

**IN THE MATTER OF  
AND**

the Resource Management Act 1991

**IN THE MATTER OF**

a resource consent application by K D Holdings Limited (LUC23/48350) for alterations to an existing building and associated earthworks at 39 – 41 Molesworth Street, New Plymouth.

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

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**Independent Commissioner:**

Mark St.Clair

**29 August 2024**

## APPOINTMENTS

- [1] In July 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” K D Holdings Limited for land use consent (LUC23/48350) for alterations to an existing building and associated earthworks at 39 – 41 Molesworth Street, New Plymouth.

## PROCEDURAL MATTERS

### Directions and procedural matters

- [2] I attach the minutes related to this matter in **Appendix 1**.
- [3] The first minute related to Section 103B of the RMA including the pre-circulation of Council’s Section 42A Report, all of the Applicant’s evidence, the submitter’s expert evidence and request for conferencing amongst relevant experts. All of the reports and evidence were duly filed including the first Joint Witness Statement (**JWS - 1**) from the planning experts.
- [4] I record that on Monday 5 August 2024, I received correspondence via the Hearings’ Administrator, Ms Hickmott, that the parties had meet and potentially resolved matters to the point where the submitters no longer wished to be heard. I conducted a video conference with all the parties (list of attendees set out in **Appendix 2**) on Tuesday 6 August 2024, where all the parties agreed that a hearing was no longer required, subject to the amended proposal and what were effectively agreed conditions. To formalise this position, I issued a Minute #2 setting aside the hearing scheduled for 8 August 2024, establishing the next steps for; compiling a final set of plans, a further conferencing session amongst the planners as to conditions (resulting in the second Joint Witness Statement (**JWS - 2**)), and the opportunity for the submitters and Applicant, to review the conditions and plans, and advise as to their position. Those steps were duly complied with; the submitters advising that they were no longer opposed to the application and their expert witness amending their recommendation to one of support, subject to the JWS – 2 conditions. I issued Minute #3 that the matter was now to proceed on the papers.
- [5] I did not undertake a site visit. I record that I asked the parties at the pre-hearing video call if this was an issue, to which the unanimous answer was no.

## Decision format

- [6] 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 41C, 42A, or 92; or*
- (b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly.”*

- [7] JWS - 1 (dated 24 July 2024) from the planning witnesses set out a large level of agreement as to the relevant provisions with outstanding issues being in relation to the planned character of the city centre and cultural effects. As identified above, JWS - 2 (dated 8 August 2024) provided a revised set of conditions and plans reflecting the Applicant's amended proposal to effectively address the outstanding issues as to planned character and cultural effects. As such I have relied on those JWSs in preparing this decision.

## THE APPLICATION PROCESS

- [8] BTW Ltd, filed an application on behalf of K D Holdings Limited for land use consent for alterations to an existing building and associated earthworks at 39 – 41 Molesworth Street, New Plymouth (the subject site) dated 17 October 2023.
- [9] On 6 December 2023, NPDC requested further information as to traffic and the request for a landscape and visual assessment peer review.
- [10] The consent application was limited notified on 20 March 2024 with the submission period closing on 19 April 2024.
- [11] NPDC received two submissions. One from Ngāti Te Whiti Hapū, supporting the application and seeking that the proposal be granted subject to conditions and the other from Ngāti Tawhirikura in opposition and seeking that the application be declined.
- [12] A Section 42A Report dated 16 July 2024, was prepared by Ms K Thomson, consulting planner for the Council.
- [13] Evidence for the Applicant was received from Mr K Doody, director of K D Holdings Limited dated 25 July 2024 and from Ms D Martin, senior planner at BTW Company Limited, dated 24 July 2024.
- [14] Evidence for the submitters was received from Ms J Healey of behalf of Ngāti Te Whiti Hapū and Mr S Zeltjes, independent planning consultant on behalf of Ngāti Te Whiti Hapū, both dated 31 July 2024.

- [15] As noted above, there were two JWSs from the planning witnesses.
- [16] For completeness, I record that the Applicant obtained written approval from 45 Molesworth Street.
- [17] I also record that I read the submissions in full and their amended position, and I have had regard to it as part of my evaluation of the application.
- [18] As noted above, all the evidence was pre-circulated in accordance with Section 103B of the RMA. I record that I read all of the evidence and have taken it into account as part of my evaluation of the application.
- [19] I was assisted in an administrative capacity by Ms Jane Hickmott, Hearings' Administrator, at NPDC.
- [20] All of the material presented by the above parties is held on file at NPDC. 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

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

<b>Legal Description:</b>	Lot 1- 2 DP 17052 comprised in Record of Title TNJ1/808
<b>Site Area:</b>	891m <sup>2</sup>
<b>Site Address:</b>	39 - 41 Molesworth Street, New Plymouth
<b>District Plan Zone:</b>	Operative District Plan – Business B Environment Area  Operative District Plan Overlays - State Highway 44, urban view shaft, coastal policy area, Marton New Plymouth Railway Designation N8, site of significance to Māori – 736 (Waimanu Pa).  Proposed District Plan – City Centre Zone  Proposed District Plan Overlays - Archaeological Site/Site of Significance to Māori ID 736 Pa, Coastal Environment, Coastal frontage site, State Highway 44, Height Management Area B – 14 metres, Noise Control Boundary.

## THE PROPOSAL

- [22] The proposal was described in the application<sup>1</sup> and the Section 42A officer's report prepared by Ms Thomson.<sup>2</sup>

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<sup>1</sup> Resource Consent Application and Assessment of Environmental Effects, Building Extension at 39-41 Molesworth Street, New Plymouth Rev B – 17-10-23, Section 3.1 and 3.2

<sup>2</sup> Section 42A Report, Ms K Thomson, dated 16 July 2024, Paras 22 - 29

[23] For completeness, I have found it useful to set out the Applicant's proposal as recorded in the Section42A Report, in summary to:

*Add ... to the existing building, as follows:*

- *A western addition increasing the existing footprint of the building, for a covered car park (level 0 / ground floor), void (level 1), pool and spa (level 2), with a roof. Levels 0 and 1 will maintain the existing office space uses and are anticipated to accommodate one commercial tenant per level;*
- *An additional floor (level 2) within most of the new building footprint, for a three bedroom dwelling; and*
- *A portion of an additional floor (level 3) which is a lookout living area for the dwelling.*

*Prior to construction, an acoustic design certificate from a suitably qualified acoustic expert will be provided to confirm the noise insulation of the dwelling will be suitable (further explained with regard for the relevant PDP standard in Appendix D).*

*No signage is proposed.*

*The building will use existing connections to NPDC's three-water services. Exterior materials (excluding glazing and joinery) will predominantly be an aluminium cladding in copper and grey colours, as demonstrated on the plans. The grey tiled feature of the ground floor will be continued on the western extension's ground floor. Aluminium joinery will be used, and the decks will have glass balustrades.*

*Excavation and filling is required for the foundations of the western building extension. This consists of:*

- *An average 0.5 m of cut;*
- *Seven drilled anchor piles beneath this cut, which are each a 15 cm diameter cylinder 11 m long;*
- *Filling / compacting with appropriate fill, aggregates, and concrete to form a concrete pad foundation; and*
- *An approximate 36 m<sup>3</sup> of cut material results. Where it cannot be reused on the site, it will be transported off-site to a suitable location.*

*The site will provide car parks for light vehicles, split in terms of their Vehicle Access Point (VAP) use as follows:*

*Western VAP*

- *One accessible park and a standard park near the entry door;*
- *Retain four existing 90 degree parks along the western side; and*
- *A campervan will be generally stored in the garage and used occasionally.*

*Eastern VAP (note: existing single direction in and out)*

- *Three full angled parks along the road boundary, with a fourth shared with the site to*
- *the east understood to be for the application site users; and*
- *1-2 resident parks in the garage /store created under the earlier consent.*

*No dedicated loading space is proposed as the office activities only require courier services from vans which are typically of light private vehicle size and can use one of the parks on the site.*

*Indicative vehicle movement numbers are included in Appendix H.*

*As advised by the outcomes of the LVIA (refer to sections 8 and 9 in the LVIA), the proposed activities could implement some measures in order to better provide for landscape character and values.*

*In implementing these measures, the proposal would also have improved outcomes for visual effects. Measures (numbered 1 and 3 in the LVIA) as recommended in section 8.2 of the LVIA have been interpreted into a planning framework and proposed as conditions of consent as follows:*

#### *Planting*

*Plants shall be planted in front of carparks 7-10. No less than four specimen trees shall be planted in the northwest corner of the site adjacent to the carport. Trees shall be no less than 2 m tall at time of planting.*

*Prior to planting, the consent holder will provide Ngāti Te Whiti hapū the opportunity to provide advice on suitable species for the site, with no less than 5 working days to do so. Plants and trees shall thereafter be chosen from List A or B below respectively or another local species that may be advised by Ngāti Te Whiti.*

*All planting shall be maintained for the duration of the activity. Plant List A (in front of carparks):*

- Corokia cotoneaster var Paritutu (Paritutu korokio)*
- Dianella nigra (Tūrutu)*
- Hebe speciosa (Napuka)*
- Selliera radicans (Remuremu)*
- Dysphyma austral (Horokaka)*
- Pimelea prostrata (Pinatoro)*
- Fuchsia procumbens*
- Euphorbia glauca (Waiūatua) Plant List B (northwest corner)*
- Myrsine salicina (Toro)*
- Melicope ternata (Wharangi) Glazing and Façade Treatments*

*All mirrored glazing shall be removed from the facades of the building.*

- [24] This incorporates, amendments made to the application on 22 February 2024.<sup>3</sup>
- [25] Ms Martin's planning evidence on behalf of the Applicant, recorded that since notification additions to the proposal were for a stone with Waimanu Pā text and design; and "... *cultural narrative paving designs, by way of removal of the current tar-sealed yard, for replacement with concrete to facilitate the pattern in a high quality and durable hard surface.*"<sup>4</sup>
- [26] As a result of a meeting between the parties and confirmed at the pre-hearing Video call, the Applicant confirmed further amendments to the proposal in terms of cultural narrative to be placed on battens for parts of the building. Final plans illustrating the

<sup>3</sup> Section 42A Report, Ms K Thomson, dated 16 July 2024, Para 29

<sup>4</sup> Evidence in Chief (EIC), Ms D Martin, dated 24 July 2024, Para 7.2

narrative and where they would be placed on parts of the buildings were filed as attached to JWS - 2, including conditions offered by the applicant on an Augier basis and accepted by the parties.

## ACTIVITY STATUS

- [27] It was common ground that consent was required as a discretionary activity for earthworks under Regulation 11 of the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS).
- [28] Similarly, it was common ground that under the NPDC Appeals Version of the Proposed District Plan (PDP), the overall activity status was discretionary. The Section 42A Report, expert planning evidence and JWS - 1, identified the following rule triggers; CCZ-R20, CCZ-R21, SASM-R17, HH-R30, EW-R10, TRAN-R1, TRAN-R8, TRAN-R10, CE-R1 and CE-R5. For completeness, I record that the entire proposed site is within 50m of the Site of Significant to Māori – the Waimanui Pa.
- [29] I accept that overall, the application is to be assessed as a discretionary activity.

## STATUTORY PROVISIONS

- [30] 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

- [31] 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.*

## **Section 104(1)(a) – Actual and Potential Effects on the Environment**

### The existing environment

- [32] Before addressing the actual and potential effects of the proposed activity, I must consider the environment against which the effects are assessed. This includes existing lawful activities, consented activities and permitted activities.

- [33] The affected existing environment is described in the application<sup>5</sup>, and Section 42A<sup>6</sup>, evidence<sup>7</sup> and JWS-1<sup>8</sup>. There was general agreement as to the existing environment to be considered as part of the application. Based on the JWS-1 agreement amongst the planners, I recognise that there are a number of properties zoned for commercial uses located on or adjacent to sites of significance to Māori that have had cultural expressions established over the recent times that form part of the existing environment.
- [34] There was agreement amongst the planners that the permitted baseline, as provided for under section 104(2), should not apply<sup>9</sup> and I accept that advice.

### Considering the Effects

- [35] The effects as to construction, physical earthworks, archaeological, noise, transport and human health were addressed in the application, Section 42A report, evidence in chief of Ms Martin and the JWS - 1. None of these effects were in contention and I adopt those assessments, which subject to the conditions imposed, I find acceptable.
- [36] The effects in contention I summarise in being inter-related as relating to building within the extent of a Site and Area of Significance to Māori, building near the coast and height<sup>10</sup>, effects on planned character<sup>11</sup> and cultural effects. More specially, the issue related to the manner in which the cultural narrative was reflected in the proposal as a way of mitigation of the potential effects.
- [37] Taking account of the changes to the proposal as set out in paragraphs 22 - 26 above; the Applicant, the submitters and reporting officer were now of the view that the combination of the proposed paving treatment, the stone marker incorporating the word "Waimanu" and the cultural narrative to be placed on battens on parts of the building along with the proposed conditions, addressed the effects such that the matter was no longer at issue.
- [38] I have carefully reviewed the application, including the Landscape and Visual Impact Assessment, the peer review by Blue Marble; the evidence from the Applicant, the submitters and reporting officer, in reaching the conclusion the effects of the proposed building have been acceptably mitigated.

### **Effects Conclusion**

- [39] 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.

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<sup>5</sup> Resource Consent Application and Assessment of Environmental Effects, Building Extension at 39-41 Molesworth Street, New Plymouth Rev B – 17-10-23, Section 2

<sup>6</sup> Section 42A Report, Ms K Thomson, dated 16 July 2024, Para 20

<sup>7</sup> EIC – Ms J Healey, Dated 31 July 2024, Paras 13 - 24

<sup>8</sup> JWS-1 – dated 24 July 2024, Page 2

<sup>9</sup> JWS-1 – dated 24 July 2024, Page 3

<sup>10</sup> Section 42A Report, Ms K Thomson, dated 16 July 2024, Paras 53-57, 70 – 82 and 87 - 92

<sup>11</sup> JWS-1 – dated 24 July 2024, Page 4



## Section 104 RMA

[40] 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 and section 77M, 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.*

[41] 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

[42] It was common ground that the only relevant National Environmental Standard was the NES-CS. I adopt the assessment in the application as to the management of potentially contaminated soils and proffered conditions as agreed to by the Section 42A reporting officer. Nothing to the contrary was placed before me. Therefore, I accept that position and find that subject to conditions the effect will be acceptable, hence the proposal is consistent with the standard.

[43] The planners agreed that the National Policy Statement for Urban Development 2020 (NPS-UD) and the New Zealand Coastal Policy Statement 2010 (NZ-CPS) were relevant to the proposal.<sup>12</sup> Ms Thomson and Ms Martin were in general agreement that the proposal was generally consistent with those national policy statements. Nothing to the contrary was placed before me, so I adopt that position.

## Taranaki Regional Policy Statement (“the RPS”)

[44] Similarly, the planners agreed that the RPS was a relevant document but noted its age compared to the more modern objectives of the PDP<sup>13</sup>. Again, Ms Thomson and Ms Martin were in general agreement that the proposal was generally consistent with RPS. Nothing to the contrary was placed before me, so I adopt that position.

## Operative New Plymouth District Plan (ODP)

[45] There was agreement amongst the planners that the ODP was not relevant in the consideration of the proposal<sup>14</sup>. The reason being the advanced status of the PDP and that the only matter of the PDP under appeal being noise was a permitted activity

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<sup>12</sup> JWS – 1, Page 5

<sup>13</sup> JWS – 1, Page 6

<sup>14</sup> JWS – 1, Page 5

under the ODP; hence the proposal was consistent with the relevant objectives and policies.

[46] Nothing to the contrary was placed before me, so I accept that evidence.

### **Proposed New Plymouth District Plan (PDP)**

[47] It was common ground that the applicable District Plan was the – Appeals Version 2023.

[48] Ms Thomson identified the following as relevant to the proposal<sup>15</sup>:

Strategic Objectives UFD-18 to UDF-24

Objectives: TW – 13 to 17, NE-8, SASM-O1 to O3, HH-O1 to HH-O2, EW-O1; TRAN-O2 to TRAN-O5; CE-O1 to CE-04; CCZ-02 – CCZ-O8 and CL-O1

Policies: SASM-P2 to SASM-P6; HH-P13, HH-P15, and HH-P18; EW-P1 to EW-P4 and EW-P6; TRAN-P7, TRAN-P8, TRAN-P12 and TRAN-P14; CE-2, to CE-P4, CE-P8, CE-P9, CE,-P13, CE-P15; CCZ-P1, CCZ-P3, CCZ-P5, CCZ-P8, CCZ-P9, CCZ-P11, CCZ-P12; and CL-P2.

[49] In JWS-1 the planners generally agreed as to the relevant objectives and policies. There was some disagreement between Ms Martin and Mr Zeltjes as set out in their evidence. However, as a result of the meeting between the parties, an agreed suite of conditions, and the submitters and the Applicant no longer wishing to be heard; I have reached the conclusion that the disagreement no longer exists and hence I do not make any finding on that particular matter.

[50] Overall, I accept the identified objectives and policies set out above. In addition, I find the revised proposal and conditions are consistent with the provisions of the PDP, recording that I had no evidence to the contrary before me.

### **Section 104(c) Any other matter**

[51] Ms Thomson considered the Ngāmoto New Plymouth City Centre Strategy, as a relevant matter, as well as, *Tai Whenua*, *Tai Tangata*, *Tai Ao*, the Te Atiawa Iwi Environmental Management Plan<sup>16</sup> and this was agreed by the planners in JWS - 1 . Ms Healey in her EIC<sup>17</sup>, also referenced and attached the Ngāmotu New Plymouth, Māori Design Principles. With the amendments to the proposal and proffered conditions, I find that proposal is consistent with these documents.

### **Conditions Section 108 and Section 108AA**

[52] Various suites of conditions were included in the section 42A Report and planning evidence filed during the section 103B process. I identified some issues with the conditions at the pre-hearing video conference. The planner's undertook conferencing as to a suite of conditions to capture the revised proposal and my comments, the result being documented in JWS – 2.

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<sup>15</sup> Section 42A Report, Ms K Thomson, dated 16 July 2024, Para 115

<sup>16</sup> Section 42A Report, Ms K Thomson, dated 16 July 2024, Paras 117 - 122

<sup>17</sup> EIC, Ms J Healey, dated 31 July 2024

- [53] As set out above, the submitters considered the conditions appropriate and Mr Grieve (Counsel for the Applicant) confirmed the conditions were offered on an Augier basis and the Applicant's acceptance of those conditions.
- [54] Having reviewed the conditions and associated plans presented, I find the conditions to be generally appropriate having considered the effects and my findings above. There were minor issues as to the lodgement date of the erosion and sediment control plan and no such timeframe for the earthworks management plan, and the inconsistent use of, 'shall' and 'must', and diacritical marks. I have amended the conditions to address those matters.

## **PART 2 – RMA**

- [55] 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.
- [56] 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.
- [57] Ms Thomson's view was that the PDP had been robustly prepared in accordance with Part 2 of the RMA and as such there was no need to refer to Part 2, as it would not add anything to the evaluative exercise.<sup>18</sup> Ms Martin did not disagree, but referring to JWS – 1, set out an assessment as to Part 2.<sup>19</sup>
- [58] Noting the amendments to the proposal and proffered conditions, the effects conclusion above and status of PDP in this case, I find that reference to Part 2 of the RMA is not required.

## **Conclusion and Decision**

- [59] Acting under delegated authority pursuant to Section 34A, and Sections 104 and 104B of the Resource Management Act 1991, the application made by K D Holdings Limited for land use consent (LUC23/48350) for alterations to an existing building and associated earthworks at 39 – 41 Molesworth Street, New Plymouth is **granted**.
- [60] This decision is made for the reasons discussed throughout and, in summary, because:

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<sup>18</sup> Section 42A Report, Ms K Thomson, dated 16 July 2024, Para 123

<sup>19</sup> EIC, Ms D Martin, dated 24 July 2024, Paras 9.14 – 9.18.

- 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 29th day of August 2024



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Mark St.Clair (Independent Commissioner)

Appendix 1 – Minutes

Appendix 2 – List of Attendees at pre-hearing video call

Appendix 3 – Conditions and Plans