

**BEFORE COMMISSIONER MCKAY APPOINTED BY NEW PLYMOUTH  
DISTRICT COUNCIL**

**UNDER**

the Resource Management  
Act 1991 (“RMA”)

**IN THE MATTER**

of an application under  
section 88 of the Act by  
**BRYAN & KIM ROACH  
& SOUTH TARANAKI  
TRUSTEES LTD** to the  
**NEW PLYMOUTH  
DISTRICT COUNCIL** for  
a land use consent to  
construct a dwelling and  
associated retaining and  
fencing at 24/26 Woolcombe  
Terrace, New Plymouth.  
(LUC24/48512)

**STATEMENT OF EVIDENCE OF BENJAMIN RICHARD LAWN ON  
BEHALF OF BRYAN & KIM ROACH IN SUPPORT OF APPLICANT’S  
RIGHT OF REPLY**

**1. INTRODUCTION**

- 1.1 My name is Benjamin Richard Lawn. My qualifications, experience and conduct are set out in my primary statement of evidence dated 12 March 2025.
- 1.2 I have read the amendments and responses from Ms Hooper and Mr Robinson received on 16 April 2025 in response to the additional information sought from the applicant, that I filed with the Council on 11 April 2025 (as per Independent Commissioner McKay’s Post Hearing Minute dated 28 March 2025).
- 1.3 I have read the Independent Commissioner McKay’s Post Hearing Minute dated 17 April 2025 also and provide this further evidence in response.
- 1.4 I confirm that I continue to comply with the Code of Conduct for expert witnesses discussed in paragraph 3.1 of my primary statement of evidence.

## **2. PERMITTED BASELINE MODEL**

- 2.1 I note in the Commissioner's Post Hearing Minute dated 17 April 2025 (Paragraph 3) that there is general agreement amongst the three planning experts (Mr. Campbell, Ms. Hooper and myself), that the permitted baseline model prepared by Mr. Arnold can comply with the PDP. I am in agreement with this statement.

## **3. PROPOSED PERGOLA**

- 3.1 I note that Ms Hooper and Mr Robinson agree that many aspects of the proposed pergola are either agreed, permitted, or comply – but they disagree that the pergola meets the requirements of MRZ-R31 due to MRZ-S10 (Maximum fence or wall height).
- 3.2 This is ultimately a matter of interpretation – and as addressed in my further information dated 11 April 2025, depends on whether the pergola is considered a fence or wall. If it is, then it must comply with MRZ-S10. If it is not, then it is instead subject to MRZ-S1, which applies to structures generally.
- 3.3 As outlined in my earlier statement, I maintain that MRZ-S10 is specifically worded to apply only to "fences or walls" and not to all structures. The text states: "No fences or walls or a combination of these structures (whether separate or joined together)," clearly indicating that only fences and walls are captured, not other structural forms.
- 3.4 There is no definition of "fence" or "wall" in the PDP. While Ms Hooper references the Fencing Act 1978 and dictionary definitions, these are not binding planning instruments and should not override the internal logic of the District Plan. The Fencing Act is concerned with boundary fencing between adjoining properties and defines a "fence" as something that "separates the lands of adjoining occupiers." The pergola is not located on the boundary and does not divide two properties—it is internal to the site and serves no separating function. Therefore, even under that Act's broad interpretation, it is not a fence.
- 3.5 The pergola does not function as a wall either. It does not enclose space, is not solid, and is made up of a permeable frame intended to support climbing plants. Its form and purpose are distinctly different from those of a typical wall or fence. It is separated from the existing fence/wall on the boundary,

with its own support brackets located on the deck. Being within 1m of the side boundary does not convert it into fence or wall, nor does it meet the structural or functional characteristics of such elements.

- 3.6 It is also relevant to note that under the PDP, a “building” is defined as a temporary or permanent movable or immovable physical construction that is “partially or fully roofed.” If the pergola were to have a roof installed, it would fall within that definition. In that case, MRZ-S10 would not apply at all. Instead, it would be subject to MRZ-S5, which permits buildings to be located up to the side boundary provided the total length of all buildings within 1m of the boundary does not exceed 12m or 50% of the boundary length (whichever is the lesser). The pergola would also need to comply with MRZ-S3 (Height in Relation to Boundary), which the proposal does. This comparison highlights that a fully roofed structure could be lawfully located in the same position as the pergola and would not trigger MRZ-S10. It would be inconsistent to apply a stricter standard to a non-roofed structure than would apply to a building.
- 3.7 If the interpretation put forward by Ms Hooper and Mr. Robinson is adopted, then many structures not intended to be regulated by MRZ-S10 could require consent. This includes trellises, shade structures, raised garden beds, and other incidental or decorative features, particularly for sites that have built up above their ‘ground level’ as defined by the PDP, which as demonstrated in this case, can be located over 1m below the current as-built level.
- 3.8 Accordingly, I remain of the view that the pergola is not a fence or wall. It is a structure, but not one that falls within the scope of MRZ-S10. For these reasons, I consider the proposed pergola complies with MRZ-R31 and is a permitted activity.

#### **4. PROPOSED MITIGATION**

- 4.1 The Commissioner’s Post Hearing Minute dated 17 April 2025 (Paragraph 5) requested a reconsideration of the proposed pergola to ensure compliance with MRZ-S10. If the interpretation put forward by Ms Hooper and Mr. Robinson is adopted, then the only options of the pergola being compliant with MRZ-S10 is to either reduce the height to be 2m high, which would make it the same height as the current fence, ultimately defeating the purpose of any additional screening, or to move the pergola to be over 1m away from the side boundary, meaning MRZ-S10 does not apply.
- 4.2 I have been advised by the applicant that the pergola is unable to be efficiently and practically moved 1m back from the side boundary due to the

steel brackets which are required to support the pergola already being installed (as the pergola would have been compliant under the ODP when the design was produced and support brackets installed). To move the steel support brackets would require removal of the deck and installation of further piles – making it cost prohibitive.

- 4.3 To allow for mitigation, proposed planters have been offered by the applicant instead as detailed by a drawing produced by Mr. McEwan attached as **Appendix A**. The drawing shows four planter pots located on the exterior deck, which would allow for a 45L *Olearia paniculata* or similar native evergreen specimen tree in each. It is proposed to have a combined minimum height of planter and tree of 1.6m at the time of installation. The proposed species has a mature height of 4m.
- 4.4 The proposed plants will offer the same level of mitigation as the initial proposed pergola, providing a natural screening between 26 and 28 Woolcombe Terrace, without any structure being higher than 2m, therefore removing any doubt as to whether MRZ-S10 is applicable or not. The proposed planters are also considered to be consistent with the proposed mitigation option provided by Ms. McRae in her evidence which listed 'planting to soften the transition between the two properties and reduce overlooking/privacy effects from the eastern deck'<sup>1</sup>.
- 4.5 An assessment of the proposed planters against the applicable rules and standards of the PDP is provided below:

Rule #	Rule	Compliance	Activity Status
<i>Medium Density Zone Rules</i>			
MRZ-R31	Building Activities	<p>'Building activities' is defined under the PDP as '<i>undertaking or carrying out any of the following building works: Erection of a structure - erection of new buildings and structures.</i>'</p> <p>The definition of buildings is defined under the PDP as '<i>means a temporary or permanent movable or immovable physical construction that is: partially or</i></p>	Permitted

<sup>1</sup> Ms. McRae Evidence – para. 15.4

		<p><i>fully roofed, and is fixed or located on or in land.'</i></p> <p>The proposed planter pots and trees are not partially or fully roofed in any way; therefore they are not considered to be a building under the PDP.</p> <p>The definition of structure is defined under the PDP as '<i>any building, equipment, device, or other facility, made by people and which is fixed to land</i>'.</p> <p>The proposed planter pots and trees are not fixed to land in any way, and are movable objects; therefore, they are not considered to meet the definition of a structure under the PDP.</p> <p>For completeness, the planter pots and trees are assessed against all MDRZ effects standards below and all are able to be complied with.</p>	
<b>Medium Density Zone Effect Standards</b>			
MRZ-S1	<i>Maximum structure height - 11m maximum.</i>	The proposed planter pots and trees are not considered to be a structure, therefore MRZ-S1 is not applicable.	Complies
MRZ-S2	<i>Maximum building coverage – 50% maximum.</i>	The proposed planter pots and trees are not considered to be a building, therefore MRZ-S2 is not applicable as this relates only to 'building footprints'.	Complies
MRZ-S3	<i>Height in relation to boundary – Buildings must not project beyond a 45-degree recession plane measured</i>	The proposed planter pots and trees are not considered to be a building, therefore MRZ-S3 is not applicable.	Complies

	from a point 3m vertically above ground level.		
MRZ-S4	<i>Alternative height in relation to boundary</i>	Not applicable.	Complies
MRZ-S5	<i>Minimum building setbacks –</i> <ul style="list-style-type: none"> <li>From a road boundary: 1.5m</li> <li>From a side boundary: 1m</li> </ul>	The proposed planter pots and trees are not considered to be a building, therefore MRZ-S5 is not applicable.	Complies
MRZ-S6	<i>Outdoor living space requirements</i>	Not applicable.	Complies
MRZ-S7	<i>Minimum outlook space</i>	Not applicable.	Complies
MRZ-S8	<i>Minimum landscaped permeable surface area – 25% minimum.</i>	The proposed planter pots and trees are permeable, and are located on the current permeable deck, therefore there will be no change in permeable surfaces.	Complies
MRZ-S9	<i>Outdoor storage requirements</i>	Not applicable.	Complies
MRZ-S10	<i>Maximum fence or wall height –</i> Within the front yard: 1.4m in height above ground level.  Within the side and rear yard: 2m in height above ground level.	The proposed planter pots and trees are not considered to be a 'fence or wall'. The planter pots themselves are less than 2m high from the original ground level and are lower than the existing fence.	Complies
<i>Coastal Environment</i>			

CE-R5	Building Activities where all underlying zone rules and effects standards are complied with.	The proposed planter pots and trees are not considered to be a building or structure. In addition they are able to comply with all underlying zone rules and effects standards.	Complies
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4.6 Further mitigation was offered by the applicant, as detailed in Mr. Arnolds supplementary evidence dated 27<sup>th</sup> March 2025, in the form of additional louvers on the eastern 'bay window' to provide further privacy and reduce overlooking. Drawings of the proposed louvers on this window are detailed in **Appendix B**.

4.7 These drawings include two mitigation options to allow for the two scenarios of MRZ-S3 and MRZ-S4. If it is determined that MRZ-S4 is unable to be used due to a single building being past 20m from the road frontage, then the proposed louvers will need to stop approximately 0.25m from the top of the window (as shown on Page 2 of **Appendix B**) to ensure they are within the standard HIRB angle, as an additional breach of this standard would be outside the scope of the current application.

4.8 If MRZ-S4 is determined to be applicable, then the louvers are able to be installed to cover the window entirely, providing better mitigation of privacy and overlooking between 26 and 28 Woolcombe Terrace (as shown on Page 1 of **Appendix B**). As detailed in my primary and supplementary evidence dated 27<sup>th</sup> March 2025, I am of the opinion that MRZ-S4 is applicable to the application, and the louvers are able to be installed as a mitigation measure as detailed on Page 1 of **Appendix B**.

## 5. DRAFT CONSENT CONDITIONS

5.1 I have provided proposed consent conditions attached as **Appendix C**. This includes the comments from my primary evidence and the mitigation measures detailed above, with tracked changes showing proposed amendments from the initial version included in the s42A report.

5.2 I have provided three versions of draft conditions to allow for the three scenarios as listed below:

- (a) Scenario 1: The pergola is considered a permitted activity and MRZ-S4 is considered applicable.

- (b) Scenario 2: The pergola is not considered a permitted activity, and the planter pots and trees are implemented instead, and MRZ-S4 is applicable.
  - (c) Scenario 3: The pergola is not considered a permitted activity, and the planter pots and trees are implemented instead, and MRZ-S4 is not considered applicable.
- 5.3 I have provided a summary of changes to the initial draft consent conditions below:
- (a) Altered the dates on the initial referenced plans from 6.8.24 to 20.9.24 as this was the date of the last set of drawings provided to Mr. Robinson in the application. I have also updated the date of the SK3.0 'Elevations' drawing from 6.8.24 to 7.3.25 to reference the updated drawing provided by Mr. Murdoch in his evidence as per the recommendation of Mr. Robinson in the s42A report.
  - (b) Removed the reference of 'timber' from Condition 2 regarding the installation of the louvers to allow for flexibility in design materials.
  - (c) Removed reference to 'achieve compliance with Effects Standard MRZ-S5 of the PDP' from Condition 2. As stated in Section 9 of my primary evidence, the building and decks are compliant with MRZ-S5.
  - (d) Altered the completion of Condition 2 from 20 working days to 40 working days to allow for procurement of the louvers, recognizing that the proposed louvers are required to be manufactured and delivered before they can be installed.
  - (e) Altered spelling mistake in Condition 5 (NOPSE to NOISE).
- 5.4 The draft conditions for each scenario include the addition of the applicable drawings in the table of Condition 1 and the inclusion of the louvers on the eastern bay window as part of Condition 2. Conditions 3 and 4 have been added to each scenario to allow for implementation of the pergola or planter pots and trees depending on the scenario.

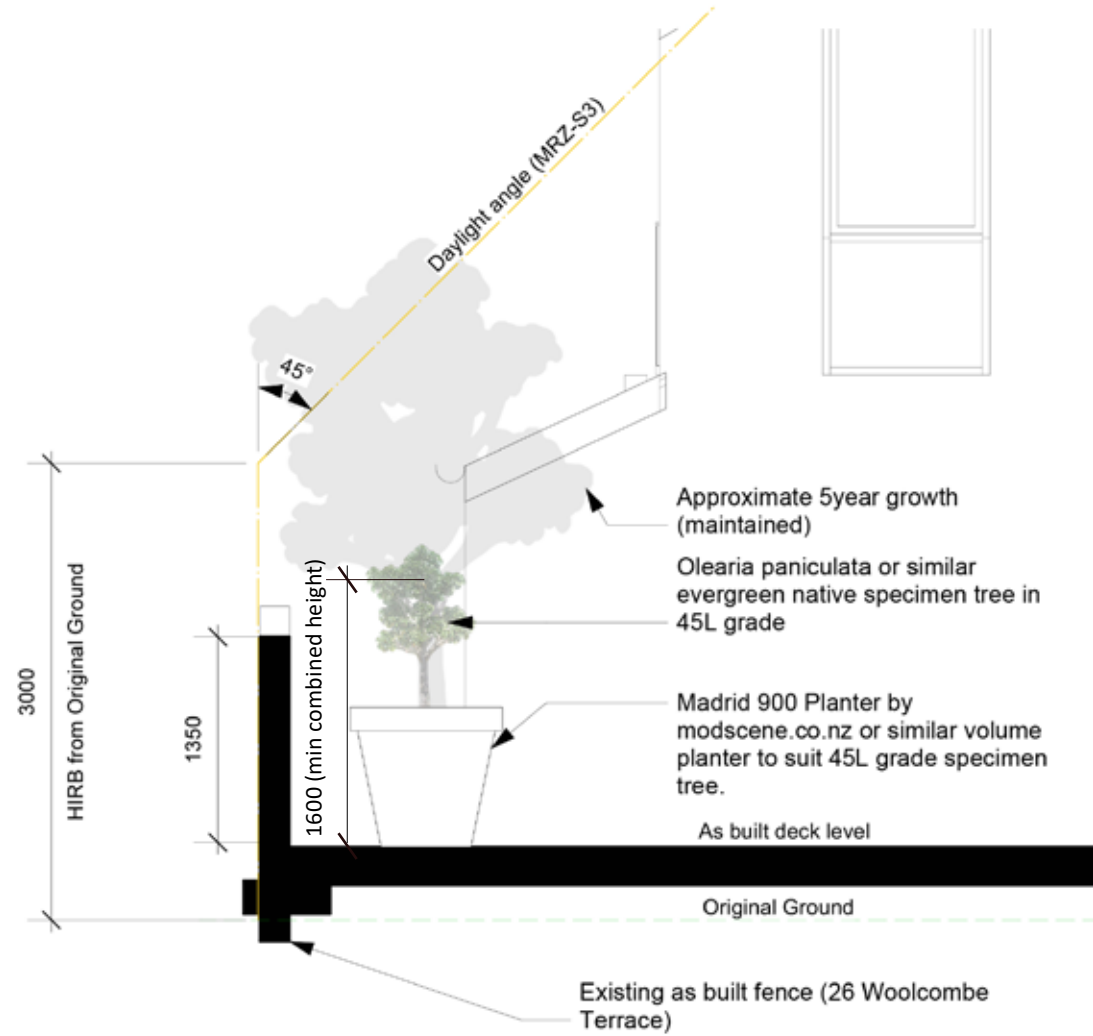
**Benjamin Richard Lawn**

**McKinlay Surveyors Limited**

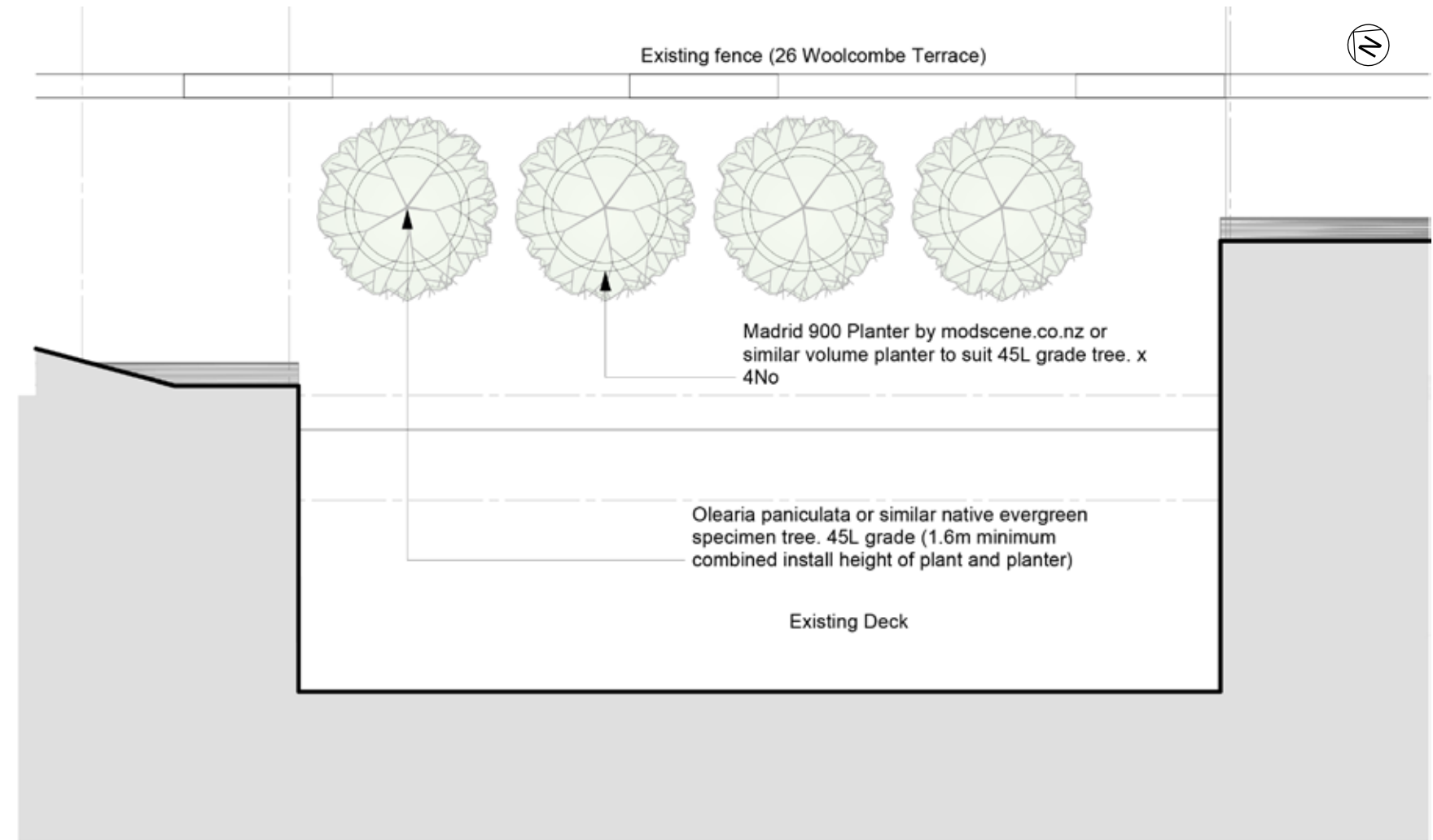
**9 May 2025**



## **Appendix A – Proposed Planting Design**

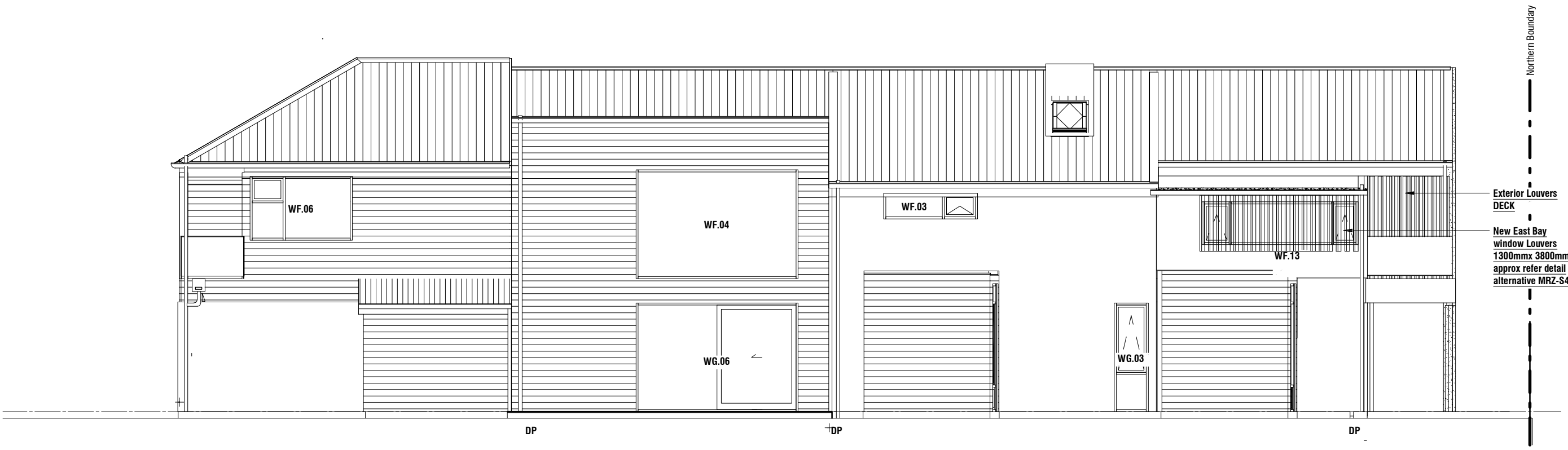


1 **Proposed Planters Section**  
Scale: 1:50



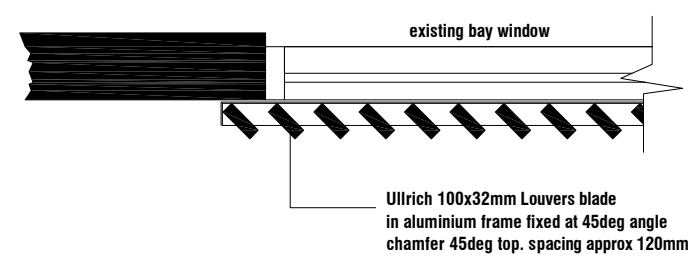
2 **East Ground Level Deck Plan**  
Scale: 1:50

## **Appendix B – Proposed Louvers on Eastern Bay Window**



East Elevation Alternate Option A -MRZ-S4

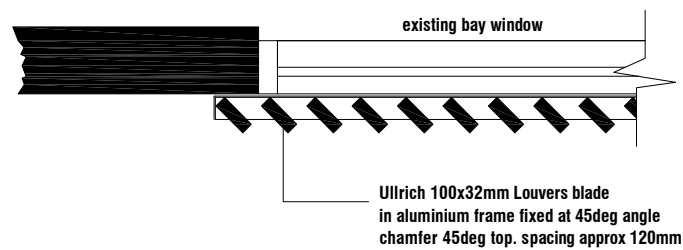
Scale 1 : 100 (A3)



Louvre Schematic Detail



East Elevation Option B -MRZ-S3  
Scale 1 : 100 (A3)



Louvre Schematic Detail

## **Appendix C – Draft Consent Conditions**

*Scenario 1: The pergola is considered a permitted activity and MRZ-S4 is applicable.*

Approved Plans:

1. The use and development of the land shall be consistent with application No. LUC24/48512 including and with the following plans:

Plan No	Name	Date
SK1.0	Proposed Site Plan	<a href="#">6.8.24</a> <a href="#">20.9.24</a>
SK2.0	Proposed Ground Floor Plan	<a href="#">6.8.24</a> <a href="#">20.9.24</a>
SK2.1	Proposed First Floor Plan	<a href="#">6.8.24</a> <a href="#">20.9.24</a>
SK3.0	Elevations	<a href="#">6.8.24</a> <a href="#">7.3.25</a>
SK3.1	Elevations	<a href="#">6.8.24</a> <a href="#">20.9.24</a>
<a href="#">LD.01</a>	<a href="#">Proposed Pergola Design</a>	<a href="#">7.4.25</a>
<a href="#">SK07</a>	<a href="#">Proposed Louvre Elevations</a>	<a href="#">28.4.25</a>

Installation of ~~timber~~ louvers ~~to achieve compliance with Effects Standard MRZ-S5 of the PDP.~~

2. Installation of the vertical ~~timber~~ louvers at the eastern edge of the first-floor balcony (refer drawings SK2.1 and SK3.0) and the eastern bay window (refer drawing SK07) shall be completed within 20 40 working days from the commencement of this consent. Photographic evidence confirming installation shall be supplied to the Council's Monitoring Supervisor.

Installation of Pergola

3. Installation of the pergola on the eastern ground level deck shall be completed within 40 working days from the commencement of this consent (refer drawing LD.01). The proposed climbing species shall be planted within the next planting season (May to September) following the implementation of this consent. Photographic evidence confirming the installation of the structure and planting shall be supplied to the Council's Monitoring Supervisor.
4. Any planting under Condition 3 that fails must be replaced at the expense of the consent holder within the next planting season (May to September). All plantings must continue to be maintained by the consent holder thereafter.

Construction Noise Effects:

- 2.5. Construction noise from all remaining works shall comply with the relevant standards outlined under Rule ~~NO~~P~~I~~S~~E~~-7 NZS6803:1999 requiring the noise generated complies with the noise limits set out in Tables 2 and 3 of NZS 6803:1999 Acoustics Construction Noise, with reference to 'construction noise' taken to refer to mobile noise sources.

**Advice Notes:**

1. The land use consent lapses 5 years after the date of decision unless the consent is given effect to before that date; or unless an application is made before the expiry of that date for the Council to grant an extension of time for establishment of the use.
2. An application for an extension of time will be subject to the provisions of section 125 of the Resource Management Act 1991.

*Scenario 2: The planter pots and trees are implemented and MRZ-S4 is applicable.*

Approved Plans:

1. The use and development of the land shall be consistent with application No. LUC24/48512 including and with the following plans:

Plan No	Name	Date
SK1.0	Proposed Site Plan	<a href="#">6.8.24</a> <a href="#">20.9.24</a>
SK2.0	Proposed Ground Floor Plan	<a href="#">6.8.24</a> <a href="#">20.9.24</a>
SK2.1	Proposed First Floor Plan	<a href="#">6.8.24</a> <a href="#">20.9.24</a>
SK3.0	Elevations	<a href="#">6.8.24</a> <a href="#">7.3.25</a>
SK3.1	Elevations	<a href="#">6.8.24</a> <a href="#">20.9.24</a>
<a href="#">LD.02</a>	<a href="#">Proposed Planters</a>	<a href="#">30.4.25</a>
<a href="#">SK07</a>	<a href="#">Proposed Louvre Elevations</a>	<a href="#">28.4.25</a>

Installation of ~~timber~~ louvers ~~to achieve compliance with Effects Standard MRZ-S5 of the PDP.~~

2. Installation of the vertical ~~timber~~ louvers at the eastern edge of the first-floor balcony (refer drawings SK2.1 and SK3.0) and the eastern bay window (refer drawing SK07) shall be completed within 20 40 working days from the commencement of this consent. Photographic evidence confirming installation shall be supplied to the Council's Monitoring Supervisor.

Installation of Planters

3. Installation of the proposed planter pots and trees on the eastern ground level deck shall be completed within 20 working days from the commencement of this consent. The proposed planter pots and trees shall have a combined height of a minimum of 1.6m high (refer drawing LD.02). Photographic evidence confirming installation shall be supplied to the Council's Monitoring Supervisor.
4. Any planting under Condition 3 that fails must be replaced at the expense of the consent holder within the next planting season (May to September). All plantings must continue to be maintained by the consent holder thereafter.

Construction Noise Effects:

- 2.5. Construction noise from all remaining works shall comply with the relevant standards outlined under Rule NOISE-7 NZS6803:1999 requiring the noise generated complies with the noise limits set out in Tables 2 and 3 of NZS 6803:1999 Acoustics Construction Noise, with reference to 'construction noise' taken to refer to mobile noise sources.

**Advice Notes:**

3. The land use consent lapses 5 years after the date of decision unless the consent is given effect to before that date; or unless an application is made before the expiry of that date for the Council to grant an extension of time for establishment of the use.
4. An application for an extension of time will be subject to the provisions of section 125 of the Resource Management Act 1991.



*Scenario 3: The planter pots and trees are implemented and MRZ-S4 is not applicable.*

Approved Plans:

1. The use and development of the land shall be consistent with application No. LUC24/48512 including and with the following plans:

Plan No	Name	Date
SK1.0	Proposed Site Plan	<del>6.8.24</del> <a href="#">20.9.24</a>
SK2.0	Proposed Ground Floor Plan	<del>6.8.24</del> <a href="#">20.9.24</a>
SK2.1	Proposed First Floor Plan	<del>6.8.24</del> <a href="#">20.9.24</a>
SK3.0	Elevations	<del>6.8.24</del> <a href="#">7.3.25</a>
SK3.1	Elevations	<del>6.8.24</del> <a href="#">20.9.24</a>
<a href="#">LD.02</a>	<a href="#">Proposed Planters</a>	<a href="#">30.4.25</a>
<a href="#">SK07.02</a>	<a href="#">Proposed Louvre Elevations</a>	<a href="#">28.4.25</a>

Installation of ~~timber~~ louvers ~~to achieve compliance with Effects Standard MRZ-S5 of the PDP.~~

2. Installation of the vertical ~~timber~~ louvers at the eastern edge of the first-floor balcony (refer drawings SK2.1 and SK3.0) ) and the eastern bay window (refer drawing SK07.02) shall be completed within ~~20~~ 40 working days from the commencement of this consent. Photographic evidence confirming installation shall be supplied to the Council's Monitoring Supervisor.

Installation of Planters

3. Installation of the proposed planter pots and trees on the eastern ground level deck shall be completed within 20 working days from the commencement of this consent. The proposed planter pots and trees shall have a combined height of a minimum of 1.6m high (refer drawing LD.02). Photographic evidence confirming installation shall be supplied to the Council's Monitoring Supervisor.
4. Any planting under Condition 3 that fails must be replaced at the expense of the consent holder within the next planting season (May to September). All plantings must continue to be maintained by the consent holder thereafter.

Construction Noise Effects:

- 2.5. Construction noise from all remaining works shall comply with the relevant standards outlined under Rule ~~NOISE~~ NOISE-7 NZS6803:1999 requiring the noise generated complies with the noise limits set out in Tables 2 and 3 of NZS 6803:1999 Acoustics Construction Noise, with reference to 'construction noise' taken to refer to mobile noise sources.

**Advice Notes:**

5. The land use consent lapses 5 years after the date of decision unless the consent is given effect to before that date; or unless an application is made before the expiry of that date for the Council to grant an extension of time for establishment of the use.
6. An application for an extension of time will be subject to the provisions of section 125 of the Resource Management Act 1991.