

**BEFORE AN INDEPENDENT HEARING COMMISSIONER  
APPOINTED BY THE NEW PLYMOUTH DISTRICT COUNCIL**

**UNDER**

the Resource Management Act 1991

**IN THE MATTER**

of an application for a resource consent  
by **Kelsey E Kearns** to undertake a **two-lot  
subdivision of 249C Tukapa Street,**  
New Plymouth

***Council Ref: SUB20/47579***

**STATEMENT OF PLANNING EVIDENCE BY LOUISE ALICE MCLAY  
ON BEHALF OF Kelsey E Kearns**

**14 July 2022**

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## **INTRODUCTION**

1. My name is Louise Alice McLay.
2. I have approximately 16 years' experience in resource management and planning. I hold a Bachelor of Science (Biochemistry) and a Master in Natural Resource Management from the University of Canterbury. I am an Associate Member of the New Zealand Planning Institute.
3. My experience in resource management and planning includes policy, development of regional plans, district and regional consent applications predominantly in Taranaki. My experience in central government was with the Commission for the Environment and Department of Conservation, in regional government with the Taranaki Regional Council and in the private sector with BTW Company and Landpro Limited. I also have experience in Civil Defence and Emergency Management as a volunteer and professionally as Recovery Manager.
4. Originating from rural Canterbury I have lived and worked in Taranaki since 1988. I have been in my current position as a Resource Management Planner with Landpro Limited (Landpro), a Survey and Planning Consultancy, since 2018.
5. I am familiar with resource management issues arising in the New Plymouth District, and I estimate half of my work in my current role has been applications under the operative New Plymouth District Plan 2005 (ODP) and Proposed New Plymouth District Plan (PDP) as notified on the 23<sup>rd</sup> of September 2019.

## **EXPERT WITNESS CODE OF CONDUCT**

6. I confirm that I have read, and agree to comply with, the Environment Court's Code of Conduct for Expert Witnesses (Environment Court of New Zealand Practice Note 2014). This evidence I am presenting is within my area of my expertise, except where I state that I am relying on the evidence of another person. To the best of my knowledge, I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.

## **INVOLVEMENT WITH THE PROJECT**

7. I was approached in my capacity as a consultant Resource Management Planner by Kelsey Kearns (the Applicant) in July 2021 regarding an application for resource consent for a two-lot residential subdivision of her property at 249C Tukapa Street, New Plymouth that had been prepared and lodged by Bland & Jackson Surveyors Limited with the New Plymouth District Council on 24 August 2020.
8. The Applicant was seeking advice from a consultant with a "fresh and independent set of eyes" on the status of the application. It had been a joint project with her husband up to the time it was lodged, and the couple has since separated. An updated Record of Title is provided in **Appendix A**.

9. Ms Kearns verbally outlined the background to me and provided copies of the documentation she held. I subsequently obtained a copy of the public NPDC file on the application, SUB20/47579.
10. After reviewing the documentation, I provided advice to Ms Kearns regarding her options. I was formally engaged to act on her behalf in December 2021.
11. On the 3rd of February 2022, Ms. Kearns, Mr. Grieve (the applicant's lawyer) and myself met and discussed her options. In light of this discussion the applicant instructed:
  - that NPDC be requested to reactivate the application and to proceed to a Hearing;
  - a traffic assessment of the proposal by a traffic engineer be commissioned; and
  - the offer to build a 1.8m fence along the boundary between 249B and 249C Tukapa Street be withdrawn.
12. Subsequently NPDC was informed of and /or provided with;
  - a formal request to re-activate the application;
  - that the offer of the fence as a mitigation measure had been withdrawn;
  - a letter from the owners of 249A Tukapa Street, demonstrating they are aware of, and are not unduly affected by, the withdrawal of the offer of the 1.8m timber fence, **Appendix B**;
  - the Traffic Assessment RE: 249C & 251 Tukapa Street, AMTANNZ Ltd, 27 April 2022, **Appendix C of the Officer's Section 42 Report**; and
  - The written approval of 251 Tukapa Street, **Appendix C**.
13. I have visited that application site on two occasions. I am familiar with the wider neighbourhood.

#### **SCOPE OF EVIDENCE**

14. The purpose of my evidence is to provide a planning assessment of the applicant's proposal and the events and information arising since the application was lodged.
15. My evidence is provided within the scope of my expertise and experience, which is an assessment of the applicant's proposal against the planning requirements and processes of the Resource Management Act 1991 (RMA) and the Operative and Proposed New Plymouth District Plans.
16. My evidence will:
  - Demonstrate I am in agreement with the original application;
  - Identify that the Scheme Plan as lodged remains what is applied for;
  - Expand on the description of the existing environment;
  - Expand on the assessment against the ODP and the PDP;
  - Expand on the increased users of the ROW;
  - Expand and update consultation undertaken with affected parties and iwi;
  - Expand on easements and covenants;
  - Expand the Assessment of Environmental Effects;

- Expand on Statutory Considerations and in particular the National Policy Statement – Urban Development 2020 (Updated May 2022);
  - Discuss the submission made by the notified affected party, the owners of 249B Tukapa Street; and
  - Provide a response to the Reporting Officer’s Section 42 Report.
17. I am relying on the information provided in:
- i. the original application;
  - ii. email and written correspondence between the parties involved;
  - iii. the verbal account of events, the timeline and evidence provided by the applicant;
  - iv. the relevant Records of Titles and instruments recorded thereon ;
  - v. the provisions of the RMA, the ODP and PDP;
  - vi. the Reporting Officer’s Notification Report;
  - vii. the formal submission lodged by the owners of 249B Tukapa Street;
  - viii. the Traffic Assessment provided by AMTANZ Ltd dated 27 April 2022 (Traffic Assessment), and evidence provided by Mr Skerrett;
  - ix. the application lodged with NPDC by the owners of 251 Tukapa Street, on 10<sup>th</sup> of June 2022; and
  - x. the Reporting Officer’s Section 42 Report.

#### **THE PROPOSAL AS LODGED IN THE ORIGINAL APPLICATION ON 24 AUGUST 2020**

18. The Scheme Plan and Schedule of Easements supplied in the application, remains current and what is applied for. The application is for a subdivision only, no new dwelling is planned at this time. A land use consent is not required as the existing dwelling complies with bulk and location standards.
19. As shown on the aforementioned Scheme Plan, the proposal is a two-lot residential subdivision of Lot 2 DP 7582 and is located at 249C Tukapa Street. Proposed Lot 1, retaining the existing dwelling, will be approximately 460m<sup>2</sup> in area, excluding a ROW area of 145m<sup>2</sup>. Proposed Lot 2 will be approximately 455m<sup>2</sup> in area excluding 47m<sup>2</sup> of access area and 104m<sup>2</sup> of ROW.

#### **Application Details and Activity Classification**

20. I am in agreement with the Section 1.0 *Application Details* and Section 2.0 *Subdivision Proposal* including that the proposal requires, using the bundling principle, consent for a Discretionary Activity under rules of the ODP.
21. I agree that under the Residential Area Rule RES 54 the subdivision is a Discretionary Activity because there will be an increase in the number of users of a ROW.
22. I agree that under Residential Area Rule RES 59 the subdivision is a Discretionary Activity because not all design specifications for a ROW are met.

## Description of the Site and Neighbourhood

23. I agree with Section 2.2 *Description of the Site and Surrounding Area* provided in the application and provide further relevant information in paragraphs 24-31 below. The text from the original application is in black font and my additions or corrections in blue font.
24. *The property is located on the east (not the west) side of Tukapa Street (refer Figure1). It has an area of 1139m<sup>2</sup>, refer to the Record of Title, TN202/3, dated 10 June 1955*
25. *Residential subdivision creating allotments of approximately this size were common in the 1950's and 1960's when "the quarter acre" section was the predominant residential allotment size. With infill development of more recent times, allotments of this size, especially if flat in contour, in New Plymouth's residential zones is less common.*
26. *The property is a large residential site located down a right of way. It contains an existing dwelling with an attached garage. The property is contained in lawn and contains mature trees along the southern and eastern boundaries. The eastern boundary between 249 B and the site is largely screened by a well-established hedge. The topography of the site is relatively flat, slightly descending to the north.*
27. *Access is via an existing right of way from Tukapa Street, opposite the intersection to Nursery Place. Under the NPDC hierarchy of road classification, Tukapa Street is a Collector Road in the vicinity of the site and becomes an Arterial Road at the roundabout adjacent to Francis Douglas Memorial College and intersection with Omata Road.*
28. *The surrounding land is predominantly residential in nature with a mix of older homes and modern homes arising from infill housing development. The location is well connected via the roading network and walkways or footpaths to services, employment & education centers, facilities and parks.*
29. *The site is within an easy active transport distance (walk, scooter, pushchair, skateboard or cycling distance) to:*
- *Francis Douglas Memorial College, which is approximately 320m to the northeast along Tukapa Street;*
  - *a local convenience store, petrol station (noting the petrol station became operative near or after 24 August 2020) and café, which are approximately 100m to the northwest;*
  - *Taranaki Base Hospital, which is approximately 1.2km along Tukapa Street to the north and east;*
  - *A Primary Health Care Provider including GPs, physiotherapy, pharmacy and x-ray imagery, which is approximately 1.8km to the north and east along Tukapa Street;*
  - *Barret Domain and lagoon (including Riding for the Disabled), which are approximately 700m by street to the west;*
  - *Frankley Primary School and Early Childhood Education Centre, which are approximately 950m to the south; and*

- *Woodleigh School Primary School, which is approximately a 1.8km by street to the east.*
- 30. *Public transport is available near the site. Bus stops (including bus shelters) are close by on Tukapa Street for the commuter bus service (Route 4). Bus stops for the School Orbiter bus service, which services the city's Intermediate and High Schools, are located at Francis Douglas Memorial College and near the intersection of Wallath Road and Tukapa Street.*
- 31. *The site is within commuting distance, both for passive and active transport, to major employers such as New Plymouth Base Hospital, the District Council, Port Taranaki and WITT. The City Centre, Westown Suburban Centre and Yarrows Stadium are also easily accessed from Tukapa Street. The roading network provides a convenient link to the State Highways, north and south, and to New Plymouth Airport.*
- 32. I concur with 2.3 *Other Activities that are Part of the Proposal*, that the new allotment will be for residential purposes and any other requirements (such as under the Building Act 2004) will be met, or permissions applied for, at the time the proposed new allotment is developed.

#### **District Plans**

- 33. I concur with the assessment provided in Section 3.0 *District Plan* except section 3.3 *Vehicle Access*, page 4 which has been superseded by the Traffic Assessment. This is discussed below in paragraphs 41-46. I note that under the ODP the site is zoned Residential A Environment Area with no overlays.
- 34. I have expanded the assessment of the application against the PDP throughout my evidence.
- 35. The PDP was notified on 23rd September 2019 and some provisions, in particular those relating to Water Bodies, Biodiversity, Sites of Significance to Maori and Archaeological Sites taking immediate legal effect. The provisions that are relevant to this application are not yet in legal effect. However, a consent authority is expected to take them into account, giving them progressively more weight as the PDP progresses through the statutory process. As the PDP is currently at the formal Hearing Stage, I have expanded on the discussion and information on the PDP provisions that relate to this application.
- 36. Under the PDP, the site is zoned General Residential Zone with no overlays.
- 37. I agree with Sub Section 3.1 *Lot Size*, that as the site is zoned as a Residential A Area, and the proposed lot sizes (excluding area that is access leg or ROW) are greater than 450m<sup>2</sup>, and the subdivision is therefore a Controlled Activity with respect to lot size.
- 38. Under the PDP, in the General Residential Zone the minimum lot size reduces to 400m<sup>2</sup> (Effects Standard SUB S1). This signals that smaller allotments and greater intensification are anticipated under the PDP.

39. As previously stated in paragraph 18 above, I agree with subsection 3.2 *Increased users of the Existing Right of Way*, that under rule RES 54, because an additional allotment will have access via the ROW, the subdivision is a Discretionary Activity.
40. Under the PDP, where there is an increase in the number of users of a ROW, a subdivision is a Restricted Discretionary Activity under the Subdivision Rule SUB R 7. This is less stringent than the ODP.
41. *Section 3.3 Vehicle Access*. This section contains some inaccuracies and is quite light on assessment. It has been superseded by the above-mentioned Traffic Assessment which was provided to NPDC on 28 April 2022.
42. As previously stated, the proposal requires is a Discretionary Activity under RES 59 because it does not meet all the specifications for a ROW of the ODP. In particular:
- The ROW is greater than 50 m in length and there is no formed passing bay or turning area;
  - The width of the formed carriage way/seal is under 3m; and
  - The separation between the Vehicle Access Point from an intersection is under 30m.

It is noted that the legal dimensions of the ROW are an existing situation and the ROW design dates back to the original subdivision that occurred in the 1950's.

43. The proposal does meet the other design specifications for a ROW. These are:
- The minimum legal width of 4.5m, it is 5.5- 6m in width; and
  - The minimum sight distances of 45m, the proposal has sight distances over 150m in both directions.
44. *Table 1. District Plan Requirements*, of the Traffic Assessment provides the requirements of the PDP with respect to Traffic and Transport. The minimum sight distance is increased from 45m to 90m, the maximum width of a Vehicle Access Crossing is 4m, the minimum legal width for a ROW remains 4.5m, minimum width for a formed carriage way or seal is unchanged at 3m. The separation distance between an intersection and a Vehicle Access Crossing has been reduced to 9m. The proposal is complaint with these requirements of the PDP.
45. The requirement for a passing bay and a turning area where a ROW is greater than 50m in length remains in the PDP. Under the PDP, the proposal is a Restricted Discretionary Activity under TRAN -R1 because one or more of the Transport Effects Standards has not been meet. This is less stringent than the ODP.
46. I support the findings of the Traffic Assessment and the expert evidence of Mr. Skerrett that, with appropriate upgrades, the ROW can accommodate increased traffic arising from the proposal.

47. I am in agreement with subsection 3.4 *Services* that the new allotment can be serviced, as described, for water, wastewater and stormwater. The requirements under the PDP are essentially unchanged except low impact stormwater control is encouraged.
48. I am in agreement with subsection 3.5 *Building Platform*, that as required under rule RES62 the new, rear lot can provide a suitable, stable and flood free building platform. The requirements under the PDP remain essentially unchanged.
49. I am in agreement with subsection 3.6 *Existing Buildings*, that as the existing garage will be removed to enable access to the rear lot, the existing dwelling will meet the standards for a permitted activity for setbacks and site coverage and daylight envelope relative to the new boundary. The bulk and location requirements with respect to the new boundary are essentially unchanged under the PDP.
50. In summary, while the proposal is a Discretionary Activity in the ODP, it would be a Restricted Discretionary Activity under the PDP as notified in 2019.
51. Section 4.0 *Consultation Undertaken*. I will discuss this section of the application after commenting on Section 6.0 *Assessment of Environmental Effects*.

#### **Easements**

52. Section 5.0 *Easements and Covenants*. I agree with the application regarding existing easements and covenants on the Record of Title.
53. There is one omission. The property at 251 Tukapa Street, Lot 1 DP 7582, owned by Simon and Theresa Cayley, is a fourth property with a legal ROW over the subject ROW. This was created by the instruments listed in the application. As referenced in the Traffic Assessment, the dwelling at 251 Tukapa Street has not used the ROW and has a formed access directly to Tukapa Street. Consequently, the proposal will increase the number of allotments with legal ROW from four to five. I note this remains under the maximum number of allotments allowed by the ODP, which is six.
54. Existing ROW provisions “carry over” onto the new titles and hence both allotments will inherit a ROW over the existing ROW. A new ROW, over the area “C” in the Scheme Plan is to be created to provide access over Lot 2 to Lot 1. A Memorandum and Schedule of Easements is provided on the Scheme Plan. These include, in addition to access, easements for sewage, water, power and telecommunications.

#### **Assessment of Environmental Effects**

55. I am in agreement with 6.0 *Assessment of Effects* provided in the application, except as superseded by the Traffic Assessment, and the omission of an assessment of positive effects. The Traffic Assessment has been provided. Positive effects are considered in paragraph 56 and permitted baseline is discussed in paragraphs 57-59 below.



## Positive Effects

56. The proposed two lot residential subdivision will:
- Create an additional residential allotment in an area within a high demand area for housing, particularly new housing on smaller sections;
  - Due to the dimensions of proposed Lot 2, enable a future dwelling, suitably designed, to be built as a permitted activity under the ODP;
  - Create a new allotment for infill housing on flat, stable, food free land with a sunny aspect;
  - Be an efficient use of residential land as existing municipal infrastructure will be utilized and only relatively minor upgrades to private infrastructure will be required to service the new allotment;
  - Create potential for a new, modern, healthy and energy efficient dwelling to be built at a time when there is an officially recognised and documented housing shortage;
  - Create a new allotment, and potential for a new dwelling, at a location that is very well connected to passive and public transport networks to educational and employment centres, services, recreational facilities and open spaces;
  - Create an allotment that is well connected via the roading network to the rest of New Plymouth, the State Highway, north and south, and to New Plymouth Airport;
  - Create a new allotment, that due to its sunny aspect, allows the option of utilizing solar energy and passive heating;
  - Contribute to housing diversity by creating a subdivision that retains the existing dwelling while making a land available for a new dwelling to be built;
  - Enable the applicant to meet her aspirations - including the ability to care for her elderly relative;
  - Contribute to the applicant's, and the wider communities' social, economic and cultural wellbeing; and
  - Contribute to a Well-Functioning Urban Environment.

## Permitted Baseline

57. It is accepted that a permitted base line does not apply for subdivision in New Plymouth District. As previously stated, the subdivision is a Controlled Activity with respect of lot size, bulk and location of existing buildings, building platform and services under the ODP. However, it is also accepted that the subdivision will, in all probability, result in a future dwelling on proposed Lot 2. This has been assumed in the Notification Report and the Section 42 Report; the effect of a future dwelling on neighbours is considered in these reports. Therefore, it is relevant to consider what the permitted baseline is for a future dwelling on the new lot created by the subdivision in my opinion.
58. A future dwelling on Lot 2 can be built as a permitted activity provided it meets the following key planning rules and standards:
- There is only one habitable building in on an allotment serviced by a ROW under RES 9;

- It is set back from side boundaries by 1.5 m as required under RES 63;
- It is within the required daylight envelope as defined under RES 5;
- Parking, Lot 2 has sufficient area to provide parking for one accessibility car park as, I understand it, is still required under RES 74 and the NPS -UD 2020;
- The volume of earthworks on Lot 2 to establish a new dwelling is within the maximum volume and composition specification as required under RES 47 & RES 49. A dwelling on proposed Lot 2 can be built with minimal earthworks required, including the volume required to establish foundations, services and soak holes. Therefore, the volume of earthworks can easily comply with RES 47 & RES 49;
- The lot size is sufficient that a new dwelling can meet the Daylight Envelope requirements from side boundaries under RES 5 & RES 6;
- The maximum dwelling height is 9m under RES 7. It is noted that a one or two storey dwelling can, with suitable design, meet the daylight envelope and comply;
- The maximum length of a building within 10 m of a boundary is 30m under RES 8 and a new dwelling is expected to meet this rule; and
- Site coverage in Residential A Environment Area is up to a maximum of 40% under RES 11, proposed Lot 2 is sufficient in area to accommodate a dwelling with a site coverage of under 40%. I note that site coverage includes coverage from non-habitable buildings as well as a dwelling.

59. The above parameters apply to any building over 5m<sup>2</sup> in footprint and 2m in height. There is an exception if there are no windows (such as for a garage or shed) along the side boundary wall; then the setback of 1.5m from the side boundary does not apply provided the wall is under 12m in length or less than 50% the length of the boundary (whichever is the lesser).

### **Affected Parties**

60. The NPDC has identified the affected parties as the other parties who use and or have a legal ROW over the subject ROW. These are the owners /occupiers of:
- 249A Tukapa Street;
  - 249B Tukapa Street; and
  - 251 Tukapa Street.
61. The Written Approval of the Affected Parties at 249A and 251 Tukapa Street has been provided and, therefore, any adverse environmental effects on them must be disregarded by the Consent Authority in reaching its decision (under section 104(3)(a)(ii) RMA).

### **Consultation**

62. I am in agreement with the application section **4.0 Consultation Undertaken** but I make some corrections and additional comment in paragraphs 63-68 below.
63. As stated previously in paragraph 60, and in the Traffic Assessment and expert evidence of Mr. Skerrett, the property at 251 Tukapa Street also has legal ROW over the existing ROW.

Consequently, the owners of 251 Tukapa Street are an affected party, and their written approval has been granted. A copy is provided in **Appendix C**. It is noted that 251 Tukapa Street has not historically utilized this right, as the access had been formed directly to Tukapa Street.

64. I understand from the applicant (including her evidence) and the application that the applicant met with the Woods on two occasions to discuss the application. After this more formal correspondence was entered into between the parties as is recorded in the original application.

65. The Woods, during consultation, sought numerous mitigation measures and explanations. The correspondence illustrates that the applicant genuinely engaged with the Affected Party and went to considerable effort to endeavour to address their concerns and answer their questions (to no avail).

66. I agree with the following description and summary, paragraphs 1-6, Page 7, of the original application:

*However, during consultation the applicant was unable to obtain approval from 249B Tukapa Street. They had concerns regarding the maintenance of the right of way, as well as character and amenity concerns around the development of the new lot. As a condition of providing written approval, they wanted several design covenants to be registered against the new title issued. The applicant was not amenable to a number of these design restrictions, given the Controlled Activity status of the application in terms of lot size and bulk and location.*

*The cost of any upgrades to the existing right of way required because of the currently proposed subdivision will be at the sole cost of the applicant/consent holder.*

*Following the proposed subdivision, maintenance costs will be shared equally between each of the four right of way users (three original lot owners plus the fourth created by the proposed subdivision)*

*It is requested that limited notification be given to the owners of 249B Tukapa Street.*

*During consultation, the applicant offered to construct a 1.8m fence along the common boundary with 249B to alleviate their privacy concerns. The applicant is still amenable to this and a condition will be offered as follows:*

*“Prior to the issue of section 224 certification or within one month of the removal of the existing hedge along the common boundary (whichever is first), a 1.8m timber boundary fence shall be constructed along the common boundary between 249B and 249C Tukapa Street at the sole cost of the consent holder.”*

67. The offer to build a 1.8m timber fence along the common boundary between 249B & 249C Tukapa Street has since been withdrawn. The owners of 249A Tukapa Street were consulted on this change and have provided confirmation that they are aware it has been withdrawn and are not unduly affected, refer **Appendix B**.

68. I agree with the statement in the application, paragraph 1, page 7: *“applicant was not amenable to a number of these design restrictions, given the Controlled Activity status of the application in terms of lot size and bulk and location.”*
69. I refer to the matters raised in the formal submission by the owners of 249B Tukapa Street to the NPDC dated 17 October 2020. I consider the matters have been addressed in:
- The detailed engineering specifications for a ROW and vehicle access points contained in the ODP and the New Plymouth District Development and Subdivision Infrastructure Standards Version 3 (August 2019) and
  - The Traffic Assessment
  - or is information in the public domain
  - or is a question regarding costs which has previously been answered (at the applicant’s cost)
  - or is a request for an agreement / contract that is inappropriate as the respective rights and obligations are already set out in law, including property law, regarding how costs to maintain a ROW are generally split equally between the parties who use the ROW or, in the instance of the right for further subdivisions along the ROW, is set out in the rules of the ODP.

## **STATUTORY REQUIREMENTS**

70. I am in agreement with Section 7.0 *Statutory Considerations* as provided in the application except as updated by the Traffic Assessment and as expanded in my evidence and the Section 42 Report, in particular, regarding Part 2 of the RMA, the National Policy Statement – Urban Development 2020, NPS -UD, and regarding the Objectives and Policies of the ODP and PDP.

## **Operative District Plan**

71. I am in agreement with the analysis of the proposal against the objectives and policies of the ODP as outlined in the application. However, I consider that Mr. Balchin’s analysis in the Section 42 Report, paragraph 54 and Table 4- *Relevant ODP Objectives and Policies Assessment*, is more complete. These documents found that the proposal is consistent with the Objectives and Policies of the ODP, with which I agree.

## **Proposed District Plan**

72. The Proposed District Plan was notified on 23 September 2019. The objectives and policies have to be considered in the assessment of proposed activities.
73. I agree with the analysis of Mr. Balchin provided in the Section 42 Report, paragraph 55 and Table 5 – *Relevant PDP Objective and Policies Assessment*, which found the proposal consistent with the relevant objectives and policies of the PDP.

## **Regional Policy Statement for Taranaki**

74. The Regional Policy Statement for Taranaki 2010 (RPS) identifies the significant resource management issues of Taranaki which include land and soil, fresh water, air, coast, indigenous biodiversity, natural features and landscapes, historic heritage and amenity values, natural hazards, waste management, minerals, energy, and built environment.
75. The relevant section to this application is section 15. *Built Environment*. This section discusses the resource management issues for the goal of Sustainable Urban Development and sets out objectives and policy for Sustainable Urban Development in the Region. The relevant objective and policy are reproduced below (which, where relevant, the application is consistent with in my opinion):
- Sustainable Urban Development:*  
*SUD OBJECTIVE 1 To promote sustainable urban development in the Taranaki region.*
- Sustainable Urban Development*  
*SUD POLICY 1 To promote sustainable development in urban areas by:*
- (a) encouraging high quality urban design, including the maintenance and enhancement of amenity values;*
  - (b) promoting choices in housing, workplace and recreation opportunities;*
  - (c) promoting energy efficiency in urban forms, site layout and building design;*
  - (d) providing for regionally significant infrastructure;*
  - (e) integrating the maintenance, upgrading or provision of infrastructure with land use;*
  - (f) integrating transport networks, connections and modes to enable the sustainable and efficient movement of people, goods and services, encouraging travel choice and low-impact forms of travel including opportunities for walking, cycling and public transport;*
  - (g) promoting the maintenance, enhancement or protection of land, air and water resources within urban areas or affected by urban activities;*
  - (h) protecting indigenous biodiversity and historic heritage; and*
  - (i) avoiding or mitigating natural and other hazards.*
76. I consider that the proposal is consistent with the RPS, in particular SUD Policy 1 (b), (c) and (f).

## **National Environmental Standards**

77. The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESC) is relevant to the proposal. Subdivision is an activity to which the NESC applies where land is potentially or actually contaminated. The site is not registered in Taranaki Regional Council's 's Selected Land Use data base as a site on which a HAIL activity has occurred and there is no current HAIL activity occurring at the site. Therefore, the NESC has been considered adequately in the application. As stated in the application and supported by the Section 42 Report the NESC does not apply to the subject site.

## National Policy Statement

78. The National Policy Statement on Urban Development (NPDS-UD) was approved by the Governor General on 20th July 2020 and is relevant to the application. Section 1.2 (1) Commencement of the NPS-UD states the NPD-UD came into force on 20 August 2020. It is noted that the subject application was lodged on 24 August 2020.
79. The Introductory Guide to the NPDS-UD 2020 1, Chapter 1, Intent of the National Policy Statement on Urban Development page 6 states:

*The NPS-UD is designed to improve the responsiveness and competitiveness of land and development markets. In particular, it requires local authorities to open up more development capacity, so more homes can be built in response to demand. The NPS-UD provides direction to make sure capacity is provided in accessible places, helping New Zealanders build homes in the places they want – close to jobs, community services, public transport, and other amenities our communities enjoy. Potential benefits of flexible urban policy include higher productivity and wages, shorter commute times, lower housing costs, social inclusion, and more competitive urban land markets. According to the cost-benefit analysis completed by PricewaterhouseCoopers (PwC), lower socio-economic groups and future generations will benefit most from greater land-use flexibility (increasing options for how land owners can develop their land). New Zealand's cities will also be better equipped to respond to many urban problems, such as changing patterns of wealth inequality, housing unaffordability and climate change. Most of the NPS-UD's provisions contribute to more competitive land markets in some form, but three are key.*

➤ *The intensification policies (Policies 3, 4 and 5) seek to improve land-use flexibility in the areas of highest demand – areas with good access to the things people want and need, such as jobs and community services, and good public transport services. These factors are indicators of the best areas for development, and there is strong evidence to demonstrate that reducing constraints on development in these locations would have the biggest impact.*

➤ *The responsive planning policy (Policy 8) seeks to improve land-use flexibility generally by ensuring local authorities have particular regard to plan changes that would add significantly to development capacity as they arise.*

➤ *The removal of minimum parking rates in district plans (Policy 11) seeks to improve land use flexibility in urban environments.*

*It will allow more housing and commercial developments, particularly in higher density areas where people do not necessarily need a car to access jobs, services or amenities. Urban space can then be used for higher value purposes than car parking. Developers will still provide car parking in many areas, and must still provide accessible car parking, but the number of car parks will be driven by market demand.*

*The NPS-UD is also intended to:*

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<sup>1</sup> National Policy Statement on Urban Development 2020: Introductory Guide Ministry for the Environment, July 2020  
ISBN: 978-1-99-003303-2 (online) [www.mfe.govt.nz](http://www.mfe.govt.nz)

- *improve accessibility for all people between housing, jobs, opportunities for social interaction, services, and public open space, including by way of public and active transport (Policy 1)*
- *improve the evidence used by decision-makers in planning decisions (Objective 7, subpart 3 of Part 3)*
- *provide direction on minimum requirements for local authorities in taking into account the principles of the Treaty of Waitangi (te Tiriti o Waitangi) in relation to urban environments (Policy 9)*
- *ensure zones have provisions that individually and cumulatively support the purpose of the zone (Policy 3, subpart 7 of Part 3)*
- *support reductions in greenhouse gas emissions (Objective 8, Policy 1).*

*In achieving these outcomes, the NPS-UD will contribute to the Urban Growth Agenda's objectives and address restrictive Resource Management Act 1991 (RMA) planning practices. Ultimately, it will help local authorities allow more urban development and housing through their plans, to better meet the different housing needs and preferences of New Zealanders.*

80. The NPS-UD defines New Plymouth as a Tier 2 Urban Environment and the New Plymouth District Council and the Taranaki Regional Council as Tier 2 Local Authorities. That is, New Plymouth is defined as a high growth city with a residential land supply challenge. A significant change in the NPDS-UD 2020, from the previous National Policy Statement Urban Development 2016, which it has replaced, is that it applies to decisions on resource consents as well as planning documents. When implementing the NPDS-UD and referring to Table 2 below, attention is drawn to the definition of "planning decision" in the NPDS-UD, 1.4 *Interpretation*, which explicitly includes a decision on a resource consent.
81. Particularly relevant to this application are Objective 1 and Policy 1 which provide for "well-functioning urban environments" and lists the features of such an urban environment.
82. Objective 2 is to promote housing affordability by planning decisions that support competitive land and development markets, in other words supports an increase in land supply for housing.
83. Objective 8 and Policies 1(e), 1(f) and 6 (e) require planning decisions to support housing developments that encourage reductions in greenhouse gasses and resilience to the effects of climate change.
84. Objective 4, and Policy 6 direct councils to enable urban environments, including their amenity values, to change over time.
85. Objective 3 is for councils to enable greater intensity in areas of high access or demand.

86. Policy 5 is that councils enable building heights and densities that reflect the relative demand for use, and the development of accessibility from planned or existing active transport.
87. Objective 3, which sets an objective for councils to support intensification in areas of high demand.
88. Policy 5, in a Tier 2 city (New Plymouth) enables building heights and densities that reflect the relative demand for use, and accessibility from planned or existing transport.
89. Policy 11, clause 3.38 removed the minimum car parking requirements for residential allotments in the District Plan, other than for accessible car parks, from 20th February 2022.
90. Policy 6 requires councils to have particular regard to the following when making planning decisions: anticipated outcomes, the benefits of urban development that are consistent with well-functioning urban environments, the need for urban environments to change, development capacity requirements and the effects of climate change.
91. I have assessed the proposal against the relevant Objectives and Policies of the NPDS-UD 2020 in Table 1 below.

*Table 1: Assessment of the Proposal Against the Objectives and Policies of the NPS- UD 2020*

Objective and Policy	Assessment
Objective 1: New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.	The location, and design of the subdivision, as detailed in the original application and this evidence, demonstrates the proposal is consistent with Objective as it increases housing supply options and to a Well-Functioning Urban Environment.
Objective 2: Planning decisions improve housing affordability by supporting competitive land and development markets.	The creation of smaller allotments in a high demand area assists supply and therefore affordability. The proposal gives effect to this Objective
Objective 3: Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply: a. The area is in or near a centre zone or other area with many employment opportunities b. The area is well-served by existing or planned public transport c. There is high demand for housing or for business land in the area, relative to other areas within the urban environment	The location, and design of the subdivision as detailed in the original application and this evidence demonstrates the proposal is consistent with this Objective by adding to housing supply options and to a Well-Functioning Urban Environment. It is noted that amendments to the Regional Policy Statement for Taranaki and the ODP and PDP may not yet have been implemented yet in this context.
Objective 4 New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.	The record of consultation with the submitter, indicates they are concerned by change in the ROW environment due to intensification. The NPD- UD 2020 directs that change arising from intensification are to be expected as a response to changing needs over time. Therefore, under the proposal the submitters will be exposed to



	a level of intensification and change which is anticipated, and indeed promoted, by the NPS- UD 2020.
Objective 5 Planning decisions relating to urban environments, and Future Development Strategy (FDS), take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).	The NPDC have processes and procedures in place to address Treaty matters.
Objective 8: New Zealand's urban environments: a. Support reductions in greenhouse gas emissions; and b. Are resilient to the current and future effects of climate change.	The location of the additional residential allotment arising from this proposal supports a Well-functioning Urban Environment. It provides opportunities for passive transport as it is in a short commuting distance to many facilities, services and employment, parks, open space and recreational centres. The size and orientation of the lots allow for solar power and passive heating options in future.
Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum: a) have or enable a variety of homes that: (i) meet the needs, in terms of type, price, and location, of different households; and (ii) (enable Māori to express their cultural traditions and norms; and b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and e) support reductions in greenhouse gas emissions; and f) are resilient to the likely current and future effects of climate change.	The proposal is consistent with this policy.
Policy 5: Regional policy statements and district plans applying to Tier 2 (New Plymouth City) and urban environments enable heights and density of urban form commensurate with the greater of: a. The level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or b. Relative demand for housing and business use in that location	Not directly relevant to this proposal at this point as the RPS and ODP and PDP have not been amended yet. However, it does indicate the direction that they are to take, and that the proposal is consistent with this direction.
Policy 6: When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters: a) the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement b) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes: (i) may detract from amenity values appreciated by some people but improve amenity values appreciated	The location, and design of the subdivision as detailed in the original application and this evidence demonstrates the proposal gives effect to this Policy, and in particular clauses 6 c), 6 d) and 6 e).

<p>by other people, communities, and future generations, including by providing increased and varied housing densities and types; and (ii) (are not, of themselves, an adverse effect</p> <p>c) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)</p> <p>d) any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity</p> <p>e) the likely current and future effects of climate change.</p>	
<p>Policy 11: In relation to car parking:</p> <p>a) the district plans of tier 1, 2, and 3 territorial authorities do not set minimum car parking rate requirements, other than for accessible car parks: and</p> <p>b) tier 1, 2, and 3 local authorities are strongly encouraged to manage effects associated with the supply and demand of car parking through comprehensive parking management plans.</p> <p>Under clause 3.38 District Plan requirements for minimum carparking, except for accessibility parking, to be removed by 20 February 2022.</p>	<p>The requirement for a new residential allotment to provide carparking, other than for one accessibility car park per dwelling, has been removed. Indicating an immediate expectation in the NPD-UD of intensification of residential development. The proposal provides an excess of area as the lot sizes still provide sufficient area for two residential carparks.</p>

92. It is my assessment that the proposal is consistent with the NPD -US, particularly Objective 1 & 8 and Policies 1 & 6. Mr. Balchin in his Section 42 Report, paragraph 63, also concludes the proposal is consistent with the NPD -UD.

## PART 2 OF THE ACT

93. Part 2 of the RMA sets out the purpose and principles of the RMA which is to 'promote sustainable management'. In the context of the RMA, sustainable management centres on the use, development and protection of the environment while ensuring the life-supporting capacity of the environment, safe-guarding future generations and avoiding, remedying and mitigating adverse effects. There is a logical hierarchy to the RMA with policy and planning instruments developed at national, regional and district levels. Further statutes may also weigh into an assessment of whether the activity achieves the purpose and principles of the RMA.
94. Section 5 sets the purpose of the Act – the sustainable management of natural and physical resources, while enabling people and communities to provide for their social, economic and cultural well-being, and for their health and safety.
95. Section 6 of the RMA sets out the matters of national importance which need to be recognised and provided for and includes among other things, and in no order of priority, the preservation of the natural character of the lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development, the protection

of outstanding natural features and landscapes, the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, and the management of significant risks from natural hazards. It is considered that infill subdivision within a Residential Zone subdivision is appropriate provided the adverse environmental effects are within planned and anticipated levels. The environmental effects arising from the subdivision proposed would be within planned and anticipated levels in my opinion for the reasons set out in the application and evidence for the applicant (including this evidence).

96. Section 7 of the RMA requires the consent authority to give particular regard to those matters listed in the section. Section 7 matters are not expressly ranked in order of priority. Therefore, all aspects of this section are to be considered equally. In the case of this particular proposal, the following matters are considered relevant:
- the efficient use and development of natural and physical resources;
  - the maintenance and enhancement of amenity values;
  - maintenance and enhancement of the quality of the environment.
97. The subdivision design has taken account of the relevant matters listed in Section 7 and it has been demonstrated that the adverse environmental effects are within the level anticipated for a two-lot residential subdivision occurring on a recessed lot on a private ROW.
98. Section 8 of the RMA requires the consent authority to take into account the principles of the Treaty of Waitangi.
99. The application is considered to meet the relevant provisions of Part 2 of the RMA. In fact, taking into account the positive effects discussed above in Paragraph 56, the proposal contributes to the applicant, people and communities to provide for their social, economic and cultural well-being, and health and safety, while sustainably managing the natural and physical resources.

#### **RESPONSE TO SECTION 42A REPORT**

100. I am in agreement with Mr. Balchin's Section 42 Report and its finding's, with the exception of paragraph 14 on page 6. This paragraph, in my opinion, requires correction.
101. Paragraph 14, page 6 of the Section 42 Report says:
- However, the neighbouring allotment, 249B Tukapa Street, has not provided written approval. This is despite consultation efforts and mitigation measures being proposed by the applicant. The fencing mitigation offered by the applicant to 249C to mitigate effects of the subdivision, not ROW matters, has since be (sic) revoked as written approval from 249B was not forthcoming. However, several other mitigation measures were proposed within the application which I understand are still proposed and would continue to*

contribute to mitigating residential character and amenity effects of subdivision on 249B Tukapa Street. These include the following:

- That the 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 of the New Plymouth District Plan with legal effect when constructing a dwelling within Proposed Lot 2 (covenant);
- Maintain the location of existing vehicle access point serving proposed Lots 1 and 2 off the ROW;
- Restricting building heights to a single storey within proposed Lot 2; and
- Cover the costs of any ROW and /or infrastructure upgrades necessary to facilitate subdivision.

102. The original application page 7 states:

*However, during consultation the applicant was unable to obtain approval from 249B Tukapa Street. They had concerns regarding the maintenance of the right of way, as well as character and amenity concerns around the development of the new lot. As a condition of providing written approval, they wanted several design covenants to be registered against the new title issued. The applicant was not amenable to a number of these design restrictions, given the Controlled Activity status of the application in terms of lot size and bulk and location.*

*The cost of any upgrades to the existing right of way required because of the currently proposed subdivision will be at the sole cost of the applicant/consent holder.*

*Following the proposed subdivision, maintenance costs will be shared equally between each of the four right of way users (three original lot owners plus the fourth created by the proposed subdivision)*

*It is requested that limited notification be given to the owners of 249B Tukapa Street.*

*During consultation, the applicant offered to construct a 1.8m fence along the common boundary with 249B to alleviate their privacy concerns. The applicant is still amenable to this, and a condition will be offered as follows:*

*“Prior to the issue of section 224 certification or within one month of the removal of the existing hedge along the common boundary (whichever is first), a 1.8m timber boundary fence shall be constructed along the common boundary between 249B and 249C Tukapa Street at the sole cost of the consent holder.”*

103. The extensive mitigation measures listed in paragraph 14 of the Section 42 Report, as I understand it, are taken from the correspondence in the appendices to the application. The correspondence was provided as background on consultation. It is not a record of an agreement, as an agreement was not reached. The mitigation measures were not accepted by the owners of 249B Tukapa Street as adequately addressing their concerns and their written approval was not granted. As seen in paragraph 102 above, and page 7 of the application, these mitigation measures were therefore not carried into the application. There was one exception, which was the offer to build a 1.8m timber fence along the

boundary between 249B and 249C Tukapa Street, this did form part of the application. As previously documented, that offer of fencing mitigation has since been withdrawn.

104. Therefore, I wish to clarify the Section 42 Report, paragraph 14. The mitigation measures listed there are not proposed. Email correspondence dated the 10<sup>th</sup> and 15<sup>th</sup> of February 2022 clarifying this point is provided in **Appendix D**.
105. I consider the mitigation measures listed are disproportionate to the impact on 249C Tukapa Street. The subdivision is a Controlled Activity with respect to amenity and character impacts on 249C Tukapa Street. The NPDC, through a public District Plan process has determined rules and standards to ensure any adverse effects are within an accepted and anticipated level, both under the ODP and the PDP.
106. The listed mitigation measures are contrary to the purpose of the NPS – UD which is to remove unnecessary barriers to infill subdivision.
107. In addition, I consider there are problems with the mitigations listed and these are described in **Appendix E**.
108. I agree with Mr. Balchin’s conclusions relating to effects on residential amenity values in paragraph 33 of the Section 42 Report in this context.

## **SUBMISSION**

109. I refer to the matters raised in the formal submission by the owners of 249B Tukapa Street to the NPDC dated 17 October 2020. I consider the matters raised with respect to the design of the ROW have been addressed in:
- The detailed engineering specifications for a ROW and vehicle access points contained in the ODP and the New Plymouth District Development and Subdivision Infrastructure Standards Version 3 (August 2019); and
  - The Traffic Assessment and the recommendations of the Section 42 Report.
- Other matters raised:
- Are questions regarding the costs of the infrastructure upgrade for the subdivision which have previously been answered in the application and the Section 42 Report; OR
  - Is a request for an agreement / contract that is inappropriate as the respective rights and obligations are already set out in law, including property law, regarding how costs to maintain a ROW are generally split equally between the parties who use the ROW; OR
  - Is regarding the right for further subdivisions along the ROW and is set out in the public domain in the rules of a the ODP.

## PROPOSED CONDITIONS ON CONSENT

110. The proposed conditions on consent provided in the Section 42 Report are supported with the exception of condition 1.
111. The it is proposed that condition 1 be amended to read:
1. *"The use and development of the land shall be as described in the application submitted to the Council by Bland & Jackson entitled "Resource Consent Application ;2-Lot Residential Subdivision ' 24 August 2020 and subsequent evidence to and any decisions arising from the New Plymouth District Council Planning Hearing held on 29 July 2020 on application SUB20/47579 & in accordance with the approved scheme plan prepared by Bland & Jackson entitled "Lots 1 and 2 Being a Proposed Subdivision of Lot 2 DP 7582"-Revision R01- Project No.9566- Date 30/01/20.*
112. The reason for this amendment is to recognise and incorporate the information and documents provided to the Hearing and the decision arising from the Hearing. This is to ensure there is no confusion regarding what has been applied for or the content of the decision.



Louise McLay  
Landpro Limited

14 July 2022

## **APPENDIX A**

**Record of Title.**



**RECORD OF TITLE**  
**UNDER LAND TRANSFER ACT 2017**  
**FREEHOLD**  
**Search Copy**



  
R.W. Muir  
Registrar-General  
of Land

**Identifier** **TN202/3**  
**Land Registration District** **Taranaki**  
**Date Issued** 10 June 1955

**Prior References**  
TN111/265

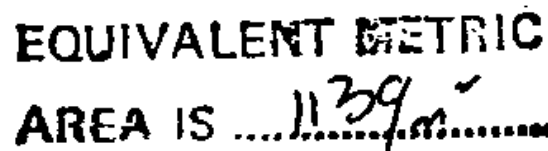
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**Estate** Fee Simple  
**Area** 1139 square metres more or less  
**Legal Description** Lot 2 Deposited Plan 7582  
**Registered Owners**  
Kelsey Euphemia Walker and Wade Jason Alsweiler

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**Interests**  
Appurtenant hereto is a right of way created by Transfer 92383  
Subject to a right of way over part created by Transfer 92383  
Appurtenant hereto is a right of way created by Transfer 92692  
Subject to a right of way over part created by Transfer 92692  
Subject to a right of way over part created by Transfer 93491 - 10.6.1955  
12369091.3 Mortgage to ASB Bank Limited - 25.2.2022 at 11:03 am





Scale :- 1 Chain to an inch

## **APPENDIX B**

**Letter from 249A Tukapa Street: Dated 11 March 2022**

11 March 2022

249a Tukapa Street  
Hurdon  
New Plymouth

New Plymouth District Council  
Liardet Street  
New Plymouth  
Attention: Luke Bulchin

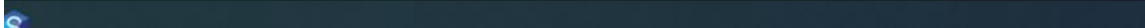
To Whom it may concern,

Regarding the subdivision application SUB20/47579 made by Kelsey Kearns, 249c Tukapa Street.

We have been notified that Kelsey Kearns of 249c Tukapa Street, has withdrawn the offer to remove the hedge and build a fence between 249c & 249b Tukapa Street, New Plymouth.

We acknowledge this decision and advise that we are not unduly impacted by this change.

Warm regards

  
Kristen Wilkes  
Rodney Brown

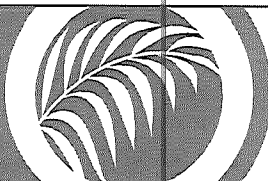
## **APPENDIX C**

**Written Approval from 251 Tukapa Street: Dated 22 June 2022**



Te Kaunihera-a-Rohe o Ngāmotu

New Plymouth  
District Council



FORM 8A

Written approval to an  
activity subject to a resource  
consent application

Please read the information on the back of this page before giving your written approval in respect of a resource consent application.

### 1. Affected person's details

- 1a. I am the ☒ Property owner ☐ Occupier
- 1b. Of the property at (street address) 251 Tukapa Street, New Plymouth
- 1c. Full name Simon JOSEPH CAYLEY  
First name(s) Surname
- 1d. Electronic service address simon.cayley@hotmail.com
- 1e. Telephone 0274312277   
Mobile Landline
- 1f. Postal address or alternative method of service under Section 352 of RMA 1991 251 TUKAPA STREET NEW PLYMOUTH
- 1g. I have the authority to sign on behalf of all other owner/occupiers of the property ☒ Yes ☐ No

### 2. Resource consent application details

- 2a. Applicant's name Kelsey Kearns  
First name(s) Surname
- 2b. Site address 249 C Tukapa Street
- 2c. Description of proposal  
Two lot subdivision of 249C Tukapa Street, New Plymouth

### 3. Documents and plans

I have read and/or seen:

- ☒ The full resource consent application, including:
- ☒ The full description of the activity and the assessment of environmental effects (AEE).
  - ☒ Plan(s), signed by me and listed below. (If required, attach any additional plan information.)

Plan reference number	Plan title	Date
Bland & Jackson: Project no.9566	Lots 1 & 2 Being Proposed Subdivision	R01
	of Lot 2 DP 7582	30/1/2020

Please turn over

### OFFICE USE ONLY

Date received  Property ID  Application #   
Time received  Land ID  Document #   
Received by

#### 4. Privacy statement

The Privacy Act 2020 applies to the personal information provided in this written approval. For the purposes of processing the resource consent application the Council may disclose this personal information to another party. If you want to have access to, or request correction of, this personal information, please contact the Council.

#### 5. Affected person's declaration

By signing\* this written approval, or by submitting this form electronically, I confirm that I understand the proposal and that the Council must decide that I am no longer an affected person and therefore must not have regard to any adverse effects on me.

I understand that I may withdraw my written approval by giving written notice to the Council before the hearing, if there is one or, if there is not, before the application is determined.

I confirm that the information contained in this written approval is true and correct, and agree to the disclosure of my personal information in respect of this written approval.


If signing on behalf of a trust or company, please provide additional written evidence that you have signing authority.

Simon

First name(s)

CAYLEY

Surname



Signature of person giving written approval (or person authorised to sign on behalf of the person giving written approval)

22 | 6 | 2022

Date

\*A signature is not required if you give your written approval by electronic means, however the plans do need to be signed.

#### 6. Information for affected persons

1. Please ensure you fully understand the proposal before deciding whether to sign this form. You may need to ask for further information from the applicant.
2. There is no obligation to sign this form, and no reasons need to be given.
3. Conditional written approvals cannot be accepted.
4. If this form is not signed, the application may be notified and you may have the opportunity to submit on the application.
5. If the Council determines that the activity is a deemed permitted boundary activity under section 87BA of the Act, your written approval cannot be withdrawn.
6. It is acceptable for you to request that you be given some time to consider the application before deciding whether to provide your written consent or not. You may also obtain your own professional advice on the application e.g. from a lawyer, planner or surveyor before deciding whether or not to give your written approval.
7. 'An Everyday Guide to the RMA' on the Ministry for the Environment website at [www.mfe.govt.nz](http://www.mfe.govt.nz) contains useful information for affected persons.

If you have any further questions regarding this process contact the duty planner at the Council on 06-759 6060.





## **APPENDIX D**

**Email Correspondence Clarifying Scope of the Application.**



## Louise McLay

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**From:** Luke Balchin <Luke.Balchin@npdc.govt.nz>  
**Sent:** 15 February 2022 08:53  
**To:** Louise McLay  
**Cc:** Zane Wood  
**Subject:** RE: [#Landpro22004] Application SUB/47579 ; 249C Tukapa Street , Kelsey Kearns. A Synopsis of History, Update and Where to from here ?

Morning Louise,

Have had a chat to our consents lead. The only thing that would need to be checked RE the removal of the fence is that this has no bearing on the existing written approval received from 249 C, I cant imagine so but would be worthwhile to check for you and your clients assurance.

As a mediation or pre-hearing meeting is not sought from here we would need to try determine a hearing date with our governance team as well as agree on a commissioner with availability. Noting that we are very busy in that space with the PDP hearings work going on.

Once we have that date the work flows will be based off that, s42 a recommendation, evidence circulation etc.

Kind Regards

*Luke Balchin*

Senior Environmental Planner

New Plymouth District Council | Liardet St | Private Bag 2025 | New Plymouth 4340 | Ph 06-759 6060 | Mob 027 234 8846

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**From:** Louise McLay [mailto:louise@landpro.co.nz]  
**Sent:** Thursday, 10 February 2022 1:16 pm  
**To:** Luke Balchin <Luke.Balchin@npdc.govt.nz>  
**Subject:** [#Landpro22004] Application SUB/47579 ; 249C Tukapa Street , Kelsey Kearns. A Synopsis of History, Update and Where to from here ?

Hi Luke

Thank you for your time and advice on last Tuesday ( 9<sup>th</sup> February ).

As per our phone conversation I provide a synopsis the history ( from NPDC file and documents provided by our client ) of application SUB/47579 ; 249C Tukapa Street , Kelsey Kearns, below:.

1. APPLICATION LODGED :Kelsey Kerns , through her agent, Bland and Jackson Surveyors Limited ( Kasey Bellamy ) , lodged and application to subdivide her property at 249 C Tukapa Street , application dated 24/08/2020
2. APPLICATION ACCPETED : NPDC formally accepted application on 21 September 2020.

3. ACTIVITY CLASSIFICATION: Is a discretionary activity under Res 54, increased number of allotments using a ROW, and Res 59 Discretionary because, while meets the other requirements for practical vehicle access from a road, the existing access point is under 30m from an intersection. Under other relevant rules it is a controlled activity.
4. PRIOR TO LODGEMENT : The application included consultation with affected parties, identified as 249A and 249B Tukapa Street.
5. PRIOR TO LODGEMENT : The affected party at 249 A provided their written approval and this was included in the application.
6. PRIOR TO LODGEMENT : The affected party at 249 B and the applicant underwent a prolonged consultation process that is documented as starting with a meeting between on 15<sup>th</sup> March 2020. During consultation, the applicant offered a list of mitigation measures. From 28<sup>th</sup> May 2020 this included formal correspondence, this was provided as an Appendix in the application.
7. The list of mitigation measures was not acceptable to the owners of 249B
8. Therefore, the applicant retained just one mitigation measure, as a good will gesture, in the application, that was to build a 1.8m fence along the boundary between 249B and 249C Tukapa Street.
9. LIMITED NOTIFICATION : The Council identified the owners of 249 C Tukapa Street as the remaining affected parties and the formal letter of limited notification was sent to them on 21 September 2020.
10. SUBMISSION LODGED : The owners of 249B Tukapa Street lodged their submission dated 16 /17th October 2020
11. PRE -HEARING MEETING : A pre- Hearing Meeting was proposed but was put on hold pending a meeting between the agent ( Bland and Jackson ) and the applicant to be held 10<sup>th</sup> November 2020.
12. APPLICATION ON HOLD : on 1 December 2020 Bland and Jackson ( Kasey Bellamy ) emailed NPDC ( Luke Balchin) requesting that the application be put on hold. This was done.

#### UPDATE :

- a) LANDPRO & Scott Grieve ( Lawyer) ENGAGED : In January 2022, the applicant engaged Landpro ( Louise McLay ) and Scott Grieve (Connect Legal Taranaki) to further the application.
- b) CLIENT's ADVICE : Our applicant's advice is that they :
  - Expect to take the application off hold once an additional report ( Traffic Report has been received )
  - As after two years with the door open to further dialogue, the written approval of 249B has still not been obtained and the costs of fencing has escalated significantly (and is not required for mitigation of amenity privacy effects in any event), the applicant wishes to remove the offer of the fencing from the table and to proceed to a Hearing.
  - A Traffic Engineer was to be engaged to report on any traffic issues arising from the ROW.
- c) TRAFFIC ENGINEER: Andrew Skerrett , AMTANN LTD. Was engaged by the applicant on 3 February 2022 and is currently preparing a traffic report for the site.

#### Where to from here ?

- I. In our discussion today, you were of the opinion that the removal of the mitigation measure of the fencing could be removed from the table via a letter to that effect from the applicant and then dealt with in the Processing Officer's Section 42 Report. I agreed with this approach as appropriate.
- II. However, you sought this email as clarification and the opportunity to confirm the approach within the NPDC Planning Team before adopting it.
- III. Once this is clarified, I will likely be in a position to formally request that the application goes to a Hearing with a date in line with receipt of the Traffic Report.

Thank you.

Kind regards



## Louise McLay

Resource Management Planner



**LANDPRO**  
Make the most of your land

0800 023 318 | +64 3 445 9905

57 Vivian Street

New Plymouth 4310 New Zealand

New Plymouth | Cromwell | Gore



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## **APPENDIX E**

**Problems with the mitigations listed in paragraph 14 of the Section 14 Report**

The following concerns are held regarding the list of mitigation measures listed in the Section 42 Report, paragraph 14.

1. Firstly, a covenant or consent notice placing a time restriction on the time to erect a new fence and to complete a house build on Lot 2 on the new Record of Titles inappropriate. This is not realistic and would be very difficult to enforce, especially in the post Covid 19 world. It is also a matter outside the applicant's control, and possibly a future builder's control, if, for example materials and/ or staff are not available such as is currently being experienced around the country, which has been widely publicised in recent times.
2. Secondly, a covenant requiring a dwelling to meet the existing requirements of a permitted activity is redundant. A dwelling will meet the requirements for a permitted activity, or it will require a land use consent.
3. If it requires a land use consent, the dwelling design would be considered on its merits. The owners of 249c Tukapa Street would, under the law as it stands, be identified as an affected party and their written approval sought.
4. Thirdly, the location of the existing vehicle access point serving proposed Lots 1 and 2 off the ROW is maintained in the Scheme Plan applied for.
5. Fourthly, restricting building heights to a single storey within proposed Lot 2 is unduly restrictive for the same reasons provided in paragraphs 2 & 3 above.
6. Fifthly, the application clearly states that the costs of any ROW and /or infrastructure upgrades necessary to facilitate the subdivision would be met by the applicant.