof of this landscape concept has not been supplied in the evidence package, I can comment no further on how it might consider to address privacy and overlooking issues. There is also no explanation of this landscape concept within Mr McEwen's evidence as to how the landscape concept for the two properties may have driven the site layout or building design.

13.24 Paragraph 11.1 of Mr McEwen's evidence concludes that no further mitigation is necessary in his opinion, however he does recommend the installation of louvres on the front and eastern side of the dwelling. It is my opinion that due to the low-moderate adverse nature of the privacy, sense of enclosure and overlooking effects, further mitigation is required, and I have suggested possible options in paragraph 12.2 above.

13.25 REVIEW OF EVIDENCE OF MR RICHARD BAIN

- 13.26 Mr Bain's evidence states that he has been engaged by the applicant to conduct a peer review of Daniel McEwan's evidence regarding the potential visual and amenity effects of the proposal. Mr Bain states that his review follows the peer review guidelines outlined in the NZILA Aotearoa New Zealand Landscape Assessment Guidelines - Te Tangi a te Manu. I concur that Mr Bain's outline of his review in paragraph 4.2 covers the matters outlined by Te Tangi a Te Manu required in a landscape Peer Review.
- 13.27 I agree with the conclusions of Mr Bain in relation to Methodology and method and the description of the existing landscape and character in paragraphs 7.2 to 7.4.
- 13.28 With regard to the statutory planning provisions, Mr Bain states "*In my view, the height-to-boundary exceedance impacts are minimal compared to a building complying with the permitted standards under MRZ-S3, but far less than what is anticipated under the alternative consent pathway under MRZ-S4. The alternative height boundary rule requires resource consent but sets out matters of discretion and indicates what is anticipated. In this context, the constructed building results in lesser character and amenity effects than those anticipated under MRZ-S4, as there is significantly more daylight between the constructed building and its neighbours.*"
- 13.29 Again, I refer back to **Figure 10** as to what could be constructed with a complaint envelope, and an alternative envelope with further matters of discretion attached. As discussed above, I believe that a dwelling which complies with the permitted envelope, set back appropriately from the boundary, would result in reduced overbearing, overlooking and sense of enclosure effects when compared to the as-built dwelling. In addition, I note that a building which complies with the alternative HIRB standard is still required to appropriately address the additional matters of discretion in MRZ-R33, and to demonstrate that it is consistent with the relevant objectives and policies of the MRZ. It is my opinion that the as-built building does not appropriately address the matters of discretion for overlooking and privacy, as outlined above in Section 9, and that

the effects of this are low-moderate adverse, and therefore require further mitigation.

- 13.30 Mr Bain discusses the visual effects in relation to shading, the streetscape of the area, and the breach in height of the retaining wall and fence in paragraphs 7.8 to 7.13. As I have noted above, my findings are that the effects on these matters are low adverse, and I will not discuss them further here.
- 13.31 In section 8 of his evidence, Mr Bain notes the matters which are within his area of expertise, relating to character effects and amenity impacts. As Mr Bain, Mr McEwen and I are broadly in agreement on matters in relation to character, shade and loss of views, I will not discuss these further. In relation to sense of enclosure and dominance effect along the eastern boundary and loss of privacy, I have made my views clear above in Sections 8, 9 and 10.
- 13.32 Mr Bain states in his paragraph 8.5 that *"In my view, the building's height to boundary' breaches create a minimal additional sense of enclosure and or dominance. This is primarily due to the small scale and extent of the breaches in the context of the building's eastern façade. I viewed the breach areas from several positions when visiting the Whyte property. Photographs of from these viewpoints are appended to this evidence. From these viewpoints, while the breach areas are identifiable, in my view they contribute little additional enclosure and/or dominance over and above if the breach areas were not there."*
- 13.33 I disagree that at 22.5m long the breach is "small". Both Mr McEwen and Mr Bain admit that the breach, when assessed under MRZ-S3, occurs over $\frac{3}{4}$ of the building's façade.
- 13.34 Mr Bain notes that *"The constructed dwelling at 26 Woolcombe Terrace is substantial and visually dominates the western flank of the submitters' property. However, this dominance is created primarily by the compliant parts of the dwelling"*. However, I again refer back to Figure 10 noting that a compliant building would need

to be of a different design, which would not bring the upper parts of it as close to 28 Woolcombe Terrace, or be set substantially further back from the boundary were it of the same design.

- 13.35 In relation to breach of privacy, Mr Bain again refers to the positioning of windows and does not comment on the position of outdoor living spaces in relation to privacy, the effects of which I have covered above.

14.0 COUNCIL OFFICER'S S95 REPORT AND S42A REPORTS

- 14.1 I agree with the findings of Mr Robinson's s95 report in relation to streetscape effects and effects on the Coastal Environment.
- 14.2 The s95 broadly groups effects on the Whytes' property into three key areas – shading, privacy loss and building dominance or sense of enclosure. I am in agreement with Mr Campbell's finding in relation to shading.
- 14.3 The s95 notes that *"Building dominance effects can be broadly described as the sense of building enclosure or the sense of a building being too close or being overbearing. Building dominance effects can contribute to a feeling of a lack of visual or built relief between buildings impacting on the sense of outlook or amenity."*
- 14.4 I agree with the assessment of the s95 that *"The proportion of the building which fails to comply with the Effects Standard is relatively high in the context of both the building and boundary length" that being 21.9m in length which "represents approximately 75% of the total building length or 62% of the total boundary length between the properties."*
- 14.5 Mr Robinson considers that the Whytes would experience building dominance effects which are at least minor *"resulting from the cumulative portion of eastern elevation which does not comply with the HIRB Effects Standard MRZ-S3."* We are in agreement on this point.

- 14.6 In relation to privacy effects, Mr Robinson considers the findings of the AEE and the proportion of the window which is within the breach. He states that *“Access to the area of the first-floor deck which fails to comply with MRZ-S3 is blocked by vertical timber louvers set-back 0.7m from the edge of the building. The placement of the louvers effectively avoids any overlooking or privacy loss from this aspect of the infringement.”* However, as noted above these louvers are not present on the as-built building. The S95 does not consider the privacy and overlooking aspects from any of the other outdoor spaces, as I have discussed above. I therefore disagree with his conclusion that those effects are less than minor.
- 14.7 I agree with Mr Robinson in paragraph 52 of his s42A report that *“Methods to mitigate building dominance effects can include the use of boundary treatments e.g. screening, landscaping and planting as well as a reduction in the physical extent of building.”* I also agree that the use of planter boxes or vegetative screening would need to be carefully considered and involve a landscape professional.
- 14.8 Mr Robinson concludes in the s42A that *“negative building dominance effects described in the notification decision will be at the lower end in terms of magnitude and ultimately be acceptable given the development is consistent with the planned character of the zone.”* I note that this appears to be a change in position when compared to his notification report that *“The proportion of the building which fails to comply with the Effects Standard is relatively high in the context of both the building and boundary length”*.
- 14.9 The s42A concludes that *“It is not obvious that further mitigation measures would be plausible, proportionate or warranted”*. I disagree with this statement and have provided some suggested mitigation measures which are proportional to the scale of the low-moderate adverse privacy, dominance and enclosure effects.

15.0 OVERALL CONCLUSIONS AND RECCOMENDATIONS

- 15.1 I find that the assessment of Mr McEwen and the Review of Mr Bain have been carried out generally in line with best practice.

- 15.2 Mr McEwen, Mr Bain and I are broadly in agreement on the nature and scale of the effects in relation to shading and effects on the streetscape and planned future outcomes for the MRZ, and that the effects in relation to both these matters are low, and less than minor.
- 15.3 In relation to privacy loss, dominance and sense of enclosure we differ in opinion. Both Mr McEwen and Mr Bain fail to address the privacy and overlooking effects of the outdoor spaces of the as-built building, and understate the effects on visual dominance and sense of enclosure based upon their opinion that a complying building would create effects which have worse visual outcomes. It is my opinion that the greatest effects on amenity in relation to 28 Woolcombe Terrace are in relation to 'sense of enclosure' and privacy and overlooking effects. These effects are anticipated to be **low-moderate adverse** in relation to Standard MRZS3, and Standard MRZ S4, and the as-built building does not comply with the further matters of discretion outlined in MRZ R33. These effects therefore require further mitigation.
- 15.4 Adverse effects of the development are potentially able to be avoided, remedied or mitigated through:
- Redesign of building's eastern facade further away from boundary so it does not exceed HIRB envelope
 - Reduction in height/angle of roof plane so it does not exceed HIRB envelope
 - Installation of louvres/window tinting in appropriate locations to reduce overlooking/increase privacy
 - Introduction of planting/ planter boxes to soften the transition between the two properties and reduce overlooking/privacy effects from the eastern deck

- Increased permeability in materials of the boundary fence to remove tunnelling effect and allow increased sunlight into undercroft space

Emma McRae

NZILA Registered | Principal Landscape Architect

Boffa Miskell Limited

19 March 2025

APPENDIX 1 [Appendix heading style]

Landscape and Natural Character Effects Method Statement

Method Statement

22 November 2023

This assessment method statement is consistent with the methodology (high-level system of concepts, principles, and approaches) of 'Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines', Tuia Pito Ora New Zealand Institute of Landscape Architects, July 2022. The assessment provides separate chapters to discuss landscape, visual and natural character effects where relevant, but is referred to throughout as a Landscape Effects Assessment in accordance with these Guidelines. Specifically, the assessment of effects has examined the following:

- *The existing landscape;*
- *The nature of effect;*
- *The level of effect; and*
- *The significance of effect.*

The Existing Landscape

The first step of assessment entails examining the existing landscape in which potential effects may occur. This aspect of the assessment describes and interprets the specific landscape character and values which may be impacted by the proposal alongside its natural character where relevant as set out further below. The existing landscape is assessed at a scale(s) commensurate with the potential nature of effects. It includes an understanding of the visual catchment and viewing audience relating to the proposal including key representative public views. This aspect of the assessment entails both desk-top review (including drawing upon area-based landscape assessments where available) and field work/site surveys to examine and describe the specific factors and interplay of relevant attributes or dimensions, as follows:

Physical –relevant natural and human features and processes;

Perceptual –direct human sensory experience and its broader interpretation; and

Associative – intangible meanings and associations that influence how places are perceived.

Engagement with tāngata whenua

As part of the analysis of the existing landscape, the assessment should seek to identify relevant mana whenua (where possible) and describe the nature and extent of engagement, together with any relevant sources

informing an understanding of the existing landscape from a Te Ao Māori perspective.

Statutory and Non-Statutory Provisions

The relevant provisions facilitating change also influence the consequent nature and level of effects. Relevant provisions encompass objectives and policies drawn from a broader analysis of the statutory context and which may anticipate change and certain outcomes for identified landscape values.

The Nature of Effect

The nature of effect assesses the outcome of the proposal within the landscape. The nature of effect is considered in terms of whether effects are positive (beneficial) or negative (adverse) in the context within which they occur. Neutral effects may also occur where landscape or visual change is benign.

It should be emphasised that a change in a landscape (or view of a landscape) does not, of itself, necessarily constitute an adverse landscape effect. Landscapes are dynamic and are constantly changing in both subtle and more dramatic transformational ways; these changes are both natural and human induced. What is important when assessing and managing landscape change is that adverse effects are avoided or sufficiently mitigated to ameliorate adverse effects. The aim is to maintain or enhance the environment through appropriate design outcomes, recognising that both the nature and level of effects may change over time.

The Level of Effect

Where the nature of effect is assessed as **'adverse'**, the assessment quantifies the level (degree or magnitude) of adverse effect. The level of effect has not been quantified where the nature of effect is neutral or beneficial. Assessing the level of effect entails professional judgement based on expertise and experience provided with explanations and reasons. The identified level of adverse natural character, landscape and visual effects adopts a universal seven-point scale from **very low** to **very high** consistent with Te Tangi a te Manu Guidelines and reproduced below.

VERY LOW	LOW	LOW-MOD	MODERATE	MOD-HIGH	HIGH	VERY HIGH
----------	-----	---------	----------	----------	------	-----------

Landscape Effects

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

Visual Effects

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

Natural Character Effects

Natural Character, under the RMA, specifically relates to *'the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development'*. Therefore, the assessment of natural character effects only involves examining the proposed changes to natural elements, patterns and process which may occur in relevant landscape / seascape contexts.

As with assessing landscape effects, the first step when assessing natural character effects involves identifying the relevant physical and experiential characteristics and qualities which occur and may be affected by a proposal at a commensurate scale. This can be supported through the input of technical disciplines such as geomorphology, hydrology, marine, freshwater, and terrestrial ecology as well as input from *tāngata whenua*. An understanding of natural character considers the level of naturalness and essentially reflects the current condition of the environment assessed in relation to the seven-point scale. A higher level of natural character means the waterbody and/or margin is less modified and vice versa.

A natural character effect is a change to the current condition of parts of the environment where natural character occurs. Change can be negative or positive. The resultant natural character effect is influenced by the existing level of naturalness within which change is proposed; a greater level of effect will generally occur when the proposal reduces the naturalness of a less modified environment. In short, the process of assessing natural character effects can be summarised as follows:

- Identify the characteristics and qualities which contribute to natural character within a relevant context and defined spatial scale(s), including the existing level of naturalness;
- Describe the changes to identified characteristics and qualities and the consequent level of natural character anticipated (post proposal); and
- Determine the overall level of effect based on the consequence of change.



The Significance of Effects

Decision makers assessing resource consent applications must evaluate if the effect on individuals or the environment is less than minor⁴ or if an adverse effect on the environment is no more than minor⁵. For non-complying activities, consent can only be granted if the s104D 'gateway test' is satisfied, ensuring adverse effects are minor or align with planning objectives. In these situations, the assessment may be required to translate the level of effect in terms of RMA terminology.

This assessment has adopted the following ⁶ (refer to diagram below), acknowledging low and very low adverse effects generally equate to 'less than minor' and high / very high effects generally equate to significant⁷.



⁴ RMA, Section 95E

⁵ RMA, Section 95E

⁶ Seven-point level of effect scale. Source: Te tangi a te Manu, Pg. 151

⁷ The term 'significant adverse effects' applies to specific RMA situations, including the consideration of alternatives for Notices of Requirement and AEEs, as well as assessing natural character effects under the NZ Coastal Policy Statement.

