

**IN THE MATTER OF
AND
IN THE MATTER OF**

the Resource Management Act 1991

a resource consent application by Robe and Roche Investments Limited for a 113-lot subdivision and associated earthworks at 56 Pohutukawa Road, Bell Block, New Plymouth (SUB21/47803).

**DECISION OF THE HEARING COMMISSIONER APPOINTED BY
NEW PLYMOUTH DISTRICT COUNCIL PURSUANT TO SECTION 34A OF
THE RESOURCE MANAGEMENT ACT 1991**

Independent Commissioner:

Mark St.Clair

19 June 2025

APPOINTMENTS

- [1] On 10 December 2024, pursuant to Section 34A of the Resource Management Act 1991 (**RMA**), independent commissioner Mark St. Clair was appointed as a commissioner by New Plymouth District Council (NPDC) to hear and determine the application lodged by the “**Applicant**” Robe and Roche Investments Limited for a 113 lot subdivision and associated earthworks at 56 Pohutukawa Road, Bell Block, New Plymouth.

PROCEDURAL MATTERS

Directions and procedural matters and scope

- [2] For completeness I attach the minutes related to this hearing in **Appendix 1**.
- [3] Minute #1, related to the pre-circulation of material under section 103B of the RMA, the hearing date and time procedures. The pre-circulation timeframes were duly met.
- [4] In Minute #2, having identified four (4) late submissions (ID#18, ID#19, ID#34, and ID#97) from the Section 42A Report that required a decision on whether they should be accepted or not, I sought input from those submitters as to their position and if they wished to be heard or not. I also sought the Applicant’s view as to the late submissions. ID#18 Avatar Management Limited advised through their lawyer, Ms S George, that they withdrew their submission.¹ I accept the notice of withdrawal of the submission and have not taken account of the submission in my decision. No further correspondence was received from submitters ID#19, ID#34, and ID#97. At the hearing itself, Mr Grieve, counsel for the Applicant advised that the Applicant was not opposed to the acceptance of the late submissions. As such, there being no identified prejudice to any party, the late submissions are accepted, and I have considered them as part of my decision.
- [5] In Minute #3 I granted leave for Mr Bruce, archaeologist for the Applicant and Mr Whittaker, the section 42A Reporting Officer to attend the hearing remotely. In Minute #4 I set out a preliminary question as to Mr Miller’s evidence for the Applicant as to the “Preliminary Stage Road Design Memo” dated 25 March 2025, which was addressed at the hearing itself by the relevant witnesses.
- [6] In Minute #5, following my explanation at the hearing itself, I set out a timetable for conferencing by the planning experts as to conditions, the opportunity for the submitters to comment on the recommended conditions and also for the Applicant’s Right of Reply in writing. Following a request from the planning experts, I further extended the timeframes for conferencing, responses and reply by of Minute #6. The documentation from the planning conferencing and the Applicant’s reply were duly filed in line with the timeframe. I record that there were no comments on the recommended conditions from submitters.
- [7] Having reviewed the all the material filed, in Minute #7 I requested from the Applicant further detail as to the Scheme Plans attached to the Planning JWS, in terms of lot

¹ Email from Ms S George on behalf of Avatar Management Limited, dated 1 April 2025

sizes and confirmation as to consistency with the other plans and reports filed, so as to confirm the Applicant's final position. The Applicant provided that information on 3 June 2025, and the material was distributed to the parties.

- [8] Finally in Minute #8, having reached the view that I had all the material I required, I formally closed the hearing on 4 June 2025.

Scope

- [9] During the course of the hearing, the issue arose as to the difference, if any, between the original application as lodged 21 May 2021 and application at the commencement of the hearing. Mr Lawn, planning witness for the Applicant, succinctly described the difference as follows;

*"Following consultation with Puketapu Hapū and subsequent applications for consent to the Taranaki Regional Council (TRC), the proposed development has undergone alterations of the road alignments. This has altered the allotment boundaries and sizes, although the number of proposed allotments has remained the same."*²

- [10] Mr Whittaker, the section 42A RMA reporting planner, similarly noted the evolution of the proposal through the application process.³ There was no disagreement amongst the parties that the application was within scope as to layout. Having reviewed the information and evidence provided, and the responses to my questions, I find that the application is within scope.

- [11] A second aspect as to scope arose during the hearing in relation to earthworks associated with the proposal. This matter was traversed extensively during the hearing by the parties in legal submissions, evidence, Joint Witness Statements (**JWS**), supplementary planning statement, the reply statement and in response to my questions. In short, I identify the issue as follows; does the subdivision application as lodged include associated earthworks? Mr Lawn, as an alternative, suggested filing a retrospective Form 9 for land use consent for earthworks as a way of resolving the issue.⁴

- [12] As I have determined them, the facts of the matter are that in the Operative District Plan (**ODP**) earthworks rules were often included as part of a subdivision activity, however, that is not the case in the Proposed District Plan (**PDP**). Historically, back when the application was lodged, it was the practice of NPDC to require one Form 9 for subdivision to be filed and that any such application was deemed to include associated earthworks. I understand that that practice has now changed to require separate application forms for subdivision (section 12 of the RMA being subdivision consent) and earthworks (section 9 of the RMA being land use consent). I observe that the original application records in several places that earthworks are considered as part of the assessment undertaken⁵ and there is a site earthworks plan Dwg No.

² Evidence in Chief (EIC), Mr B Lawn, dated 28 March 2025, Para 5.1

³ Section 42A Report. Mr T Whittaker, dated 21 March 2025, Paras 25 - 28

⁴ EIC, Mr B Lawn, Para 7.14

⁵ For example: Application for Resource Consent 56 Pohutukawa Place, New Plymouth, dated 26 May 2021, McKinlay Surveyors, Table 1: Assessment of the New Plymouth District Plan Rules, Page 20, SUB-P8 Page 30, Table 2: Assessment of the New Plymouth Proposed District Plan Rules Page 32, Pol. TTAN4.1 Page 36.

100-433, dated 25-05-21, Rev D showing the earthworks for the proposed roading layout as it was at that time. These matters were highlighted by the Applicant's counsel⁶ and witnesses⁷. A new site earthwork plan DWG- 3917-C-01 Rev A dated 12-03-2025 shows the revised subdivision scheme and roading layout, where the earthworks applied for are primarily for roading with some topsoil stripping. Separately, the Applicant has applied for earthworks consent to the Taranaki Regional Council (**TRC**). I was advised during the hearing that that application was in process and required details such as an Erosion and Sediment Control Plan (**ESCP**), and the location of Sediment Detention Ponds. I record that a granted or declined TRC earthworks consent was not tabled before the close of the hearing.

- [13] In the Planning JWS of 11 April 2025⁸, all the planning experts were of the view that earthworks were included. Having reviewed all the material and presentations made at the hearing I am not persuaded that this is anything but the case. A change in practice as to which forms are required with subdivision applications I find does not alter the fact that the original application included associated earthworks. For the reasons set out above, I find that the original application includes associated earthworks and so does the amended application as it evolved through the application process. As such, the filing of a further Form 9 for associated earthworks is not required, as the matter is within scope. In addition, the associated earthworks are limited in nature, primarily as to topsoil stripping, the formation of the roading network and servicing as shown on the plans.
- [14] In the remainder of the decision, I have proceeded on the basis that the subdivision includes associated earthworks and do not return to the matter.

Procedural matters

- [15] None of the parties raised any procedural matters at the commencement of the hearing. However, I raised during the hearing itself whether the written approval of Council was required under section 176 of the RMA for the use of land or subdivision of the designation NPDC 3 – Proposed Reserve on Lot 2 DP 521660 which is part of the application site. Section 176 of the RMA states:

176 Effect of designation

(1) If a designation is included in a district plan, then—

- (a) [section 9\(3\)](#) does not apply to a public work or project or work undertaken by a requiring authority under the designation; and*
- (b) no person may, without the prior written consent of that requiring authority, do anything in relation to the land that is subject to the designation that would prevent or hinder a public work or project or work to which the designation relates, including—*
 - (i) undertaking any use of the land; and*
 - (ii) subdividing the land; and*
 - (iii) changing the character, intensity, or scale of the use of the land.*

⁶ Legal Submissions, Mr S Grieve, dated 14 April 2025, Pages 21 - 34

⁷ EIC, Mr B Lawn, Paras 7.6 – 7.14

⁸ Planning JWS, dated 11 April 2025, Paras 5.1 – 5.3

- [16] No such written approval had been requested by the Applicant and none provided by the Council as the requiring authority. Under the application, the designated land is shown as proposed Lot 301, on Scheme Plan – Stage 6B, DWG No. 07 dated 08-05-25, and is proposed to be vested in Council as esplanade reserve. The Council acting in its role as a requiring authority⁹ provided its written approval to the Applicant on 5 May 2025.¹⁰ That written approval having been obtained, I find that section 176 (1) (b) of the RMA has been met.

Site visit

- [17] As explained at the hearing, I undertook a site visit on 13 April 2025 to familiarise myself with the subject site and the surrounding environment. Due to required access arrangements for entering the property, I was accompanied by Mr Hawke, the Applicant and Ms Straka, Manager Governance NPDC and the administrator for this hearing.

Decision format

- [18] I have had regard to the requirements of Section 113 of the RMA when preparing this decision. In particular I note and have acted in accordance with Section 113(3) which states:

“A decision prepared under subsection (1) may, -

- (a) instead of repeating material, cross-refer to all or a part of -*
 - (i) the assessment of environmental effects provided by the applicant concerned;*
 - (ii) any report prepared under section 41 C, 42A, or 92; or*
- (b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly.”*

- [19] During the course of the hearing it became apparent that there were particular issues in relation to Cultural effects, Archaeological effects, Traffic effects, Ecological effects, Earthworks effects, Engineering and Infrastructure, future road connections, property values and building covenants. I therefore focused my questions on these matters. I have consequently focused my decision on those same matters.

THE APPLICATION PROCESS

- [20] McKinlay Surveyors, filed an application on behalf of Robe and Roche Investments Limited for a 113 lot subdivision at 56 Pohutukawa Place, Bell Block New Plymouth (the **subject site**) dated 26 May 2021, and was accepted by NPDC in June 2021.
- [21] Section 2.4 of the Section 42A Report¹¹ details the applications process which I adopt for the purposes of this decision report. I summarise the main aspects of the process by noting that NPDC commissioned a cultural values assessment of the area (2022) and the Applicant sought public notification in February 2023, with the application being fully publicly notified on 22 February 2023 and the submission period closing on 22 March 2023.

⁹ Section 166 of the RMA

¹⁰ Letter from NPDC to Robe & Roche Investments Limited, dated 5 May 2025 Ref 9490948

¹¹ Section 42A Report, Mr T Whittaker, 21 March 2025, Para

- [22] NPDC received 314 submissions within the submission period and four (4) late submissions. I have dealt with the late submissions in paragraph 4 above.
- [23] A summary of the submissions was detailed in the Section 42A report¹² prepared by Mr Whittaker. Including the three (3) late submissions which I accepted above; the submissions were;
- In support 297;
 - Opposed 10;
 - Neutral 7;
 - Not stated 3.
- [24] I record that I read the submissions in full and I have had regard to them as part of my evaluation of the application.
- [25] In addition, I record that the application was placed on hold under section 91 of the RMA by NPDC in May 2023, for consent applications in relation to National Environmental Standard for Freshwater and the Regional Plans to be applied for by the Applicant. Those consents being for;
- a) To discharge stormwater from roading surfaces onto and into land in circumstances where it may enter the Waipu Lagoons for the purposes of urban development and infrastructure management; and
 - b) To divert groundwater within 100 metres of the Waipu Lagoons by increasing impermeable surfaces for the purposes of housing, roading and infrastructure placement for urban development.
- [26] Both applications were granted by TRC on 25 March 2025.¹³ In addition, although separate from the section 91 of the RMA, TRC has also placed on hold the application for a land use consent for earthworks until an Erosion and Sediment Control Plan (ESCP) is filed. As identified above, at the close of the hearing, an approved ESCP, nor a granted TRC earthwork consent had been issued.
- [27] The Applicant filed expert, economic, archaeological, ecological, civil design, stormwater and roading network design, geotechnical and planning evidence on 28 March 2025. On behalf of submitters, expert planning evidence on behalf of Te Kotahitnga O Te Atiawa Trust and Puketapu Hapū, and evidence on behalf of Parininihi Ki Waitotara Incorporation was filed on 4 April 2025. In addition, a Joint Witness Statement (JWS) as to transport¹⁴ and two JWS's as to planning¹⁵ were also filed.
- [28] As noted above, all expert evidence was pre-circulated in accordance with Section 103B of the RMA. I record that I read all of the evidence and joint witness statements, and have taken them into account as part of my evaluation of the application.

¹² Section 42A Report, Mr T Whittaker, 21 March 2025, Para

¹³ Evidence in Chief (EIC), M B Lawn, dated 28 March 2025, Appendix E

¹⁴ Joint Witness Statement (JWS) – Transport, dated 7 March 2025

¹⁵ JWS, - Planning and Consent Conditions, dated 11 April 2025 and JWS - Planning and Consent Conditions, dated 9 May 2025

THE HEARING and ATTENDANCES

- [29] The hearing was held in the Ngāmotu Room at the New Plymouth District Council Offices, 84 Liardet Street, New Plymouth on 14 and 15 April 2025, commencing at 9:00am on both days.
- [30] I adjourned the hearing at 12.53pm on 15 April 2025, in order for the planners to conference on conditions, any submitters from the hearing to provide comments on the conditions and for the Applicant's right of reply in writing.
- [31] The revised conditions from the planners and the reply statement from the Applicant was duly filed and distributed to the parties. There were no comments on conditions from submitters filed.
- [32] Having considered that I had all the information I required, I closed the hearing by way of minute (Minute #8) on 4 June 2025.
- [33] The attendances at the hearing were as follows:

Applicant

- [34] For the Applicant:

- Mr Scott Grieve - Counsel for the Applicant
- Mr Benjamin Hawke – Director of Robe and Roche Investments – the Applicant.
- Mr Lawrence McIlrath – Economist, Director of Market Economics
- Mr I Bruce – Archaeologist, Archaeological Resource Management
- Mr William Shaw, Lead Principal Ecologist - Director Wildlands Ltd;
- Mr Luke Bunn, Senior Civil Engineer, Red Jacket Ltd (Stormwater Management, Reticulated Water, Sanitary Sewer and Earthworks);
- Ms Kristel Franklin, Senior Engineering Geologist , Red Jacket Ltd;
- Mr Chis Miller, Senior Civil Engineer, Red Jacket Ltd (Roding Network);
- Mr Mark Georgeson, Transport Engineering Specialist – Stantec
- Mr Benjamin Lawn, Planner, McKinlay Surveyors Ltd;
- Ms Kathryn Hooper – Principal Planner, Executive Director Landpro Ltd.

Submitters

- [35] For the submitters;

- Mr Andrew Paora (Anaru) Wilkie – Deputy Chair and Trustee of Puketapu Hapū – Holder of Hau and Iwi whakapapa, kupu tuku iho and purakau;
- Mr Sean Zieltjes – Consultant Planner on behalf of Te Kotahitanga o Te Atiawa Trust and Puketapu Hapū;

- Mr Richard Buttimore, Te Rau Whakahono Pito/General Manager of Property for Parininihi Ki Waitotara.

Council officers

- [36] The following consultants and Council staff were in attendance and responded to matters raised at the hearing;
- Mr Todd Whittaker – Consultant Planner for NPDC.
 - Mr Andrew Skerrett – Transportation Specialist - Civil Engineering Consultant with AMTANZ for NPDC
 - Mr Richard Watkins – Principal Planner at NPDC.
- [37] Section 42A officer's report was prepared by Mr Whittaker, consultant planner for NPDC.
- [38] I was assisted in an administrative capacity by Ms Julie Straka, Manager Governance at NPDC.
- [39] All of the material presented by the above parties is held on file at NPDC. I took my own notes of the verbal presentations and any answers to my questions. For the sake of brevity, I do not repeat that material in the decision. However, I do refer to relevant matters raised in the material in subsequent parts of the decision.

LEGAL DESCRIPTION AND ZONING

- [40] The property ("**the subject site**") is legally described as follows:

Legal Description:	Lot 2 DP 521660
Site Area:	23.8797Ha
Site Address:	56 Pohutukawa Road, Bell Block, New Plymouth
District Plan Zone:	Operative District Plan – Residential A – Designation L8 – NPDC Proposed Recreation Reserve Proposed District Plan – General Residential Zone – Designation NPDC 3 Proposed Reserve

THE PROPOSAL

- [41] The proposal was described in the application¹⁶, with the subdivision layout from the amended application¹⁷ being the version that was notified. As described in the Section 42A officer's report, the form of the subdivision layout was modified by the Applicant

¹⁶ Application for Resource Consent 56 Pohutukawa Place, New Plymouth, dated 26 May 2021, McKinlay Surveyors, Paras 3.1 – 3.4, Application Addendum, dated 8 July 2021 and amended Scheme Plan dated 6 August 2021.

¹⁷ Addendum Updated Application dated 8 July 2021

following consultation with tangata whenua.¹⁸ I observe that Mr Lawn¹⁹ generally agreed with Mr Whittaker's summation of the application. By way of overview, I have included a brief description of the proposal here, including amendments made during the course of the hearing.

[42] The Applicant's proposal at the commencement of the hearing was, in summary to:

- to undertake a subdivision and associated earthworks (Scheme Plan dated 05/02/24) as follows:
 - Four stages to progressively develop the site from Parklands Avenue
 - A total of 113 residential lots are propose , ranging in area 450m² to 960m²
 - The vesting of three (3) esplanade reserves which adjoin and would form part of Waipu Lagoons
 - New roads to vest with Council to service the lots and connect to Parklands Avenue and Impact Avenue
 - Provision of future road linkages to Pohutukawa Place and Sampson Ave

[43] I record that the main difference between the subdivision lay out as notified and that at the commencement of the hearing is that the proposed lots have been pulled back from the lagoon to the west of the subject site and the inclusion of esplanade reserve to vest along that side of the proposed subdivision. I have already addressed the inclusion of earthworks as part of the application above (See paragraphs 11-14 above).

[44] During the hearing, in response to my questions, Mr Lawn clarified the proposed staging at the interface between stages 6 and 9²⁰. Similarly, Mr Miller in his presentation, identified inconsistencies between proposed road names in the Red Jacket roading network design and the McKinlay Surveyors Ltd Scheme Plan, with an explanation letter and revised plans amended plans handed up.²¹

[45] As part of the conferencing on recommended conditions from the planners following the adjournment of hearing on 15 April 2025, further amendments to the application were made which I observe are primarily for feasibility and consistency. The first being the intersection of Road 1, Road 2 and Impact Ave was changed from a roundabout to a four way intersection²². The second being the amendment of proposed Lot 301 Esplanade Reserve so that it fully encompasses the area specified for Designation NPDC- 3- Proposed Reserve requiring amendments to the areas for proposed Lots 6, 7, 8 and 9 in Stage 6. Finally, amendments to the staging and numbering to allow for purchasing and funding of purchase, linking stages to individual stormwater discharge outlet points, including proposed esplanade reverse all in early Stage 6 and consequential renumbering of allotments, roads and reserves.²³ The revised staging being as follows;

- Stage 6A – Lot 400 and Lot 403 (Superlots);
- Stage 6B – Lots 1 – 28, Lots 301 – 303 (Reserve) and 304 (Road);
- Stage 7 – Lots 29 – 49 and Lot 305 (Road);

¹⁸ Section 42A Report, Mr T Whittaker, Paras 30-43

¹⁹ EIC, Mr B Lawn, Para 5.1

²⁰ Amended Scheme Plan and Plans of Stage 6, 7 and 9 (dated 14-04-25), handed up 15 April 2025

²¹ Letter from Mr C Miller [sic] dated 14 March 2025, handed up on 15 April 2025.

²² Planning JWS, dated 9 May 2025, Appendix 2, Para 1.3 (a)

²³ Planning JWS, dated 9 May 2025, Appendix 2, Para 1.3 (c)

- Stage 8A – Lot 401 and Lot 406 (Superlots);
- Stage 8B – Lots 50 – 75 and Lot 306 (Road);
- Stage 9A – Lot 402 and Lot 308 (Superlots); and
- Stage 9B – Lots 76 – 113 and Lot 307 (Road).

[46] In the 9 May 2025 Planning JWS, all the planning experts agreed the amendments were within the scope of the application. I heard nothing to the contrary so accept that position.

[47] There were no changes to the proposal addressed in the Applicant's reply statement, except as to the lapse or duration of any consent granted. I deal with that matter later in the decision.

[48] In paragraph 7 above, I identified some issues with the Scheme Plans attached to the Planning JWS, in terms of lot sizes and confirmation as to consistency with the other development plans and reports filed; to which the Applicant filed amended documents to address those matters on 3 July 2025. It is those documents that form the Applicant's final position as to the proposal and which I considered in my assessment. Those documents being;

- The updated and final set of Scheme Plans titled "Proposed Subdivision of Lot 2 DP 521660 – 56 Pohutukawa Place" prepared by McKinlay Surveyors with reference B- 231212 DWG 01-10 dated 26/05/25;
- Red Jacket Plan – Typical Rain Garden Details – C2-3 - C2-5 Rev B dated 03/06/25; and
- Red Jacket Plan – Stormwater Discharge Points – C2-6 - C2-9 Rev B dated 03/06/25;
- Red Jacket Plan – Roading & Stormwater Layouts – C3-1 – C3-5 Rev B dated 03/06/25;
- Red Jacket Plan – Typical Road Cross Sections – C4-1 – C4-5 Rev B dated 03/06/25;
- Red Jacket Plan – Stormwater – C5-1 – C5-12 Rev B dated 03/06/25;
- Red Jacket Plan – Water Reticulation – C6-1 – C6-12 Rev B dated 03/06/25;
- Red Jacket Plan – Sewer – C7-1 – C7-22 Rev B dated 03/06/25;
- Red Jacket Plan – Bulk Earthworks Plan – C8-1 Rev B dated 03/06/25; and
- Red Jacket - MEM – 3917-C-01 REV E – Preliminary Design Memo dated 03/06/25.

ACTIVITY STATUS

[49] The section 42A Report set out the status of the Operative and Proposed District Plans, which rules were now operative and those that were not, due to appeals to some parts

of the PDP.²⁴ Mr Zieltjes concurred with that assessment.²⁵ Mr Lawn, similarly agreed as to the status as to the plans, however, he had some minor differences as to the applicability of certain rules.²⁶ In response to my questions, Mr Whittaker deferred to Mr Lawn in terms of the identification of the applicable rules and Mr Zieltjes advised that he had no further rules to add to Mr Lawn's list.

- [50] I observe that on 16 May 2025, the Council issued a new version of the PDP, following the resolution of all the appeals on the PDP. I record that no party drew this change to my attention. As such I have relied on the evidence of the planning witnesses presented at the hearing itself, that both the ODP and PDP apply.
- [51] Consequently, I find the rules identified by Mr Lawn under the ODP and PDP to be applicable. In summary, the relevant ODP rules are, Res45, Res47, Res48, Res55, Res56, Res59, Res60-63, and the relevant PDP rules are SUB-R2, SUB-R6, Sub-R9, SUB-S1- S8, TRAN-R9, TRAN-S2- s5 and TRAN-S20, SASM-R17 – R18²⁷, WB-R5, CE-R11, EW-R13, EW-S1-S5.
- [52] Overall, the planners view was that the application was to be considered as a discretionary activity. Hearing nothing to the contrary, I adopt that position.

STATUTORY PROVISIONS

- [53] This application falls to be considered as a discretionary activity under Part 2 and Sections 104 and 104B, of the RMA.

SECTION 104B OF THE RMA

- [54] As a discretionary activity, the application must be considered against the requirements of Section 104B, which states that:

104B Determination of applications for discretionary or non-complying activities

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

(a) may grant or refuse the application; and

(b) if it grants the application, may impose conditions under section 108.

PRINCIPAL ISSUES IN CONTENTION

- [55] The principal issues in contention, as I have determined them, include:

- Application of permitted baseline;
- Cultural effects;
- Archaeological effects;
- Traffic and Transport effects;
- Ecological effects;

²⁴ Section 42A Report, Mr T Whittaker, Paras 62- 71

²⁵ EIC, Mr S Zieltjes, Para 10

²⁶ EIC, Mr B Lawn, Paras 7.1 - 7.5

²⁷ I record that in the Appeals version of the NPDC Proposed District Plan at 16 May 2025, that these are SASM-R14 and SASM-R15

- Earthwork effects;
- Scheme Plan Layout, Engineering and Infrastructure
- Future Road Connections
- Property Values
- Building Covenants

I address these issues in the following sections.

Application of permitted baseline

- [56] The issue of the applicability of the permitted baseline was addressed in response to my questions.
- [57] Section 104 (2) of the RMA states that:
- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*
- [58] It was common ground amongst the planning witnesses that the permitted baseline does not apply to the consideration of the subdivision application, the application not being a permitted activity and consent is required. I adopt that reasoning and find that the application of the permitted baseline in this case is not appropriate.

Cultural Effects

- [59] The proposed subdivision site includes part of SASM site #675 (Wahi tapu - Waipu Lagoons) and therefore triggering SASM-R18 and earthworks within 50m of the same site triggering Rule SAM -R17. The submission from Puketapu Hapū, Ngāti Tawhirikura Hapū and Te Kotahitanga o Te Atiawa Trust, set out the context of the cultural values of the subject site and the wider area. That submission was opposed to the proposal as notified and sought that the application be declined.
- [60] Speaking to the submission, Mr Wilkie extensively shared at the hearing the background and significance of the Waipu Lagoons and surrounding area for Puketapu Hapū. I acknowledge the explanation by Mr Wilkie to provide an understanding of the significance of the lagoons in a cultural context, and I record that as Mr Wilkie's explained, the level of detail he provided was usually only imparted on the marae or wananga. I further note that Puketapu Hapū, have as manawhenua determined that the area of Waipu is Tapu and that the kaitakai of Waipapu is known as Hine Huriawa.²⁸
- [61] Mr Wilkie advised that following consultation, amendments by the Applicant as to the proposal reflecting what was now presented at the hearing, that Puketapu Hapū amended their objection to one of support with conditions. For completeness I record that other matters in the Puketapu Hapū, Ngāti Tawhirikura Hapū and Te Kotahitanga o Te Atiawa Trust submission, such as the effects of stormwater discharges under the NPS-Freshwater and Te Mana o te Wai were addressed through the regional consents obtained from TRC. In response to my questioning

²⁸ Hearing Presentation, Mr A Wilkies, Page 9

Mr Wilkie he advised that that amended position as to the submissions also included Ngāti Tawhirikura Hapū and Te Kotahitanga o Te Atiawa Trust. As to the conditions themselves, I understood Mr Wilkie to agree with the intent of the Kaitiaki Forum and Tikanga Māori conditions, and directed me to Mr Zieltjes as to any details. I record that Mr Zieltjes confirmed, that in his view, Puketapu Hapū concerns had been reflected in conditions.

- [62] There was no challenge to the cultural effects assessment presented in the hearing. I accept the evidence of Mr Wilkie for the reasoning provided, and I find that subject to conditions, the cultural effects are acceptable.

Archaeological Effects

- [63] The submission of Heritage New Zealand Pouhere Taonga (ID #5) was neutral, noting that the archaeological assessment in the application recommend archaeological authority be sought and that if consent is granted any conditions should be consistent with those in any archaeological authority.
- [64] Mr Bruce, archaeologist for the Applicant, presented evidence that there were no recorded archaeological sites on the subject site itself, but that there were archaeological sites in close proximity.²⁹ In his presentation at the hearing, Mr Bruce considered it key that the development be undertaken with an archaeological authority. I questioned Mr Bruce on a number of aspects of whether an archaeological authority application had been made, the processing time for any such application, his experience with other such authorities and the connections between the conditions of any subdivision consent if granted and any conditions of an archaeological authority if granted. In summary, Mr Bruce advised that application had not yet been lodged and that ensuring that any conditions of the subdivision consent if granted ahead of the archaeological authority should be prepared in such a manner so as to ensure there was no inconsistency.
- [65] I accept Mr Bruce's assessment and adopt his reasoning. The Planning JWS dated 9 May 2025, included conditions to address the matters identified by Mr Bruce. No matters to the contrary were raised at the hearing. Subject to technical amendments to the conditions which I discuss in paragraphs 109- 114 below, I find any potential archaeological effects acceptable.

Traffic and Transport Effects

- [66] Mr Whittaker identified 13 submissions in opposition to the proposal in relation to traffic and transport effects across a range of issues.³⁰ I record that none of those submitters choose to expand on their submission points at the hearing.
- [67] Transport engineers Mr A Skerrett, on behalf of NPDC and Mr M Georgeson on behalf of the Applicant provided a JWS on transport effects which was included as an appendix to the Section 42A Report.³¹ The Transport JWS addressed, the proposed subdivision and roading design, traffic generation and distribution, the strategic roading

²⁹ EIC, Mr I Bruce, Section 5

³⁰ Section 42A Report, Mr T Whittaker, Section 3.3

³¹ JWS Transport, , dated 7 March 2025, Appendix 3 of Section 42A Report

programme and projects, matters raised in submissions and an assessment of the transportation effects.

[68] I summarise the following aspects of the Transport JWS as follows:

- The planned Council and NZTA roading improvement in the area will make improvements to traffic capacity over time;
- The proposal does not foreclose any proposed improvements;
- The proposal is not of a scale to that would lead to significant transport effects; and
- Matters raised by the submitters were regarded as minor and temporary until additional network connections are established as planned.

[69] I questioned Mr Skerrett and Mr Georgeson at the hearing particularly as to indicative road alignment and effects on traffic queuing for vehicles using on Nugent Street. Both witnesses were in agreement as to the workability and purpose of the road alignments. Similarly, both witnesses agreed that the staging of development meant that additions to any queues would not occur all at once and that the addition of approximately 10 vehicles per annum would not likely to be perceptible to other drivers on the network.

[70] Considering the evidence on traffic and transport effects from the revised proposal, including staging, I find there the effects of increased traffic over time, traffic safety and the efficiency of the roading network to be acceptable.

Ecology Effects and Waterbodies

[71] A number of submissions raised various potential ecological effects from urbanisation due to the proposal's location adjacent to the Waipu Lagoons which is an important habitat for native wildlife.³² Included in those submissions was concern as to the introduction of domestic cats and the threat to the native bird population. These submitters did not present at the hearing itself.

[72] Mr Shaw, ecologist for the Applicant, produced a technical assessment for the application and evidence addressing both terrestrial and wetland environments, and responded to the matters raised in submissions. In summary, Mr Shaw concluded that subject to particular measures being implemented, such as rain gardens and swales to treat stormwater runoff, 20 m wide riparian buffer including planting, pest plant and pest animal control, that the ecological effects on the subject site and wetland complex were likely to be less than minor. Mr Shaw further outlined a number of positive ecological effects and addressed the matters raised by the submitters. I also record Mr Bunn's evidence³³ and responses to my questions as to matters of stormwater design, treatment standards of rain gardens and potential effects.

[73] In response to my questioning Mr Shaw generally considered that these matters had been reflected in the proposed conditions, some which crossed over to the TRC stormwater consents that had already been issued.

[74] Mr Shaw's evidence³⁴ addressed the issue of predatory animals including cats and dogs at the interface with the lagoon complex and I questioned Mr Shaw on those same matters. Difficulties in managing and enforcing any subject site wide ban on domestic cats as sought by some submitters was also highlighted in Mr Whittaker's

³² E.g. Sub ID#20 Taranaki Fish and Game Council, Sub ID #22 Department of Conservation and Sub ID # 23 Royal Forest and Bird Protection Society, H and J Aston Sub ID#28, M Perrot Sub ID #31G Hight Sub ID # 4 and N Hight Sub ID #27

³³ EIC, Mr L Bunn, Section 6

³⁴ EIC, Mr W Shaw, Pars 10.2 – 10.8

section 42A Report.³⁵ On this particular issue, the Planning JWS recommending conditions, included conditions as to dog proof fencing at the interface of residential lots and the proposed esplanade reserves with consent notices, and consent notices restricting domestic cat ownership on all residential titles. These proposed conditions were not opposed by any party.

- [75] I adopt the reasoning of Mr Shaw and response to my questions in reaching the finding that the adverse ecological effects of the proposal are acceptable, subject to the imposition of conditions. I share Mr Shaw's and Mr Whittaker's concern about the enforceability as to banning domestic cats. Insufficient detail as to the mechanisms of how any such ban would operate and its effectiveness and efficiency in addressing the potential adverse effect was not presented to me. In this case I accept the Planning JWS recommending conditions as to dog proof fencing and the consent notices to the fencing and limiting domestic cat numbers.

Earthworks

- [76] I have already found that earthworks associated with the subdivision are part of the application (see paragraphs 11-13 above). The submissions referenced in ecology and water bodies section above raised similar concerns as to the potential effects of earthworks.
- [77] At the hearing, the parties were in agreement that the extent of the earthworks applied for was limited.³⁶ In addition, an application for earthworks has been filed with TRC and is currently on hold, awaiting as I understand it an approved ESCP to be filed. Mr Lawn responded to my questions as to applicable conditions of consent a TRC earthworks consent and a NPDC consent opining that erosion and sediment control matters were generally addressed by TRC and NPDC addressed safety of earthworks and geotechnical matters. In addition, Mr Lawn provided an example of a NPDC earthworks consent and conditions. The matter was further complicated by the NPDC District Plan having rules as to water bodies which Mr Watkins advised in his presentation at the hearing was an issue as to potential duplication that was being considered by the Council for a future plan change. This latter matter is for a different forum.
- [78] The Planning JWS of 9 May 2025³⁷ included recommended conditions for earthworks, which were not challenged by any party. Noting that earthworks may not commence until the consent from TRC has been obtained, I find that given the limited extent as to topsoil stripping, forming of roads and services, that subject to the recommended conditions, the effects from the earthworks on the subject site will be acceptable.

Scheme Plan Layout, Engineering and Infrastructure

- [79] A number of submissions canvassed a wide range of engineering and infrastructure matters, such as scheme plan layout as to lot sizes, proposed road widths, design and maintenance of rain gardens. These matters were not expanded on by the submitters at the hearing. Comprehensive evidence from the Applicant's engineering expert witnesses as to stormwater, water supply, sewerage, geotechnical and roading was provided, with those witnesses responding to my questions and filing updated amended plans and documents. In addition, I note that the Council's

³⁵ Section 42A Report, Mr T Whittaker, Section 6.4.3

³⁶

³⁷ Planning JWS, dated 9 May 2025 – Appendix 3, Page 20

development engineers have been involved in the assessment of the proposal, with the final proposed scheme and development plans reflecting that assessment.

- [80] Noting that there was no evidence to the contrary provided, subject to applicable conditions, I find that the layout, engineering and infrastructure effects to be acceptable.

Future Road Connections

- [81] The submission of Parininihi Ki Waitotara (PKW) raised the issue of road linkage from the subject site through an adjoining site owned by a third party, across land owned by PKW and linking up to Sampson Avenue. Mr Buttimore, for PKW expanded on the submission at the hearing highlighting the importance of the connection for PKW and if possible that conditions address these matters.
- [82] I observe that Planning JWS recommend conditions, specify that Road 1 (the link from Parklands Ave to Pohutukawa Place) requires to be constructed as a collector road, but not the link to Sampson Road. This position being informed by the roading engineers from Council and the Applicant. In addition, in terms of staging, part of Road 1, and Road 9 which link the proposal Sampson Ave connection are to be developed in the same development stage of the subdivision, as shown in updated Scheme Plan drawings for Stage 9A and Stage 9B.
- [83] PKW did not challenge the recommended conditions, so based on the details set out above, I find the proposed roading connection from the subject site to Sampson Ave to be appropriate.

Property Values

- [84] Loss of property values was an effect raised by a number of submissions. Mr Whittaker, noting RMA caselaw, opined that property values were not an appropriate lens to assess RMA effects.³⁸ Mr Grieve provided caselaw references³⁹ to back up Mr Whittaker's view. I accept that reasoning and caselaw, concluding that that the effects should be assessed on their own, as I have set out above.

Building Covenant

- [85] Mr R Smith (Sub ID #13) raised the issue as to a private covenant, potentially affecting proposed Lots 1, 6 and 7 of the now updated 26-05-25 Stage 6B plans. As Mr Lawn points out in his evidence, *"The land covenant is an existing registered property right that binds the subject site property title in perpetuity. The granting of this resource consent in no way limits, affects or impacts upon Mr. Smith's existing rights and protections under the registered land covenant over the subject site, and he will retain all of the benefits and protections under the land covenant that he already has."*⁴⁰ I accept that the existing covenant will continue to apply and matter requires no further consideration.

³⁸ Section 42A Report, Mr T Whittaker, Section 6.8.1

³⁹ Legal Submissions, Mr S Grieve, Pars 32 - 33

⁴⁰ EIC, Mr B Lawn, Para 8.68 (c) (ii)

ISSUES NOT IN CONTENTION

Economic Effects

- [86] Evidence was presented on economic effects, Mr McIlrath of Market Economics as to address the potential economic and urban form implications of the proposed development. In addition, Mr McIlrath provided additional information to my questions. This evidence was not challenged and I have taken it into account in my evaluation.

Positive Effects

- [87] Mr Whittaker and Mr Lawn also identified a number of positive effects as to the proposal.⁴¹ Again I have taken account of those matters in my assessment of the application.

EFFECTS CONCLUSION

- [88] Having considered all of the evidence on the matter of effects, overall, I am satisfied in terms of resource management effects that the revised proposal does not create adverse effects, that subject to conditions would be acceptable.

Section 104 RMA

- [89] Section 104 (1) of the RMA requires that a consent authority:
- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
 - (a) *any actual and potential effects on the environment of allowing the activity;*
and
 - (b) *any relevant provisions of—*
 - (i) *a national environmental standard:*
 - (ii) *other regulations:*
 - (iii) *a national policy statement:*
 - (iv) *a New Zealand coastal policy statement:*
 - (v) *a regional policy statement or proposed regional policy statement:*
 - (vi) *a plan or proposed plan, and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- [90] I have discussed the significance of any actual or potential effects on the environment of allowing the activity in the above sections and turn now to the statutory provisions requirement of Section 104(1)(b).

National instruments

- [91] It was common ground that the National Environmental Standard – Freshwater 2020 was applicable to this application as well as the National Policy Statement – Freshwater 2020 (amended October 2024).⁴² Mr Whittaker and Ms Hooper noting

⁴¹ Section 42A Report, Mr T Whittaker, Section 6.7 and EIC, Mr Lawn Pars 8.69 – 8.70

⁴² Section 42A Report, Mr T Whittaker, Section 7.2 and EIC, Ms K Hooper, Section 14

that TRC had assessed and granted applications for the proposal for stormwater discharge and diversion of groundwater, considered that further assessment was either not required or could be relied on as to consistency with the objectives and policies of the NSP and applicable sections of the RPS. I heard nothing to the contrary, so adopt that reasoning and conclusion.

- [92] Mr Whittaker and Ms Hooper in evidence⁴³ explained the relevance of the National Policy Statement – Urban Development 2020 (NPS-UD), identifying the applicable Objectives and Policies, the status of New Plymouth as a Tier 2 urban environment under the NPS-UD and requirements for the City in meeting the NPS. Mr Whittaker and Ms Hooper, the latter relying on the evidence of Mr McIlrath, similarly concluded that the proposal was fully in accordance with the provisions of the NPS-UD. There was no evidence to the contrary. I adopt the reasoning of Mr Whittaker and Ms Hooper in finding that the proposal is in accordance with the NPS-UD.
- [93] As to the National Policy Statement on Indigenous Biodiversity 2024 (NPS-IB), in response to my questions, Mr Whittaker opined that the NPS-IB had been addressed through the PDP process and assessed as part of the consents granted by TRC and there was no direct loss of biodiversity; SNA 169 not being within the subject site.⁴⁴ Ms Hooper responding to my questions was of the view that there was nothing in the application contrary to the NPS-IB and that there were a number of factors supporting indigenous biodiversity through the management of the margins of the lagoons as referenced by Mr Shaw. Mr Zieltjes, again in response to questions, noted the linkages in the strategic objectives of the PDP in referring back to the NPS-IB. I adopt the reasoning of these planning witnesses in finding that the proposal is not contrary to the NPS-IB.
- [94] No other NPSs were drawn to my attention. I observe that the subject site is outside the coastal environment overlay in the PDP and as such I have concluded that similarly the subject site is not affected by the New Zealand Coastal Policy Statement.

Taranaki Regional Policy Statement (“the RPS”)

- [95] Mr Whittaker expressed the view that the TRC had considered the RPS and Regional Freshwater Plan as a part of the discharge and diversion applications made for the proposal and that the RPS only provided high level policy direction (SUD Objective 1 and SUD – Policy 1) as to urban development.⁴⁵ Ms Hooper identified similar provisions in the RPS and while noting some minor conflict between SUD Policy 1(a) and Policy 4 of the NPS-UD, was of the view that the NPS-UD should prevail, being the more recent document and that the proposal was consistent with the RPS.⁴⁶ I agree that the proposal is consistent with the provisions of the RPS, noting that the RPS has not been amended to give effect to the NPS-UD.

Operative New Plymouth District Plan (ODP)

- [96] The ODP became operative in 2005. Mr Whittaker identified in the Section 42A officer’s report his view of the provisions of the ODP relevant to this application.⁴⁷ Mr Whittaker noted that appeals to the PDP, which meant that both the objectives and policies of both the ODP and PDP needed to be taken into account and that in his opinion more weight should be afforded to the PDP.

⁴³ Section 42A Report, Mr T Whittaker, Section 7.1 and EIC, Ms K Hooper, Section 11

⁴⁴ Supplementary Planning Statement, Mr T Whittaker, dated 15 April 2025, Paras 3.1 – 3.2

⁴⁵ Section 42A report, Mr T Whittaker, Section 7.3

⁴⁶ EIC, Ms K Hooper, Paras 12.1 – 12.3

⁴⁷ Section 42A Report, Mr T Whittaker, Section 7.4.1

- [97] For the record I find the following provisions relevant as identified by Ms Whittaker as to the application:
- Objective 1, Policy 1.1, 1.2
 - Objective 5, Policy 5.1
 - Objective 6, Policy 6.1, 6.4
 - Objective 20, Policy 20.1, 20.7
 - Objective 22, Policy 22.1
- [98] Mr Whittaker, while noting some tension with the transportation objectives and policies, the proposed upgrades over the medium to long term would mean that the proposal would be consistent with those provisions. Overall Mr Whittaker's view was that there was no inconsistency with the objectives and policies of the ODP.⁴⁸
- [99] Mr Zieltjes agreed that the proposal was consistent with the ODP objectives and policies.⁴⁹ Mr Lawn similarly agreed with Mr Whittaker's conclusion, although Mr Lawn's evidence appeared focused on the PDP objectives and policies.⁵⁰ The ODP was not addressed in Ms Hooper's evidence.
- [100] I accept this evidence, including reasons of the planning witnesses that the proposal is consistent with the policy direction of the ODP.

Proposed New Plymouth District Plan (PDP)

- [101] The PDP was publicly notified on 23 September 2019. The decisions version of PDP was notified on 13 May 2023. The appeals version of the PDP was released on 14 September 2023.
- [102] Mr Whittaker identified the following as relevant to the proposal:
- Objectives: SASM-O1 to SASM-O3, WB-O1 to WB-04, SUB-O1 to O3, TRAN-01 to TRAN-03
- Policies: SASM-P2, SASM-P4 to SASM-P6, SASM-P9, SUB-P1, SUB-P4, SUB-P5, SUB-P8, SUB-P9, WB-P2, to P14, TRAN – P6 and TRAN-P7.⁵¹
- [103] Mr Lawn, further considered the earthworks objectives and policies from the PDP as relevant, particularly, objective EW-O1 and policies EW-P1 to EW-P6.⁵²
- [104] In reference to the strategic objectives of the PDP, Mr Hooper identified Strategic Objectives HC-2, HC-3, TE-13, TW-14 to TW-17, UFD-18 – UFD20 and UFD-24.⁵³ Mr Zieltjes, agreeing with Ms Hooper's assessment, also considered that strategic objectives HC-1 and NE-6 to NE-10 were also relevant.⁵⁴
- [105] I accept the objectives and policies of the PDP relevant to the proposal as collectively identified by the planning witnesses, recording that they did not challenge any of the additional objectives or policies as set out in evidence during their individual presentations at the hearing. I further record that the planning witnesses were of the single conclusion that the proposal, subject to appropriate conditions, was consistent

⁴⁸ Section 42A Report, Ms T Whittaker, Paras 155 - 156

⁴⁹ EIC, Mr S Zieltjes, Para 45a

⁵⁰ EIC, Mr B Lawn, Para 9.1

⁵¹ Section 42A Report, Mr T Whittaker, Section 7.4.2

⁵² EIC, Mr B Lawn, Para 9.2

⁵³ EIC, Ms K Hooper, Paras 9.3(d), 11.9, 13.2- 13.4.

⁵⁴ EIC, Mr S Zieltjes, Para 27

with the objectives and policies of the PDP, and provided assessments to support that conclusion in their respective briefs of evidence. I adopt that reasoning.

Section 104(c) Any other matter

[106] Mr Whittaker identified that the Future Development Strategy required by the NPS-UD and adopted by TRC and NPDC in 2024, as well as the NPDC Housing and Business Capacity Assessment 2024, were relevant matters, opining that the proposal was consistent with those documents.⁵⁵ Ms Hooper concurred⁵⁶ and Mr Zieltjes noting other aspects of the FDS as relevant.⁵⁷ I adopted that reasoning and accept those conclusions.

[107] Mr Whittaker considered the Iwi Environmental Management Plan for Te Atiawa, Tai Whenua, Tai Tangata, Ti Ao as relevant matter, and provided a brief assessment concluding that as, *“the Applicant and mana whenua have now reached a position of having a mutually agreed position on the scheme plan layout and the framework for consent conditions, I consider that it is safe to conclude that granting consent with appropriate conditions is consistent with Tai Whenua, Tai Tangata, Tai Ao.”*⁵⁸ No evidence to the contrary was put before me. Noting my earlier findings as to cultural effects above, I adopt Mr Whittaker’s reasoning in finding the proposal is consistent with Tai Whenua, Tai Tangata, Tai Ao.

Section 106

[108] In evidence, Ms Franklin⁵⁹ as to engineering geology and Mr Bunn⁶⁰ as to stormwater/flooding, assessed the proposal as to significant risk from natural hazards, concluding that subject to some changes to conditions, there was no reason to decline the application under Section 106 of the RMA. Hearing no expert evidence to the contrary, I adopt that evidence.

Conditions Section 108 and Section 108AA and Section 220

[109] Various suites of conditions were included the section 42A Report⁶¹ and planning evidence⁶² filed. At the hearing, having heard from all the parties, I explained a number of issues I had identified with the conditions and suggested that an independent facilitator be appointed, to assist with the conferencing on conditions. Being mindful that this would be an additional cost to the Applicant I sought their view, which was that the applicant did not think it as necessary and did not wish to fund that exercise. I further explained at the hearing, that if the matters I identified were not addressed in the JWS resulting from the conferencing, then I would need to amend the conditions myself. I address this further below.

[110] The recommended suite of conditions from the planning conference was duly filed on 9 May 2025. The submitters from the hearing and the Applicant did not seek any further amendments to the conditions, with the exception of the Applicant addressing the lapse period under section 125 of the RMA in reply. Again, I address this latter matter below.

⁵⁵ Section 42A Report, Mr T Whittaker, Section 8.1

⁵⁶ EIC, Ms K Hooper, Pars 11.20 – 11.16

⁵⁷ EIC, Mr S Zieltjes, Para 37

⁵⁸ Section 42A Report, Mr T Whittaker, Para 182

⁵⁹ EIC, Ms K Franklin, Section 6

⁶⁰ EIC, Mr L Bunn, Section 6

⁶¹ Section 42A Report, Mr T Whittaker, Appendix 4

⁶² EIC, Mr B Lawn, Appendix F and EIC, Mr S Zieltjes, Attachment 1

- [111] Having reviewed the conditions and associated plans presented, I find the conditions to be generally appropriate having considered the effects and my findings above. However, while a number of matters I raised at the hearing were addressed in the recommended conditions, there was equally a number of matters that were not addressed. These included standards or triggers included as part of management plans rather than as specific conditions, inconsistent use of the term “shall” and “must”, reference to documents outside of the conditions, the reservation of discretion, grammatical and cross referencing issues.
- [112] As to the inconsistent use of ‘shall’ or ‘must’ throughout the proposed conditions, I observe that ‘must’ is now generally accepted as the appropriate term in the preparation of conditions of resource consents. The reason being that while “shall” can be used to impose a duty or a prohibition it can also be used to indicate a future tense, leading to confusion.⁶³
- [113] I have made various amendments to the conditions, as much as I am able, to address these matters (see **Appendix 2**).
- [114] In reply, Mr Grieve explained in some detail⁶⁴, an issue where the Planning JWS of 9 May 2025 referenced ‘consent term’⁶⁵ whereas, the corresponding condition, condition 5 in the general conditions⁶⁶ which related to the ‘lapse period’. I agree that these are not the same thing; ‘consent term’ begin duration under section 123 of the RMA and ‘lapse period’ being under section 125 of the RMA. For the reasons set out in the reply statement I concur that a 7 year lapse period is appropriate noting that any subdivision consent is not given effect to until the a survey plan has been lodged with territorial authority under section 223 of the RMA. I have amended condition 5, to that effect.

PART 2 – RMA

- [115] This application is to be considered under Section 104 of the RMA, which sets out the matters that consent authorities shall have regard to when considering resource consent applications.
- [116] In the decision (RJ Davidson Family Trust v Marlborough District Council [2018] NZCA 316), the Court of Appeal reconfirmed the pre-eminence of Part 2 matters in the consideration of resource consents. The Court however found that in those instances where it is clear that a planning document has been competently prepared having regard to Part 2 and contains a coherent set of policies leading toward clear environmental outcomes, consideration of Part 2 is unlikely to assist evaluation of a proposal. Conversely, where a plan has not been prepared in a manner which appropriately reflects Part 2, or the objectives and policies are pulling in different directions, consideration of Part 2 is both appropriate and necessary.
- [117] In his legal submissions, Mr Grieve, noting the Davidson case, submitted that while the PDP was recent and generally coherent, reference to Part 2 would unlikely add to any evaluation. Notwithstanding that, for completeness Mr Grieve put forward an assessment as to Part 2.⁶⁷ Mr Lawn’s view was that the PDP had been prepared in accordance with Part 2 of the RMA, therefore taking account of the Davidson decision

⁶³ Law Commission TE.AKA.MATUA.O.TE.Ture – Report 35 Legislation Manual Structure and Style, 1996 Wellington, Page 43, Para 172

⁶⁴ Reply Statement, Mr S Grieve, Paras 10-35

⁶⁵ Planning JWS, dated 9 May 2025, Section 6, Page 3

⁶⁶ Planning JWS, dated 9 May 2025, Appendix 3, Page 2

⁶⁷ Legal Submissions, Mr S Grieve, Paras 12- 21

there was no need to refer directly Part 2.⁶⁸ Ms Hooper's view was that the proposal was consistent with sections 6(e), 7(a), and 8 of the RMA⁶⁹. No other evidence directly assessing Part 2 of the RMA was place before me.

[118] In this case I find the reference to Part 2 of the RMA is not required, noting stage and status of the PDP and its formulation particularly as to the consideration of cultural matters.

Conclusion and Decision

[119] Acting under delegated authority pursuant to Section 34A, and Sections 104 and 104B of the Resource Management Act 1991, the application made by Robe and Roche Investments Limited for a 113 lot subdivision and associated earthworks at 56 Pohutukawa Road, Bell Block, New Plymouth, is **granted**.

[120] This decision is made for the reasons discussed throughout and, in summary, because:

- The activity that is **granted** is consistent with the purpose and principles of the Resource Management Act 1991;
- The activity that is **granted** is consistent with the provisions of the operative and proposed New Plymouth District Plan; and
- The activity that is **granted** is unlikely to have adverse effects on the environment.

DATED this 19th day of June 2025



Mark St.Clair (Independent Commissioner)

Appendix 1 – Minutes

Appendix 2 - Conditions

⁶⁸ EIC, Mr B Lawn, Para 10.1

⁶⁹ EIC, Ms K Hooper, Pars 9.3(a) and 9.6

Directions/Minute of the Commissioner #1
SUB21/47803

Application for Robe and Roche Investments
56 Pohutukawa Place, Bell Block

1. Pursuant to section 34A of the Resource Management Act 1991 (RMA), independent commissioner Mark St Clair has been appointed by New Plymouth District Council (NPDC) to hear and determine the application lodged by Robe and Roche Investments Limited (the Applicant) for subdivision to create 113 residential lots and additional road and recreational reserves at 56 Pohutukawa Place, Bell Block.
2. The hearing is scheduled to commence at **9am on Monday 14 April 2025** at the New Plymouth District Council Civic Centre, 84 Liardet Street, New Plymouth. At this stage the hearing is scheduled for two days (14 and 15 April 2025), with the 16th of April 2025 set aside as a reserve day and will only be used if required.
3. NPDC will separately issue a formal hearing notice to the parties closer to the hearing.
4. The Commissioner notes that section 103B of the RMA, requires a consent authority to provide the section 42A reports to the applicant and submitters who wish to be heard. These must be provided at least 15 working days prior to the hearing.
5. In addition, section 103B requires the applicant to provide the consent authority with briefs of evidence 10 working days before the hearing. Submitters calling expert evidence must provide that evidence five (5) working days before the hearing.
6. The Commissioner notes that the consent authority must give written or electronic notice to the parties that the applicant's evidence and any submitter expert evidence is available at the consent authority's offices. In relation to this last matter, I request that NPDC email the parties with a link to the Council's website of any material filed.
7. Accordingly:
 - a) Pursuant to 103B(2) of the RMA, the Commissioner directs that the NPDC section 42A report be provided to the parties, by way of email with a link to the Council's website, no later than **12noon on Friday 21 March 2025**.
 - b) Pursuant to section 103B(3) of the RMA, the Commissioner directs that the Applicant is to provide written briefs of all their evidence to Julie Straka (julie.straka@npdc.govt.nz), Manager Governance at NPDC, by way of email no later than **12 noon on Friday 28 March 2025**.
 - c) The Commissioner requests that as soon as practicable following receipt of any such evidence received from the Applicant, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.

- d) Pursuant to section 103B(4) of the RMA, the Commissioner directs that if any person who has made a submission intends to present expert evidence at the hearing, including expert planning evidence, then that party is to provide a written brief of that expert evidence to Julie Straka (julie.straka@npdc.govt.nz), Manager Governance at NPDC, by way of email no later than **12 noon on Friday 4 April 2025**.
- e) The Commissioner requests that as soon as practicable following receipt of any evidence received from submitters, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
- f) In terms of the above Directions the reports and evidence should be provided to NPDC electronically by email. Hard copies of the evidence should only be provided on request.
- g) Pursuant to s41C(1) of the RMA, the Commissioner directs that in respect of expert evidence pre-circulated in accordance with these Directions, the hearing will be conducted in the following manner:
- The section 42A report(s) will be taken as read;
 - The applicant that has provided the pre-circulated evidence is to call the witness in person;
 - The witness should be introduced and asked to confirm his or her qualifications and experience;
 - The witness should be asked to confirm the matters of fact and opinion contained in the brief of evidence;
 - The witness will then be given an opportunity to draw to the attention of the Commissioner the key points in the brief. No new evidence shall be introduced, unless it is specifically in response to matters raised in other pre-circulated briefs of evidence supplied by another party – in such cases the new evidence shall be presented in written form as an Addendum to the primary brief of evidence and it may be verbally presented by the witness. If there is any variation between what the witness says and what is in the brief of evidence, the Commissioner will assume that the written brief is the evidence unless the content of the brief is specifically amended by the witness;
 - The witness may then be questioned by the Commissioner.
8. Non-expert evidence (including legal submissions) should be tabled and read aloud on the day that the relevant party appears at the hearing.
9. The hearing will be conducted in a manner which is appropriate and fair, but without unnecessary formality. Subject to adequate notice, the Commissioner will receive written or spoken evidence in Te Reo Māori. If any party wishes to present evidence in Te Reo Māori, they are requested to contact Julie Straka (julie.straka@npdc.govt.nz), Manager Governance at NPDC, no later than **3pm on Friday 15 March 2025**.

10. The Commissioner also requests that all parties (the NPDC reporting officer, the applicant, and any of the submitters) calling expert witnesses liaise amongst themselves in order to facilitate their respective experts conferencing on matters relevant to their specific areas of expertise prior to the preparation of their reports or evidence (including any applicable conditions of consent) and through to the commencement of the hearing. The aim of the conferencing should be to identify areas of agreement and disagreement which can then be noted in the reports and evidence (Environment Court Practice Note 2023, Sections 9.3 and 9.4).
11. The Commissioner will attempt to focus on the issues of contention during the hearing and in deliberations thereafter and so the assistance of the parties to clearly identify areas of expert agreement and disagreement in this manner will be greatly appreciated.
12. Any correspondence to the Commissioner should be directed through Julie Straka, Manager Governance (julie.straka@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 21 February 2025

Directions/Minute of the Commissioner #2
SUB21/47803

Application for Robe and Roche Investments
56 Pohutukawa Place, Bell Block

1. In Minute #1 dated 19 February 2025, I set out the timetable for the filing of the section 42A Report/s and evidence, and how the hearing will be conducted. The section 42A Report/s and Applicant's evidence were duly filed and distributed in accordance with the timetable.
2. On reviewing the section 42A Report I observe that there are four (4) late submissions, as to which no decision has been made as to whether or not they should be accepted.
3. The submissions are as follows;

#	Submitter	Submission points	Date Received
Sub ID# 18	Avatar Mgt Limited (Maida Vale Retirement Village - Pat Wynd)	Neutral – if granted the subdivision consent should include specific conditions to manage bulk and location effects, particularly on elevated sites.	23/03/2023
Sub ID# 19	Michael Kaye	Support – granting consent will help alleviate housing shortage.	24/03/23
Sub ID# 34	Rachel Williams	Support.	23/03/2023
Sub ID# 97	Karen Angland	Support – the proposed site and design of the subdivision is appropriate and will promote economic development.	24/03/23

4. On reviewing the submissions themselves, I note that Submissions ID#19, ID#34 and ID#97 do not wish to be heard. However, Submission ID#18 from Avatar Management Limited has signalled that they do wish to be heard. Rather than leave exploring the matters as to the acceptance or not of the late submissions to the hearing itself, I have set out below a timetable for the parties to put forward their views ahead of the hearing and that I may be able to make a decision on the matter. The outcome of that decision, should it be acceptance, would allow Avatar Management Limited to signal a time to the Hearing Administrator as to when they might appear at the hearing.
5. To that end, I have taken that the initial position of Submissions ID#18, ID#19, ID#34 and ID#97 is that they all wish their late submissions to be accepted.
6. The Applicant, is requested to provide written advice as to whether or not they are opposed to acceptance of the late submissions including reasons, and directs that the Applicant is to provide such advice to Julie Straka (julie.straka@npdc.govt.nz), Manager Governance at NPDC, by way of email no later than **3pm on Thursday 3 April 2025**.

7. The Commissioner requests that as soon as practicable following receipt of any such advice received from the Applicant, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
8. The late submitters, Submissions ID#18, ID#19, ID#34 and ID#97, are requested to provide written advice as to the reasons for the acceptance of their late submissions and that they provide such advice to Julie Straka (julie.straka@npdc.govt.nz), Manager Governance at NPDC, by way of email no later than **3pm on Wednesday 9 April 2025**.
9. The Commissioner requests that as soon as practicable following receipt of any such advice received from the late submitters, Submissions ID#18, ID#19, ID#34 and ID#97, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
10. The hearing remains scheduled to commence at **9am on Monday 14 April 2025** at the New Plymouth District Council Civic Centre, 84 Liardet Street, New Plymouth. At this stage the hearing is scheduled for two days (14 and 15 April 2025), with the 16th of April 2025 set aside as a reserve day and will only be used if required.
11. Any correspondence to the Commissioner should be directed through Julie Straka, Manager Governance (julie.straka@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 31 March 2025

**Directions/Minute of the Commissioner #3
SUB21/47803**

**Application for Robe and Roche Investments
56 Pohutukawa Place, Bell Block**

1. On 7 April 2025, I received a memorandum from Mr Grieve, counsel for the Applicant seeking leave for Mr Bruce, archaeologist for the Applicant, to appear at the hearing remotely.
2. Similarly, on 8 April 2025, I received a memorandum from Mr Whittaker, section 42A Reporting Officer for the District Council, seeking leave to appear at the hearing remotely.
3. Through Ms Straka, the Manager of Governance for the Council I clarified the reasons for the requests which are of personal nature. I have considered the requests and find that no party will be prejudiced in Mr Bruce or Mr Whittaker attending the hearing remotely. As such the requests are granted.
4. In terms of timing on the first day of hearing, it would be helpful if Mr Grieve could liaise with Ms Straka so that Mr Bruce can be available so as not to require the interruption of the presentation or questioning of other witnesses.
5. The hearing remains scheduled to commence at **9am on Monday 14 April 2025** at the New Plymouth District Council Civic Centre, 84 Liardet Street, New Plymouth. At this stage the hearing is scheduled for two days (14 and 15 April 2025), with the 16th of April 2025 set aside as a reserve day and will only be used if required.
6. Any correspondence to the Commissioner should be directed through Julie Straka, Manager Governance (julie.straka@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 9 April 2025

**Directions/Minute of the Commissioner #4
SUB21/47803**

**Application for Robe and Roche Investments
56 Pohutukawa Place, Bell Block**

1. The section 42A Report/s, the Applicant's evidence and the submitters' expert evidence have been duly filed and distributed in accordance with the timetable.
2. On reviewing the Applicant's evidence, in particular the evidence of Mr Miller as to the proposed roading network, I note that "Appendix 1" to Mr Miller's evidence is a "Preliminary Stage Road Design Memo" dated 25 March 2025. I observe that this memorandum is dated after the section 42A Report of 21 March 2025.
3. The purpose of this minute is to signal that at hearing itself, I would be grateful if the appropriate Council officers could respond to the matters addressed in the "Preliminary Stage Road Design Memo". Similarly, it may be that Mr Skerrett and Mr Georgeson wish to advise if the memorandum has any implications as to their Joint Witness Statement as to Transport dated 7 March 2025? It is of course also open for any party to address the memorandum at the hearing.
4. The hearing remains scheduled to commence at **9am on Monday 14 April 2025** at the New Plymouth District Council Civic Centre, 84 Liardet Street, New Plymouth. At this stage the hearing is scheduled for two days (14 and 15 April 2025), with the 16th of April 2025 set aside as a reserve day and will only be used if required.
5. Any correspondence to the Commissioner should be directed through Julie Straka, Manager Governance (julie.straka@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 11 April 2025

**Directions/Minute of the Commissioner #5
SUB21/47803**

**Application for Robe and Roche Investments
56 Pohutukawa Place, Bell Block**

1. The hearing commenced at **9am on Monday 14 April 2025**. I heard from the Applicant and their experts, the submitters and their expert and from officers. I adjourned the hearing at **12.53pm on Tuesday 15 April 2025**, to allow expert planning conferencing as to conditions, the opportunity for the submitters who were heard to comment on the conditions and for the Applicant's right of reply. This minute sets out the timetabling for those matters.
2. The expert planning witnesses are to conference and prepare a Joint Witness Statement (JWS) as to a proposed set of conditions addressing the matters raised at the hearing. The resulting JWS is to be sent to Julie Straka (julie.straka@npdc.govt.nz), Manager Governance at NPDC, by way of email no later than **3pm on Friday 2 May 2025**.
3. The Commissioner requests that as soon as practicable following receipt of any such JWS, NPDC provides a copy to all other parties to the hearing by way of email with a link to the Council's website.
4. Any submitters from the hearing then have the opportunity to comment of the proposed conditions set out in the JWS as referenced in Para 2 above. Any comments on the proposed conditions are to be sent to Julie Straka (julie.straka@npdc.govt.nz), Manager Governance at NPDC, by way of email no later than **3pm on Friday 9 May 2025**.
5. The Commissioner requests that as soon as practicable following receipt of any such comments, NPDC provides a copy to all other parties to the hearing by way of email with a link to the Council's website.
6. The Applicant is then to provide their Reply Statement to Julie Straka (julie.straka@npdc.govt.nz), Manager Governance at NPDC, by way of email no later than **3pm on Friday 16 May 2025**.
7. The Commissioner requests that as soon as practicable following receipt of any such reply statement, NPDC provides a copy to all other parties to the hearing by way of email with a link to the Council's website.
8. Following the receipt of the Reply Statement and on confirming I have all the information I require, I will close the hearing by way of a minute. As explained at the hearing, I will then proceed to deliberations and the preparation of the decision.

9. Any correspondence to the Commissioner should be directed through Julie Straka, Manager Governance (julie.straka@npdc.govt.nz).

A handwritten signature in black ink, appearing to read 'Mark St. Clair', with a stylized, flowing script.

Mark St.Clair
Independent Commissioner - Chair
Date: 15 April 2025

Directions/Minute of the Commissioner #6
SUB21/47803

Application for Robe and Roche Investments
56 Pohutukawa Place, Bell Block

1. I adjourned the hearing at **12.53pm on Tuesday 15 April 2025** and issued a minute (#5) setting out the timetabling for expert planning witness conferencing as to conditions, the opportunity for the submitters who were heard to comment on the conditions and for the Applicant's right of reply.
2. On 29 April 2025 I received a memorandum (attached) from all the expert planning witnesses involved, seeking an extension to the timeframe for filing the Joint Witness Statement to Friday 9 May 2025, along with reasons for the request and a summary of progress made to date. More specifically the memorandum states that, "*... the Applicant is seeking to lodge amended details and plans in terms of the subdivision staging approach.*"¹.
3. As I advised at the hearing, having a combined suite of conditions that is up to date as to the proposal and properly formulated for consideration in my deliberations would be advantageous. An extension of timeframes would provide for that and I find there would be no prejudice to any party. That said, the amended details and plans in terms of the subdivision staging, do raise a concern. To address that matter, the planning experts are to include in any JWS filed, a section separate from the proposed conditions as to the details and plans of the staging of the subdivision and how that is different or not, from the proposal at the adjournment of the hearing. In doing so, all the parties can clearly see the scope of the changes, if any, and have the opportunity to comment if they wish.
4. Accordingly, the timetabling in Minute #5 dated 15 April 2025 is put aside. The revised timetable is as follows:
5. The expert planning witnesses are to conference and prepare a Joint Witness Statement (JWS) as to a proposed set of conditions addressing the matters raised at the hearing. The resulting JWS is to be sent to Julie Straka (julie.straka@npdc.govt.nz), Manager Governance at NPDC, by way of email no later than **3pm on Friday 9 May 2025**.
6. The Commissioner requests that as soon as practicable following receipt of any such JWS, NPDC provides a copy to all other parties to the hearing by way of email with a link to the Council's website.
7. Any submitters from the hearing then have the opportunity to comment of the proposed conditions set out in the JWS as referenced in Para 5 above. Any comments on the proposed conditions are to be sent to Julie Straka (julie.straka@npdc.govt.nz), Manager Governance at NPDC, by way of email no later than **3pm on Friday 16 May 2025**.

¹ Memorandum from Expert Planning Witnesses, dated 25 April 2025, Para 1.1

8. The Commissioner requests that as soon as practicable following receipt of any such comments, NPDC provides a copy to all other parties to the hearing by way of email with a link to the Council's website.
9. The Applicant is then to provide their Reply Statement to Julie Straka (julie.straka@npdc.govt.nz), Manager Governance at NPDC, by way of email no later than **3pm on Friday 23 May 2025**.
10. The Commissioner requests that as soon as practicable following receipt of any such reply statement, NPDC provides a copy to all other parties to the hearing by way of email with a link to the Council's website.
11. Following the receipt of the Reply Statement and on confirming I have all the information I require, I will close the hearing by way of a minute. As explained at the hearing, I will then proceed to deliberations and the preparation of the decision.
12. Any correspondence to the Commissioner should be directed through Julie Straka, Manager Governance (julie.straka@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 30 April 2025

**BEFORE COMMISSIONER MARK ST. CLAIR APPOINTED BY NEW PLYMOUTH
DISTRICT COUNCIL**

UNDER

the Resource Management Act
1991 ("RMA")

IN THE MATTER

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

REQUEST FOR EXTENSION OF TIME

PLANNING MATTERS AND CONSENT CONDITIONS

DATED: 29 April 2025

1. SUMMARY

- 1.1 Following the Commissioners minute dated 15 April 2025, the planners for the Applicant, NPDC and Puketapu Hapū are progressing an amended and agreed set of conditions. However, given the non-availability of technical members in the wider Applicant and Council teams, we have not been able to progress the conditions as much as we had anticipated. In addition, the Applicant is seeking to lodge amended details and plans in terms of the subdivision staging approach.
- 1.2 As such, it is respectfully requested that an additional week is provided for the provision of the conditions and planning JWS.

2. COMMISSIONER DIRECTION

- 2.1 In response to matters raised during the hearing and the need for additional time to work through the proposed conditions, Commissioner St Clair issued Minute #5 with the following timelines and deliverables
- Planning JWS and conditions – **3pm Friday 2 May**

- Submitters Response to JWS and Conditions - **3pm Friday 9 May**
- Applicants Right of Reply - **3pm Friday 16 May**

3. PROGRESS TO DATE

- 3.1 The planners have met twice and progressed;
- An initial framework for a set of amended subdivision condition,
 - Scope for land use conditions (earthworks), and
 - Discussion on staging requirements and plans.
- 3.2 The Applicant's team have also engaged further with their civil engineering team to discuss the nature of earthworks and staging and how the subdivision is likely to be developed.
- 3.3 There have been some availability issues with key technical staff from the Applicant and Council teams on leave over the Easter and ANZAC day holidays period (until 28 April 2025).

4. REQUEST FOR EXTENSION

- 4.1 The planners consider that an agreed set of conditions is more than likely to be achieved however it will not be possible now to complete this work by the original deadline of Friday 2 May. It is therefore respectfully requested that the Commissioner approves an amended timeline as follows:
- Planning JWS and conditions – **3pm Friday 9 May**
 - Submitters Response to JWS and Conditions - **3pm Friday 16 May**
 - Applicants Right of Reply - **3pm Friday 23 May**
- 4.2 If this request is granted, then it would be appropriate for the Commissioner to issue a new minute.
- 4.3 All planners support the extension of the timeline.



Ben Lawn
Planner for the Applicant



Kathryn Hooper
Planner for the Applicant



Sean Zieltjes
Planner and adviser to Te Kotahitanga o Te Atiawa Trust and Puketapu Hapū



Todd Whittaker
S.42A Planner for New Plymouth District Council.

29 April 2025

Directions/Minute of the Commissioner #7
SUB21/47803

Application for Robe and Roche Investments
56 Pohutukawa Place, Bell Block

1. Further to Minute #6 and in line with the timetable, I received a Joint Witness Statement (JWS) from the planning witnesses as to a proposed set of conditions addressing the matters raised at the hearing, including updated scheme plans. These documents were distributed to the parties.
2. I record that none of the submitters from the hearing availed themselves of the opportunity to comment on the proposed conditions set out in the Planning JWS.
3. Finally, the Reply Statement from the Applicant was filed on Friday last in line with the specified timetable. The reply statement is to be distributed to the parties.
4. Having reviewed all the material provided, there is one further piece of information I require. That is, in relation to the amended scheme plans in Appendix 1 of the Planning JWS of 9 May 2025. The amendments to the scheme plans, roading and allotment layout appear to result in changes to the size of a number of the allotments. There is insufficient detail shown on the amended scheme plans as to the size of the proposed allotments, particularly in relation to Stage 6B, Stage 7, Stage 8B and Stage 9B. This is required in order to fully understand the proposal as to the Applicant's final position. Therefore, I would be obliged if the Applicant could provide updated scheme plans showing the allotment sizes on the Scheme Plans identified and including for proposed allotments 301, 302 and 303 and road to vest allotments. These amended scheme plans are to be provided to Julie Straka (julie.straka@npdc.govt.nz), Manager Governance at NPDC, by way of email no later than **3pm on Tuesday 3 June 2025**.
5. Furthermore, can the Applicant please identify if there are any consequential changes required to the report attached to and referenced in the evidence of Mr Miller dated 14 March 2025 and handed up on 15 April 2025, as well as the proposed development plans (Sheet C2-1 to C8-1 dated 12/03/25). If there are amended plans required, can they please be provided to Julie Straka (julie.straka@npdc.govt.nz), Manager Governance at NPDC, by way of email no later than **3pm on Tuesday 3 June 2025**.
6. On receipt of the material requested in Items 4 and 5 above, that material is to be distributed to the parties.
7. As explained at the hearing, I will then close the hearing my way of a minute and proceed to deliberations and the preparation of the decision.
8. Any correspondence to the Commissioner should be directed through Julie Straka, Manager Governance (julie.straka@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 26 May 2025

Directions/Minute of the Commissioner #8
SUB21/47803

Application for Robe and Roche Investments
56 Pohutukawa Place, Bell Block

1. In Minute #7, I requested additional information from the Applicant as to their final position as to the size of the proposed allotments, particularly in relation to Stage 6B, Stage 7, Stage 8B and Stage 9B, including for proposed allotments 301, 302 and 303 and road to vest allotments. In addition, I sought clarification as to any consequential changes required to the report attached to and referenced in the evidence of Mr Miller dated 14 March 2025 and handed up on 15 April 2025, as well as the proposed development plans (Sheet C2-1 to C8-1 dated 12/03/25).
2. That information was received in full on 3 June 2025, in line with the timetable and was distributed to the parties.
3. Having reviewed that material, I consider I have all the information I require. As such, the hearing is now closed as at today's date 4 June 2025. I will now proceed to deliberations and the preparation of the decision. The decision will be available on or before 27 June 2025, noting that 20 June 2025 is Te Rā Aro ki a Matariki/Matariki Observance Day which is not a working day under the Resource Management Act 1991.
4. Any correspondence to the Commissioner should be directed through Julie Straka, Manager Governance (julie.straka@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 4 June 2025

SUBDIVISION

Subject to the following conditions imposed under Section 108, Section 108AA and Section 220 of the Resource Management Act 1991:

GENERAL CONDITIONS

1. The subdivision activity must be carried out in accordance with the plans and all information submitted with the application, and all referenced by the New Plymouth District Council as consent number SUB21/47303 including the following:
 - a) *Assessment of Environmental Effects, titled “Application for Resource Consent 56 Pohutukawa Place, Bell Block” prepared by McKinlay Surveyors dated 26 May 2021 and all updated material and reports since the original application was submitted, and*
 - b) *The updated and final set of Scheme Plans titled “Proposed Subdivision of Lot 2 DP 521660 – 56 Pohutukawa Place” prepared by McKinlay Surveyors with reference B- 231212 DWG 01-10 dated 26/05/25,*
 - c) *Red Jacket Plan – Typical Rain Garden Details – C2-3 - C2-5 Rev B dated 03/06/25,*
 - d) *Red Jacket Plan – Stormwater Discharge Points – C2-6 - C2-9 Rev B dated 03/06/25,*
 - e) *Red Jacket Plan – Roading & Stormwater Layouts – C3-1 – C3-5 Rev B dated 03/06/25,*
 - f) *Red Jacket Plan – Typical Road Cross Sections – C4-1 – C4-5 Rev B dated 03/06/25,*
 - g) *Red Jacket Plan – Stormwater – C5-1 – C5-12 Rev B dated 03/06/25,*
 - h) *Red Jacket Plan – Water Reticulation – C6-1 – C6-12 Rev B dated 03/06/25,*
 - i) *Red Jacket Plan – Sewer – C7-1 – C7-22 Rev B dated 03/06/25,*
 - j) *Red Jacket Plan – Bulk Earthworks Plan – C8-1 Rev B dated 03/06/25,*

unless otherwise modified by the following conditions of consent.

2. Individual certifications pursuant to Sections 223 and 224(c) of the Resource Management Act 1991 may be issued for this subdivision in a series of stages, in accordance with the staging proposed on approved plan McKinlay Surveyors with reference B-231212 DWG 01-10 dated 26/05/25 as follows:
 - a) Stage 6A – Lot 400 and Lot 403;
 - b) Stage 6B – Lots 1 – 28, Lots 301 – 304;
 - c) Stage 7 – Lots 29 – 49 and Lot 305;
 - d) Stage 8A – Lot 401 and Lot 406;
 - e) Stage 8B – Lots 50 – 75 and Lot 306;
 - f) Stage 9A – Lot 402 and Lot 308; and
 - g) Stage 9B – Lots 76 – 113 and Lot 307.

3. Unless otherwise specified all conditions apply for all stages, the Consent Holder must demonstrate at Section 223 and Section 224 of the Resource Management Act 1991 that all relevant conditions applicable to that stage have been completed and are in accordance with Condition 1 above. The Consent Holder must also demonstrate that any staging and completion of conditions will not impede or restrict the ability of the remaining stages of consent to be completed in full compliance with all conditions of this consent.
4. The Consent Holder must pay to the New Plymouth District Council all the administration, certification, monitoring and supervisions costs of this consent, fixed in accordance with Section 36 of the Resource Management Act 1991.
5. This consent lapses on 19 June 2032 unless the consent is given effect to before that date; or unless an application is made before the expiry of that date for New Plymouth District Council to grant an extension of time. An application for an extension of time will be subject to the provisions of Section 125 of the Resource Management Act 1991.

ARCHAEOLOGY, CULTURAL SITES AND ADAPTIVE MANAGEMENT

6. Initial earthworks are limited to topsoil removal until such time as the underlying soil layer is inspected by a suitably qualified and experienced archaeologist and cultural monitor, and it is determined that no material of a cultural origin including but not limited to kōiwi, wāhi taonga (resources of importance), wāhi tapu (places or features of special significance), or other Māori artefacts.
7. Until such time as a general archaeological authority is issued by Heritage New Zealand Pouhere Taonga for the subdivision the Consent Holder must implement the following Discovery Protocol at all stages of works:

If the Consent Holder discovers any material of a cultural origin including but not limited to kōiwi, wāhi taonga (resources of importance), wāhi tapu (places or features of special significance) or other Māori artefacts, the Consent Holder must implement the following Accidental Discovery Protocol without delay:

- a) Notify the Consent Authority, Puketapu Hapū and Heritage New Zealand and in the case of kōiwi, the New Zealand Police.
 - b) Stop work with the immediate vicinity of the discovery to allow a site inspection by Heritage New Zealand Pouhere Taonga and Puketapu Hapū and their advisors, who must determine whether the discovery is likely to be extensive, if further site investigation is required, and whether an Archaeological Authority is required.
 - c) Any kōiwi discovered must be handled by kaumatua responsible for the tikanga appropriate to its removal or preservation.
 - d) Adopt and implement any additional or alternative Accidental Discovery Protocol as agreed by the Kaitiaki Forum.
8. Upon receipt of a general archaeological authority from Heritage New Zealand Pouhere Taonga that covers earthworks necessary to give effect to the subdivision consent, Condition 7 no longer applies.

9. In the instance the inspection required by Condition 6 that any material of a cultural origin including but not limited to kōiwi, wāhi taonga (resources of importance), wāhi tapu (places or features of special significance), or other Māori artefacts are identified, the Consent Holder must:
- a) Stop all earthworks; and
 - b) Convene the Kaitiaki Forum within 5 working days to:
 - i. Review the nature of the find; and
 - ii. Determine if the find is of such significance, or an urupā that it must remain in-situ to be protected, and the scheme plan/earthworks plan modified to provide for this; or
 - iii. Is mobile and able to be moved in accordance with Condition 16 below; or
 - iv. Is able to be protected through archaeological record; and
 - v. Recommend any changes to the Applied Cultural Expression Plan.
 - c) Once the requirements of 9(b) are complete, earthworks may be recommenced.
10. If an archaeological discovery is made and the decision of the Kaitiaki Forum is for the find to remain in-situ in accordance with Condition 9(b)(ii), a consent notice in accordance with s.221 of the Resource Management Act 1991 must be imposed on the residential titles that the find remains within. The consent notice must be:
- (a) No earthworks, land disturbance or erection of any structures are to be undertaken on the archaeological area shown as 'X'.*
- Advice Note*
- (a) Where 'X' is a written and legal description of the location.*

PRE-WORKS CONDITIONS (PRIOR TO STAGES 6B, 7, 8B, 9B)

Kaitiaki Forum

11. Prior to the commencement of any site works, or the preparation of any management plans the Consent Holder must take all reasonable endeavours, and act in good faith, to convene and resource a Kaitiaki Forum.
12. The function and purpose of the Kaitiaki Forum must be formally agreed by the Consent Holder and Puketapu Hapū. This must be formally documented in a Forum Collaboration Agreement ('Agreement'). This Agreement must include (but not be limited to):
- a) The entities to be represented on the Forum are the Consent Holder, Puketapu Hapū and Te Kotahitanga o Te Atiawa;
 - b) The entities that form the quorum;
 - c) The number of representatives and the representatives from the entities on the Forum;
 - d) The construction timetable, and the frequency the Forum meets relative to that

timetable;

- e) The duration of the Forum;
 - f) A dispute resolution clause;
 - g) Any role for New Plymouth District Council and/or Taranaki Regional Council staff in relation to the role and function of the Forum; and
 - h) Anything further the participating entities deem appropriate to consider.
13. Prior to the commencement of works a copy of the Forum Collaboration Agreement must be provided to the New Plymouth District Council – Planning Lead or nominee.
14. The Consent Holder must engage with the Kaitiaki Forum:
- a) To gain cultural understanding and input into the content of:
 - i. The Reserve Plan required by Condition 17.
 - ii. The Road Reserve Landscape Plan required by Condition 20.
 - iii. The engineering plans required by Condition 24.
 - b) To develop an Applied Cultural Expression Plan which must include but not be limited to:
 - i. The overall purpose of Applied Cultural Expression Plan .
 - ii. The locations and on-going maintenance of any installations of Toi Māori.
 - iii. Road naming.
 - iv. The location and maintenance schedule of sign and story boards.
 - c) As required to implement the adaptive management strategy for archaeology and Sites and Areas of Significance to Māori required by Condition 9.
 - d) To contribute to the induction process of all persons working on the site, control and provide over-sight of all earthworks undertaken within the development; and
 - e) To implement necessary tikanga māori including a pre-start blessing and cultural monitoring of the earthworks within the application site. Puketapu Hapū must be engaged no less than ten (10) working days prior to any earthworks commencing.

Advice Notes:

The Kaitiaki Forum must also convene on the management plans as required in the TRC Consents (TRC 11136-1.0 & 11146-1.0)

15. Prior to earthworks commencing the Consent Holder must provide a plan to the Planning and Development Lead (or nominee) detailing the staging of earthworks across the development. This report must detail:
- a) Compliance with the scope of earthworks as approved under land use consent LUC25/48765.
 - b) The existing contours across the site; and
 - c) the area of earthworks for each stage of the subdivision; and

- d) final volumes, cut and fill areas; and
 - e) the location where any cut-to-waste material is to be deposited.
16. Prior to each stage of earthworks commencing identified in Condition 15 the Consent Holder must convene the Kaitiaki Forum to:
- a) Identify an area within the stage or overall development, or alternative location that any material of a cultural origin including but not limited to kōiwi, wāhi taonga (resources of importance), wāhi tapu (places or features of special significance), or other Māori artefacts may be able to be moved to in accordance with tikanga; and
 - b) To outline the tikanga to be followed in the instance of a find; and
 - c) Cultural induction and monitoring requirements that must be followed for that stage.
 - d) The Consent Holder must provide a report to the Planning and Development Lead (or nominee) outlining the recommendations from the Kaitiaki Forum required by Condition 14.

Ecological Management and Reserve Development Plan (Reserve Plan)

17. An *Ecological Management and Reserve Development Plan (Reserve Plan)* must be prepared by the Consent Holder and submitted to the Planning and Development Lead (or nominee) for certification. The Reserve Plan is required to be submitted at least one month prior to any works on the proposed esplanade reserves commencing (excluding earthworks approved under this consent).

The purpose of the Reserve Plan is to detail the ecological, planting and development works for the proposed esplanade reserves, the timing of the works and ongoing monitoring and management measures. The Reserve Plan must also give effect to the future use and purpose of the reserve being primarily to identify and protect the cultural and ecological values of the Waipu Lagoons.

The Reserve Plan must include the following provisions, standards and details:

- a) A Puketapu Hapū statement of association and values set out as follows: Kaitiakitanga - Active Protection of the Waipu Lagoons, the environment and knowledge; Kanohi ki te Kanohi - Engagement and Formal Consultation; Manawhenua - Recognition of the mana of Puketapu Hapū and respect for the Puketapu Hapū's relationship with its Waipu Lagoons sites; Tikanga - Appropriate action; and Rangatiratanga - leadership, integrity and ethical behaviour in all actions and decisions;
- b) Detailed design plans;
- c) Detailed specifications for landscape and ecological elements and processes;
- d) Consideration of the recommendations and conclusions set out in Wildland Consulting Report #6969 'Assessment of Potential Ecological Effects for a Proposed Subdivision at Pōhutukawa Drive, Bell Block, Taranaki';

- e) Measures to eliminate risk of sediment entry to the Waipu Lagoons;
- f) Any earthworks, changes to site topography, and provisions around earthworks to protect the ecological and cultural environment;
- g) Drainage engineering requirements to be met, as set out in the Stormwater Control conditions and Engineering Plans, Supervision and Certification conditions;

Advice Note

Design of stormwater management measures also need to meet any conditions of resource consent issued by the Taranaki Regional Council.

- h) Fencing alignment, and standards in keeping with the Parks Standards Manual, New Plymouth District Council, October 2010;
 - i) A planting plan(s), showing varying planting zones and areas in m²;
 - j) Lists and or tabular information on intended planting species, spacing and numbers for varying planting zones, informed by both; the coastal and semi-coastal zones of the Egmont Ecological District, and; general availability in nursery propagation/cultivation;
 - k) A works implementation schedule;
 - l) An 18 month maintenance plan for planting areas;
 - m) A plan for the control of environmental weeds and mammalian vertebrate pests, including an 18 month maintenance plan;
 - n) Areas to remain in cultivated turf grass, including an 18 month maintenance plan;
 - o) A single walkway alignment to the coastal walkway through proposed Lot 302, to remain unplanted;
 - p) Any ongoing monitoring and management recommendations and provisions noting that any such works will need to be funded by New Plymouth District Council reserves budgets or passed over to a community group;
 - q) A process for reporting on planning and works progress to Councils' Growth and Service Lead, including at completion of works prior to Section 224 of the Resource Management Act 1991 approvals; and
 - r) A Privileged Access Agreement required for any work within New Plymouth District Council administered reserves.
18. The Consent Holder must undertake all works on the esplanade reserves in accordance with the certified Reserve Plan. In the event that application is made to the New Plymouth District Council for certification pursuant to Section 224 of the Resource Management Act 1991 before the maintenance period for all planting approved under Condition 17 is completed, then the Consent Holder must pay to the New Plymouth District Council a bond in the form of a refundable cash deposit. The purpose of this bond is for ensuring compliance with Condition 17 and must only be entered into if the New Plymouth District Council is satisfied that the amount of the bond is sufficient to achieve this purpose, and that 50% of the estimated cost for the maintenance period

has been added.

19. Any amendment to the Reserve Plan must be;
- a) submitted to the Planning and Development Lead (or nominee) for certification,
 - b) supplied to Puketapu Hapū for advice on cultural impacts of the amendments no less than 30 working days prior to the Consent Holder submitting the plan to New Plymouth District Council for certification.

Road Reserve Landscape Plan

20. A Road Reserve Landscape Plan (RRLP) must be submitted for New Plymouth District Council certification by the Planning and Development Lead (or nominee). The Reserve Plan is required to be submitted at least one month prior to any works on the proposed roads (excluding earthworks approved under this consent).

The purpose of the RRLP is to detail the landscape and interface details within the road reserves and in particular along the interface with the proposed esplanade reserves.

21. The RRLP is to provide for all planting and turf areas located within Roads to Vest - Lots 304 - 307, and is to be prepared by the Consent Holder's consultant Landscape Architect. Design elements (including Toi Māori elements), planting layout and species palates are to be co-designed with input from Puketapu Hapū in accordance with Condition 14. The RRLP must include, but not be limited to:
- a) Detailed design plans;
 - b) Detailed specifications for landscape elements and processes;
 - c) Esplanade Reserve fencing alignment, and standards in keeping with the Parks Standards Manual, New Plymouth District Council, October 2010;
 - d) A Privileged Access Agreement required for any work within New Plymouth District Council administered reserves;
 - e) Treatment of road verges fronting Esplanade Reserve Lots;
 - f) Establishment of grass verges fronting residential Lots;
 - g) Selection, planting and maintenance of street trees;
 - h) Detailed specifications for raingarden plantings;
 - i) Detailed specifications for any other plantings within Road Reserve (e.g. chicane plantings')
 - j) A works implementation schedule; and
 - k) An 18 month maintenance plan for RRLP installations/as-builts.

Advice Note:

Section Seven Landscape of the New Plymouth District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:2010 is to be considered, in the drafting of Ecological Management Plan and the Road Reserve Landscape Plan as

required by Conditions 17 and 20.

22. The Consent Holder must undertake all works in accordance with the certified RRLP which must also be incorporated into the engineering plans.
23. Any amendment to the RRLP must be;
 - a) submitted to the Planning and Development Lead (or nominee) for certification,
 - b) supplied to Puketapu Hapū for advice on cultural impacts of the amendments no less than 30 working days prior to the Consent Holder submitting the plan to New Plymouth District Council for certification.

Engineering Plans (Stages 6B, 7, 8B, 9B)

24. An engineering plan and specification for all subdivisional and civil works authorised by this consent must be submitted to and approved by the New Plymouth District Council prior to the commencement of work.

Advice Notes:

- (a) For private stormwater disposal systems on right-of-ways, such as soakholes, a building consent may be required.*
- (b) In terms of the internal road design the follow matters will need to be assessed/detailed:*
 - a. The northernmost curve on Road 2 might restrict visibility from the access on Lot 50.*
 - b. The roundabouts will need to be checked for swept paths for HCV's.*

Construction Management Plan

25. A Construction Management Plan (CMP) must be submitted to New Plymouth District Council for certification by the Planning and Development Lead (or nominee). The CMP is required to be submitted at least one month prior to any works.

The purpose of the CMP is to detail the measures to be adopted during earthworks and civil works to ensure the management and mitigation of construction works on the surrounding properties, Waipu lagoon, and community

26. The CMP must include, but not be limited to, the following:
 - a) Details for all stages of the construction works.
 - b) Details of the site or project manager, including their contact details.
 - c) Any means, such as the fencing and setback of construction vehicles and machinery from the ecologically sensitive areas.
 - d) Measure to be adopted to minimise impacts on visual amenity including any screening, storage of rubbish and unloading of building materials and similar construction activities;
 - e) Measures to be adopted to ensure that accessible pedestrian access past the site is provided at all times and that the access is safe including details of public facing

detour information;

- f) Location of workers conveniences (e.g. portaloos);
 - g) Ingress and egress to the construction site for construction, trade and worker vehicles and machinery during the construction period;
 - h) Procedures for controlling sediment runoff, dust and the removal of soil, debris and demolition and construction materials from public roads or places. Dust mitigation should include use of water sprays to control dust nuisance on dry or windy days.
 - i) Hours of operation and days of the week for construction activities;
 - j) Management of construction traffic; and
 - k) Noise Management measures to ensure that Construction Noise standards NZS6803:1999 are complied with.
27. The management and mitigation measures prescribed in the certified CMP must be implemented for the duration of the construction works.

Certification of Management Plans

28. The New Plymouth District Council may certify or decline to certify a management plan. Should the New Plymouth District Council decline to certify a management plan they will provide clear reasons why, and the Consent Holder may resubmit a revised plan in accordance with the following process:
- a) Within 10 working days of being notified of the Council's decision to not certify the management plan, the Consent Holder must submit a revised management plan for certification by the Council.
 - b) The New Plymouth District Council may certify or decline to certify the revised management plan.
29. The Consent Holder must submit a revised management plan, repeating the process in Condition 28 above, until the New Plymouth District Council certifies the management plan.

CERTIFICATION AND ENGINEERING ADMINISTRATION

30. All work must be constructed under the supervision of a suitably qualified person who must also certify that the work has been constructed to the approved Engineering Plan/Infrastructure Standard requirements.
31. The supervision of the work, and its certification and the provision of as built plans must be as prescribed in sections 1.8 and 2.0 of New Plymouth District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:210.
32. A New Plymouth District Council engineering plan approval/inspection fee applies at cost.

33. A schedule of assets vested and SW infrastructure Operations and Maintenance Manual must be provided to New Plymouth District Council.

RESERVE INTERFACE AND ECOLOGICAL PROTECTION

34. Prior to the Section 224 of the Resource Management Act 1991 certificate, each residential lot that has a boundary with the Esplanade Reserve Lots 301, 302 and 303, must have a dog proof fence constructed along each common boundary with a reserve. The dog proof fencing is to be constructed to New Plymouth District Council's standards for both dog proof and visually permeable fencing. An alternative design may be proposed and approved in writing by the Planning and Development Lead (or nominee).
35. A consent notice in accordance with Section 221 of the Resource Management Act 1991 must be imposed on all titles which adjoin an esplanade reserve and require a dog proof fence in accordance with Condition 34.

The consent notice conditions are:

- (a) The owner of Lots [insert lot numbers] are required to maintain a dog proof fence on each common boundary with the adjacent esplanade reserve. The dog proof fence is to be maintained or replaced to New Plymouth District Council's standards for both dog proof and visually permeable fencing. An alternative design may be proposed and approved in writing by the Planning and Development Lead (or nominee).*
- (b) All owners are prohibited from disposing of any garden waste or other rubbish into or on the adjacent esplanade reserve.*

Advice Notes:

Councils' standards for dog proof and visually permeable fencing are as follows;

Dog proof fencing

- (a) minimum 1.5m tall*
- (b) minimum 1.2m closed board fencing*
- (c) may be topped by fully visually permeable (e.g. pool style) material up to maximum height 1.8m*
- (d) An alternative design may be proposed and approved by council.*

Visually permeable fencing

- (a) maximum 1.8m tall*
- (b) maximum 1.2m closed board fencing*
- (c) where exceeds 1.2m requires to be topped by fully visually permeable (e.g. pool style) material up to maximum height 1.8m*
- (d) may be constructed of fully visually permeable (e.g. pool style) material up to maximum height 1.8m*

(e) An alternative design may be proposed, and approved by council.

36. A consent notice in accordance with S.221 of the Resource Management Act 1991 must be imposed on all residential titles.

The consent notice condition is:

All lots within this area are located within a broader area which has ecological values and in proximity to the Waipu Lagoons. To manage the potential risk of cat roaming and feral cats becoming established, the following conditions and advisories apply;

- (a) A maximum of three domestic cats may be kept on each residential lot,*
- (b) Cat owners are advised that cat trapping and culling may take place within and around the Waipu Lagoons. All cat owners will need to take appropriate steps to manage cat roaming into and around the Waipu lagoons.*

DESIGN STANDARDS AND WORKS CONDITIONS

Water Supply

37. An individual water connection incorporating a manifold assembly and water meter must be provided for Lots 1 – 113.
- a) All new reticulation must be designed and constructed to the requirements of:
 - i. The NPDC Consolidated Bylaws 2014.
 - ii. The Council's Land Development & Subdivision Infrastructure Standard requirements.
 - iii. The New Zealand Fire Services "Code of Practice for Fire Fighting Water Supplies" requirements.
 - b) The Consent Holder must confirm that there are no cross-boundary water connections is required.
 - c) The Consent Holder must cover the cost of each water meter as part of the service connection fee.

Advice Notes:

- (a) An application for service connection and infrastructure connection to the existing New Plymouth District Council main is required. The connection and meter must be installed by a New Plymouth District Council approved contractor. An as built plan of all connections is required from the approved contractor and the supply of this plan by the contractor forms part of this consent.*
 - (b) Jumbo manifold boxes are to be used if two or more connections are provided at the road boundary. Each manifold must be tagged with the relevant Lot number (and street numbers if known).*
38. The existing 150mm line along Parklands Ave must only be extended to service a maximum of 82 Lots.

Advice Note:

- (a) *Once the maximum number of Lots is reached a water line will be required to join the existing water line Pohutukawa Place to provide a loop in order to provide fire-fighting supply*

Wastewater

39. A sewer connection must be provided for Lots 1 - 113 in accordance with the following;
- a) All new reticulation must be designed and constructed to the requirements of:
 - i. The Building Code,
 - ii. The NPDC Consolidated Bylaws 2014,
 - iii. The Council's Land Development & Subdivision Infrastructure Standard.
 - b) For all new connections to the sewer main an application with the appropriate fee is to be made to Council, and upon approval this connection is to be installed by a New Plymouth District Council approved contractor at the Consent Holder's cost.
 - c) If any Lots cannot be serviced by a gravity connection, the Consent Holder must install an access chamber and boundary kit as close to the road boundary as possible and must comply with the Infrastructure Standard Cl 5.3.11.1.
 - d) Where a common private wastewater drain serves more than 2 single dwelling units a manhole will be required at the point where the common drain meets the New Plymouth District Council reticulated system.
40. For Stage 6B and 7, the 150mm sewer line vested in New Plymouth District Council that currently runs through this property is to be removed and a new sewer line installed along the line of the new road.
41. For Stage 9B, the 150mm sewer line vested in New Plymouth District Council that currently runs through this property is to be removed and a new sewer line installed along the line of the new road and extend to the service main on Pohutukawa Place. The replacement of the New Plymouth District Council sewer line must be designed by the Consent Holder's engineer, so this aligns with sewer system required for the development.

Advice Notes:

- (a) *NPDC will pay for this design to be undertaken.*
- (b) *The replacement of this line must be funded largely by Council. The Consent Holder's agent must model the existing sewer system to ensure that this new line has the capacity to accommodate the proposed additional flow.*
42. If any of Lots 1- 113 cannot be provided with a gravity sewer connection, then the relevant titles must be subject to the registration of a consent notice in accordance with S.221 of the Resource Management Act 1991 to impose the following condition:
- Lot [insert allotment number(s)] does not have a gravity sewer connection to the main and the owner will need to install and maintain a suitable private pump at their expense.*

The owner must include with their application for Building Consent for the construction of a Dwelling, details of the pumping system to be installed which must be designed and constructed in accordance with Clause 5.3.11.0 of the New Plymouth District Council Land Development and Subdivision Infrastructure Standard (Local Amendments Version 3).

Storm Water Management and Disposal

43. The stormwater design must comply with the plans and consent conditions for the TRC stormwater discharge (TRC 11136-1.0 granted 25 March 2025).
44. The Consent Holder must demonstrate the suitability of each residential Lot to be able to dispose of all stormwater from dwellings and paved areas by on-site disposal by providing a soil suitability report including results of on-site stormwater soakage testing as per NZBC E1/VM1 Section 9.0.2. If it is demonstrated that on-site disposal is not suitable then an alternative method of disposal is to be identified and made available. Secondary flow paths must be shown on a Plan and must not be across private property. If this is not achievable then the following applies:

If stormwater detention is required it must be designed to comply fully with the Land Development and Subdivision Infrastructure Standard, and must achieve on the following additional criteria:

- a) The post-development peak flow and volume (utilising HIRDS V4 RCP8.5 2081-2100) for the 20%, 10%, 2% and 1% AEP storm events must not exceed the pre-development peak flow and volume (utilising HIRDS V4 Historical Data) for each storm event.
45. Secondary flow paths must not be across private property. In circumstances where this cannot be avoided, secondary flow paths must be hard formed i.e. Concrete or rock lined, and must have an easement in gross in favour of Council. This easement must not be obstructed, and no building or structure is to be built within 1.5m from the edge of the secondary flow path.
46. For all residential Lots the minimum freeboard height additional to the computed top water flood level of the 1% AEP design storm (utilising HIRDS V4 RCP6.0 2081-2100) should be as specified in Section 4.3.5.2 of the NPDC Land Development and Subdivision Infrastructure Standard. The minimum freeboard must be measured from the top of the water level to the building platform level or underside of the floor joists or underside of the floor slab, whichever is applicable. Finished platform levels for all sections must be shown on the final engineering report. Levels must be shown in relation to NZVD2016.
47. Where it is not possible to achieve the level of protection by use of secondary flow paths, then the primary flow path must be increased in capacity until the level of protection can be achieved.
48. Stormwater runoff from road surfaces and hard stand areas will require water quality treatment before discharge to receiving environments and wetlands.

Advice Notes

(a) The Consent Holder has gained consent from Taranaki Regional Council for the discharge of stormwater to the Waipu lagoons. The Consent Holder will need to ensure that the design of the stormwater management and treatment system is able to satisfy the conditions of the stormwater discharge.

(b) The New Plymouth District Council must accept the responsibility for any consent associated with an infrastructure asset upon acceptance of that asset.

49. No flooding or nuisance is to be created by increased stormwater surface flow in the catchment upstream or downstream of the development. To ensure that this does not occur, a stormwater report will be required from a suitably qualified and experienced person prior to Section 224 of the Resource Management Act 1991 detailing:

- a) A clear and descriptive design statement, detailing the pre-development stormwater management and groundwater conditions, and the stormwater design approach.
- b) A stormwater catchment / sub-catchment plan to accompany any stormwater calculations which can be easily related to the calculations.
- c) Stormwater design calculations for both the primary and secondary stormwater systems, including replicating the hydrological regime of the Waipu Lagoons. Refer TRC Resource Consent: 11136-1.0
- d) Stormwater runoff water quality treatment design calculations, specifications of any proposed treatment devices including treatment effectiveness and location of devices.
- e) An Operations and Maintenance Plan is required at the Detailed Design for Stormwater systems including any treatment devices
- f) Adequate on-site soakage testing for the proposed Lots as per NZBC E1/VM1 Section 9.0.2, to demonstrate the capability for on-site SW disposal.

Roading and Access

50. All right-of-ways must be formed to the requirements of the New Plymouth District Plan and the New Plymouth District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:210 including on- site stormwater control and splays.

51. Prior to issue of certification under Section 224 of the Resource Management Act 1991, the Consent Holder must construct and seal new vehicle crossings serving the Right of Ways identified as Areas A - E on the Scheme Plans titled “Proposed Subdivision of Lot 2 DP 521660 – 56 Pohutukawa Place” prepared by McKinlay Surveyors with references B-231212 DWG 01-10 dated 26/05/25, and allotments containing access legs in accordance with the New Plymouth District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:210.

52. For Stages 6B and 7, Lots 304 and 305 must vest in the New Plymouth District Council as road and in accordance with the following conditions/standards;

- a) The proposed road must be constructed to the New Plymouth District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:210 requirements and designed to Austroads;
- b) A road pavement design must be provided using asphaltic concrete or chipseal surfacing, meeting requirements set out in the New Plymouth District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:210;
- c) A Road Safety Audit must be undertaken at the cost of the Consent Holder. This audit must be completed prior to final sign off of the engineering plans detailed design so that any recommendations from the audit can be included at design stage. The Road Safety Audit must cover aspects as referred to in Cl. 3.2.7 of the New Plymouth District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:210. This audit must be provided at Stage 6B or 7B and must also cover Stages 8B and 9B;
- d) A turning head must be constructed at the end of cul-de-sac. Where a temporary turning head is required two MOTSAM PW66 (2 chevron option) chevron boards must be erected to indicate the end of the road;
- e) Kerb & channel, footpath, berm, stormwater disposal and street lighting must be provided on the proposed road;
- f) A light industrial vehicle crossing must be installed to serve lot 302. The crossing must be able to meet the visibility set out in TRAN-S2 of the District Plan; and
- g) The intersection for the future alignment with Impact Ave must have the same construction dimensions as the existing Impact Ave. Road 1 must be classed as a Collector Road and this intersection must comply with sight distances. A long section of this future connection to Impact Ave is required at the time of engineering plans for this proposal.

53. For Stages 8B and 9B: Lots 306 and 307 must vest in the New Plymouth District Council as road and in accordance with the following conditions/standards;

- a) The proposed road must be constructed to the New Plymouth District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:210 requirements and Austroads design;
- b) A road pavement design must be provided using asphaltic concrete or chipseal surfacing, meeting requirements set out in the New Plymouth District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:210;
- c) Kerb & channel, footpath, berm, stormwater disposal and street lighting must be provided on the proposed road; and
- d) The proposed road must be constructed to the New Plymouth District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:210

requirements and designed to Austroads.

Geotechnical

54. The Consent Holder must appoint a suitably qualified Geo-Professional to design, control and certify all earthworks.
- a) All earthworks must be carried out under the direct control of a suitably qualified Geo-Professional.
 - b) Any non-engineered fill must be identified and must be shown on the final plans.
 - c) Any works undertaken on site must employ the best practical means of minimising the escape of silted water or dust from the site. A description of the proposed means of mitigating these temporary effects must be submitted with the Engineering Plan and approved and installed prior to any works commencing. Regional Council approval must be obtained where required for sediment control.
 - d) Excavation works associated within the subdivision must be kept wholly within the subject site and not encroach past the boundary on to neighbouring land or road reserve.
 - e) Any excavation works that take place over or near New Plymouth District Council reticulation must ensure that backfill/compaction and adequate cover complies with the New Plymouth District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:210.
55. Any retaining wall that falls outside the scope of Schedule 1 of the Building Act (2004) must be authorised by a building consent. Earthworks that have the potential to undermine the stability of any adjoining property is to be assessed by a suitably qualified engineer with any remedial work to comply with the NZ Building Act 2004.

Advice Notes:

- (a) *“Geo Professional” as defined in the New Plymouth District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:210.*
 - (b) *It is recommended that developments are designed to minimise changes to landform except in circumstances where a Geo-Professional assesses that the natural landform presents risks to health, infrastructure or the environment.*
 - (c) *Any excavation that takes place within road reserve during this development shall require an approved Corridor Access Request (CAR). Refer to the “National Code of Practice for Utility Operators’ Access to Transport Corridors” for additional information. Applications can be made via the website www.beforeUdig.co.nz or 0800 248 344. A CAR along with a Traffic Management Plan must be submitted a minimum of 5 working days before an operator intends to start work for minor works or 15 working days for major works and project works. All costs incurred shall be at the applicant’s expense.*
56. A Geotechnical Completion Report as detailed under Chapter 2 of the New Plymouth

District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:210 authored by a suitably qualified geo- professional (refer NZS4404:2010 Definitions) shall be submitted to the Council’s Planning Team prior to 224 certification of Lots 1-113 to confirm a stable, flood free building platform that meets the requirements of the NPDC District Plan, including the soil’s suitability to dispose of stormwater, is available on Lots 1-113. This would demonstrate that the site is suitable for building foundations in accordance with the requirements of the New Zealand Building Code B1.

57. If the report identifies limitations needed to be raised with future property owners the Consent Holder must apply for consent notices at the time of Section 224 of the Resource Management Act 1991 certification of Lots 1-113. The limitations and ability to identify constraints on consent notices will be considered by New Plymouth District Council at the time of the Section 224 of the Resource Management Act 1991 certification and the Planning Lead retains discretion of whether consent notices are applicable in this regard.

Telecommunication and Power connections

58. An individual power connection must be provided to Lots 1 - 113.
59. An individual telecommunications connection must be provided to Lots 1 - 113.
60. Prior to certification under Section 224 of the Resource Management Act 1991, confirmation from the provider(s) that power and telecommunications connections have been provided to Lots 1 – 113.

SURVEY PLAN SECTION 223 (RMA) APPROVAL

61. The survey plan must conform with the subdivision Scheme Plans titled “Proposed Subdivision of Lot 2 DP 521660 – 56 Pohutukawa Place” prepared by McKinlay Surveyors with references B-231212 DWG 01-10 dated 26/05/25.
62. Easements – a memorandum must be shown on the subdivisional plan and easements created at the time of depositing the plan for the right of way, water, sewerage services, stormwater, telecommunications, electricity and easements in gross.
63. Easements must be provided in favour of the New Plymouth District Council where the New Plymouth District Council owned pipeline crosses private property, or to provide access over private property to the Council’s assets, and around New Plymouth District Council assets for the purposes of maintenance and operation.
- a) Such easements should be 3 metres wide in the case of pipelines or access, and must be provided at least 2 metres clearance around other New Plymouth District Council assets e.g. manholes.
 - b) Where the pipes are laid to a depth of 2 metres or more, greater easement width may be required to facilitate maintenance.

Advice Notes:

(a) *'Temporary' easements may be required on individual staging plans to ensure that New Plymouth District Council has appropriate rights of access and maintenance to all New Plymouth District Council assets pending any completion of future subdivision stages.*

64. Prior to approval under Section 223 of the Resource Management Act 1991, the Land Transfer Plan must show Lots 304 - 307 as 'Road to Vest' in New Plymouth District Council in accordance with each Stage in Condition 2.
65. Prior to approval under Section 223 of the Resource Management Act 1991, the Land Transfer Plan must show the relevant Lots 301, 302, and 303 as 'Local Purpose Reserve - (Esplanade) to Vest' in 'New Plymouth District Council' in accordance with each Stage in condition 2.
66. Prior to approval under Section 223 of the Resource Management Act 1991, a right to convey water easement must be created and included on the memorandum over the water main connection to Pohutukawa Place (Stage 9B).

SECTION 224 (RMA) APPROVAL

67. The application for a certificate under Section 224(c) of the Resource Management Act 1991 must be accompanied by certification from a professionally qualified surveyor or engineer that all the conditions of subdivision consent have been complied with and that in respect of those conditions that have not been complied with:
 - a) a completion certificate has been issued in relation to any conditions to which Section 222 of the Resource Management Act 1991 applies.
 - b) a consent notice has been or will be issued that in relation to any conditions to which a Section 221 of the Resource Management Act 1991 applies;
 - c) All works are to be designed and constructed in accordance with New Plymouth District Council, South Taranaki District Council and Stratford District Council – Land Development and Subdivision Standard (Local Amendments Version 3) Based on NZS 4404:210.

Un-serviced Lots

68. A consent notice pursuant to Section 221 of the Resource Management Act 1991 must be registered against the Records of Title of Lots 400-402, to ensure that the following condition is complied with on a continuing basis:
 - a) That for the purposes of subdivision resource consent SUB21/47803, Lots 400 – 402 are intended for future subdivision and development. As such, no provision for a wastewater, stormwater, water supply, power and telecommunications connections or vehicle access is required at this time.
 - b) No dwellings are to be constructed or established on these lots.

Advice Note:

Upon the first subdivision development on each lot being serviced by an approved wastewater, stormwater and water supply network and a power and telecommunications connection, this consent notice must be cancelled from the respective title(s).

GENERAL ADVICE NOTES

a) *A Development Contribution for off-site services of:*

- *Stage 6B: Lots 1-28: 28HUE \$211,104.18 Ex GST*
- *Stage 7: Lots 29-49: 21HUE \$158,328.13 Ex GST*
- *Stage 8B: Lots 50-75: 26HUE \$196,025.30 Ex GST*
- *Stage 9B: Lots 76-113: 38HUE \$286,498.52 Ex GST*

is payable by the Consent Holder and shall be invoiced separately. The Section 224 of the Resource Management Act 1991 release of this subdivision will not be approved until payment of this contribution is made.

b) *Other alternative solutions may be approved for those aspects where the Infrastructure Standards are unable to be met or can be achieved in a different way.*

c) *Any excavation that takes place within road reserve during this development must require an approved Corridor Access Request (CAR). Refer to the “National Code of Practice for Utility Operators’ Access to Transport Corridors” for additional information. Applications can be made via the website www.beforeUdig.co.nz or 0800 248 344. A CAR along with a Traffic Management Plan must be submitted a minimum of 5 working days before an operator intends to start work for minor works or 15 working days for major works and project works. All costs incurred are to be at the Consent Holder’s expense.*

d) *Damage to New Plymouth District Council assets*

The owner is required to pay for any damage to the road or New Plymouth District Council assets that results from their development. The Consent Holder must notify the New Plymouth District Council of any damage and the New Plymouth District Council will engage their contractor to carry out the repair work. The Consent Holder responsible for building/development work must repair, to the satisfaction of Council, damaged roads, channels drains, vehicle crossings and other assets vested in New Plymouth District Council adjacent to the land where the building/construction work takes place. Safe and continuous passage by pedestrians and vehicles must be provided for. Footpath or road must be restored to the Council’s satisfaction as early as practicable. The Consent Holder is required to pay for any damage to the road or street that results’ from their development. The consent holder must employ a New Plymouth District Council approved contractor to carry out such work.

e) *Street light design can be found <http://www.nzta.govt.nz/assets/resources/specification-and-guidelines-for-road-lighting-design/docs/m30-accepted-luminaires.pdf>. A street lighting design can be undertaken to incorporate the location and predicted height of street*

trees. This may lead to a reduction in the number of trees on the site. (NPDC will not accept painted poles).

- f) During the exercise of this consent where works additional to the above are identified and required to be completed within Esplanade Reserve or Road Reserve areas by the consent holder, such as potential track formation, these may be subject to a Developer Agreement to define the scope and nature of works and the reasonable timeframe for completion.*
- g) A Partial Cancellation of consent notice in relation to the future roading link should be applied for prior to the issue of the residential titles.*

LANDUSE (EARTHWORKS WITHIN 50M OF A SASM)

Subject to the following conditions imposed under Section 108 and Section 108AA of the Resource Management Act 1991:

General Conditions

1. Bulk earthworks associated with SUB21/47803 are subject to all terms and conditions of this consent for earthworks within 50m of a SASM and must be carried out in accordance with the plans and all information submitted with the application, and all referenced by the New Plymouth District Council as consent number LUC 25/48765 including the following:
 - a) *Assessment of Environmental Effects, titled “Application for Resource Consent 56 Pohutukawa Place, Bell Block” prepared by McKinlay Surveyors dated 26 May 2021 and all updated material and reports since the original application was submitted, and*
 - b) *The updated and final set of Scheme Plans titled “Proposed Subdivision of Lot 2 DP 521660 – 56 Pohutukawa Place” prepared by McKinlay Surveyors with reference B- 231212 DWG 01-10 dated 26/05/25,*

unless otherwise modified by the following conditions of consent.

2. All bulk earthworks are subject to the subdivision consent conditions as granted under SUB21/47803 including archaeological, kaitiaki and construction management conditions to manage and review the earthworks construction and process.
3. The scope of earthworks which are approved and subject to this land use consent are explicitly limited to the following;
 - a) The earthworks along the road corridors as shown on Red Jacket Plan – Bulk Earthworks Plan – C8-1 Rev B dated 03/06/25, and
 - b) The stripping of topsoil to provide for the assessment of any subsurface archaeological features and the reinstatement of topsoil to re-establish the original contour levels.

This consent lapses on 19 June 2032 unless the consent is given effect to before that date; or unless an application is made before the expiry of that date for New Plymouth District Council to grant an extension of time. An application for an extension of time will be subject to the provisions of section 125 of the Resource Management Act 1991.