

Schedule 1 – Summary of Evidence

Evidence for the Applicant – Bryan & Kim Roach

1. The Applicant was represented by legal counsel **Mr Scott Grieve** (Connect Legal Taranaki Lawyers) who presented opening submissions (that were also provided in writing at the hearing¹), followed by a reply in writing after the adjournment of the hearing.²
2. In accordance with the directions set out in the notice of hearing,³ all expert evidence for the Applicant was pre-circulated on 12 March 2025, and verbal summaries of the evidence were provided at the hearing. The key points made by Mr Grieve in his legal submissions are summarised in the body of this decision.
3. Mr Grieve referenced in his legal submissions, and provided electronic copies of, the following cases: *Lysaght v Whakatane District Council* [2021] NZHC 68 *Whata J, Auckland International Airport Ltd v Auckland Council* [2024] NZRMA 484, *Hinsen v Queenstown-Lakes District Council* [2004] NZRMA 115, *Progressive Enterprises Ltd v North Shore City Council* [2006] NZRMA 72, *Harris v Bay of Plenty Regional Council EnvC W72/2008*, *Strata Title Admin Body Corporate 176156 v Auckland Council* [2015] EnvC 125, *Colonial Homes Ltd v Queenstown-Lakes District Council W 104/95*, *McGuire v Hastings District Council* [2002] 2 NZLR 557, *Hill Park Residents Association Inc v Auckland Regional Council EnvC A30/2003*, *Queenstown Lakes District Council v Hawthorn Estate Ltd CA* [2006] 424, *Rodney District Council v Eyres Eco-Park Ltd* [2007] NZRMA 1, *Papakura District Council v Heather Ballantyne CIV 2006-404-3269 26 April, 20 December 2007 Keane J*, *Green Bay East Residents Society Inc v AKL Council CIV-2024-404-2326* [2025] NZHC 644, *Gisborne District Council v Eldamos Investments Ltd HC GIS CIV-2005-485-001241* [26 October 2005], *Harrison J, R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, *Shirley Primary School & Anor v Christchurch City Council* [1999] NZRMA 66 (EnvC), *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38.
4. The following expert evidence was presented on behalf of the Applicant, listed in order of appearance at the hearing.
5. **Mr Bryan Roach** presented a supplementary statement of evidence at the hearing in response to the statements of evidence from Emma McRae and Kathryn Hooper on behalf of the submitter. Mr Roach's supplementary evidence comments specifically on the mitigation options suggested in Ms McRae's evidence.⁴

¹ Dated 26 March 2025, with an updated version as presented at the hearing provided on 1 April 2025.

² Dated 9 May 2025.

³ Dated 27 January 2025.

⁴ Paragraph 12.2 of Ms McRae's evidence.

6. This was additional to Mr Roach's statement of evidence⁵ as the applicant on behalf of himself, Kim Roach and the South Taranaki Trustees, that was circulated prior in accordance with the hearing directions.
7. Mr Roach's primary statement of evidence sets out his family's background in South Taranaki and association with both 24 and 26 Woolcombe Terrace, from their initial purchase of 24 Woolcombe Terrace in 2015. His evidence sets out the background to the purchase of 26 Woolcombe Terrace in 2019, and to the planning, design and construction of the new dwelling⁶ for which retrospective resource consent is now sought. Mr Roach also sets out a response to the matters raised in the submission of Mr & Mrs Whyte and comments briefly on the Officer's Report.
8. **Mr Kyle Arnold** (Associate Director of Boon Ltd). Mr Arnold presented a supplementary statement of evidence at the hearing which comments on several matters in Ms McRae's evidence, including the presentation of an alternative permitted baseline sketch in a 3-D image format.⁷ Mr Arnold confirmed in response to my question that his qualification is an Advanced Diploma in Architectural Technology, and apologised for not stating this in his initial statement of evidence.
9. Mr Arnold also displayed a 3-D model on the presentation screen at the hearing, which included the location of the PDP height in relation to boundary recession plane in relation to the as built dwelling, therefore illustrating the extent of the breach in a 3-D format.
10. Mr Arnold's statement of evidence⁸ provides an overview of the project development as the project lead for Boon Ltd's architectural inputs. Mr Arnold's evidence describes the project and the design outcomes sought and sets out a chronology of the project including initial design and redesign. Mr Arnold's evidence sets out his understanding of the surveying issues that led to a breach of the height in relation to boundary standards of the then Operative District Plan. He comments on the Environment Court enforcement order and the outcome of the mediation, and on the Whyte's submission to the retrospective resource consent. Mr Arnold's evidence appends a letter from Armstrong Surveying and Land Development setting out their findings of their independent survey review of the as built house.
11. **Mr Jono Murdoch** (Registered Architect). Mr Murdoch did not present any supplementary evidence at the hearing but commented on and answered questions regarding his statement of evidence.⁹
12. Mr Murdoch's evidence is focused on the modelling and shadow study that he prepared for the Applicant in support of their retrospective resource consent. His evidence outlines the

⁵ Dated 12 March 2025.

⁶ For which a Code Compliance Certificate was granted by NPDC on 15 October 2024.

⁷ Images 1.1 and 1.2 of K Arnold supplementary evidence.

⁸ Dated 12 March 2025.

⁹ Dated 12 March 2025.

modelling techniques and processes used and the shading effects of the as built dwelling. Mr Murdoch's evidence also includes a permitted baseline shadow study and compares the effects of the modelled shading to that modelled for the as built dwelling, with architectural plans and shading diagrams appended.

13. **Mr Daniel McEwan** (Landscape Architect, Registered Member of NZILA, Timbre Landscape Architecture & Design Ltd). Mr McEwan presented a supplementary statement of evidence at the hearing which comments on Ms McRae's statement of evidence, including the methodology that Ms McRae used to determine that there was a vertical breach of 2m¹⁰, and her comments on the permitted baseline diagram, the lack of a landscape concept, a potential foliage climbing screen for the open deck area, and the degree of adverse effects. Mr McEwan attached as Appendix A to his supplementary evidence a foliage climbing frame plan view for the open deck and photographic examples.
14. Mr McEwan's statement of evidence¹¹ includes the methodology that he used for his visual effects assessment including reference to photographs from the surrounding neighbourhood, and to architectural 3-D models and diagrams contained in appendices. Mr McEwan's evidence also includes comments on matters raised in the submission, an assessment of the visual related effects on the submitters property (28 Woolcombe Terrace), comment on the Council Officer's Report and on the use of louvres for mitigation.
15. **Mr Richard Bain** (Landscape Architect, Registered Member of NZILA, and owner of Bluemarble Landscape Architects). Mr Bain presented a supplementary statement of evidence at the hearing which comments on Ms McRae's statement of evidence, including her assessment of effects in comparison to a compliant building and assessment against the matters of discretion in MRZ-R33 of the PDP.
16. Mr Bain's statement of evidence¹² provides peer review of Mr McEwan's evidence regarding the potential visual and amenity effects of the proposal. Mr Bain's evidence also comments on matters raised in the submission and the Council Officer's Report and appends photographs from the submitter's property of the Applicant's dwelling at 26 Woolcombe Terrace.
17. **Mr Ben Lawn** (Planner, McKinlay Surveyors Limited). Mr Lawn presented a supplementary statement of evidence at the hearing which comments on the respective statements of evidence from Ms McRae and Ms Hooper. The matters covered include the application of the permitted baseline, assessment under MRZ-S3, MRZ-S4 and MRZ-R33 of the PDP, and the degree of adverse effects on the submitters.
18. Mr Lawn's statement of evidence¹³ sets out a statutory assessment of the retrospective application against the PDP and of its effects on the environment. Mr Lawn's evidence also

¹⁰ Which is significantly greater than the maximum 0.725m calculated by the Applicant's experts.

¹¹ Dated 12 March 2025.

¹² Dated 12 March 2025.

¹³ Dated 12 March 2025.

comments on matters raised in the submission and on the Council Officer's Report, includes assessment against the relevant statutory instruments under section 104(1)(b) of the RMA, and comments on the conditions of consent recommended in the Officer's Report. Appended to Mr Lawn's evidence is a summary of resource consent applications made under MRZ-R33 (Alternative Height in Relation to Boundary) of the PDP since that rule has had legal effect, as well as documentation of the application and decision reporting relating to one of those applications.

19. I note that **Mr Alan Doy** (Licensed Surveyor, McKinlay Surveyors Ltd) prepared written evidence but I excused him from the hearing. Mr Doy was excused as his evidence related to the compliance or otherwise, of the submitters' house at 28 Woolcombe Terrace with the relevant height in relation to boundary rule of the Operative District Plan and not to the application site at 26 Woolcombe Terrace, which is the subject of this hearing. I did not propose to ask any questions of Mr Doy.

Submitter's Presentation

20. The submitters, Mr Geoffrey Whyte and Mrs Johanna Whyte, of 28 Woolcombe Terrace, New Plymouth, were represented by legal counsel **Mr Aiden Cameron**. Mr Cameron presented legal submissions on behalf of Mr & Mrs Whyte that were also provided in writing at the hearing.¹⁴
21. Mr Cameron in his legal submissions sets out the legal principles applying to retrospective resource consent applications, the relevance of past conduct, the interpretation of planning documents and bundling of consents. Mr Cameron's legal submissions comment on the permitted baseline and different approaches of the witnesses to applying it, the submitters' case, the applicants' evidence, and the Council's section 42A Report.¹⁵
22. Mr Cameron referenced the following cases in his legal submissions: *Foodstuffs (South Island) Ltd v Christchurch City Council* [1999] NZRMA 481 (HC), *Strata Title Admin Body Corporate 176156 v Auckland Council* [2015] EnvC 125, *Colonial Homes Ltd v Queenstown-Lakes District Council* W 104/95, *Workman v Whangarei District Council* A137/1998, *NZ Kennel Club Inc v Papakura District Council* W100/2005, *Makill & Maskill Contracting Ltd v Palmerston North District Council* W037/2006, *Hinsen v Queenstown-Lakes District Council* [2004] NZRMA 115 (EnvC), *Smith Chilcott Ltd v Auckland City Council* [2001] NZRMA 503; [2001] 3 NZLR 473 (CA). *New Zealand Suncern Construction Ltd v Auckland City Council* (1997) 3 ELRNZ 230 (HC), *Ruru v Gisborne District Council* PT W100/93, *Playground Events Ltd v Waikato Regional Council* [2011] NZEnvC 149, *Walker v Manukau City Council* EnvC Auckland C213/99, *Runciman Rural Protection Society Inc v Franklin District Council* [2006] NZRMA 278 (HC), *Powell v Dunedin City Council* [2004] 3 NZLR 721 (CA), *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), *Northland Milk Vendors Association Inc v Northern Milk Ltd* [1988] 1 NZLR 530 (CA), *Protect Aotea Inc v Auckland Council* [2021] NZEnvC 140, *Southpark Corporation Ltd v Auckland City*.

¹⁴ Dated 27 March 2025.

¹⁵ Prepared by Mr Cambell Robinson and dated 4th March 2025.

Council [2001] NZRMA 350 (EnvC), Edens v Thames-Coromandel District Council [2020] NZEnvC 13, Meridian Energy Ltd v Hurunui District Council [2013] NZEnvC 59, Port Otago Ltd v Environmental Defence Society Inc [2023] NZSC 112, [2023] 1 NZLR 205, New Zealand Heavy Haulage Association Inc v Auckland Council [2013] NZEnvC 240.

23. Mr Cameron provided electronic copies of *Protect Aotea Inc v Auckland Council [2021] NZEnvC 140*, and *Smith Chilcott Ltd v Auckland City Council [2001] 3 NZLR 473 (CA)*.
24. **Mr Whyte** explained in his statement that it is in support of the submission made by him and his wife Jo and that he is also authorised to make it on behalf of the G & J Whyte Trust. Mr Whyte's statement explains that it should be read in conjunction with the affidavit that he provided in support of the enforcement proceedings in March 2024.
25. Mr Whyte's statement sets out his experience and qualifications as an electrical and instrumentation engineer and that he has also been involved in the design and project management of building works. His statement sets out that their house at 28 Woolcombe Terrace was constructed in 2013 – 2014 and that he and Jo wish to remain living in it into their retirement.
26. The statement advises that the Whyte's enjoy their property for its northern aspect and coastal views as well as the space it provides to the rear which is sheltered from north and north-westerly winds. Mr Whyte explains that at times this rear area is used for outdoor living, with furniture and a barbeque stored in the adjacent garage and brought outside as required. This area is also used by the Whyte's grandchildren as a play area, including for bike riding.
27. Mr Whyte's statement sets out events since his affidavit was filed in March 2024 including the outcome of the Environment Court commissioner assisted mediation, and matters relating to both the common boundary wall between 26 and 28 Woolcombe Terrace and the front wall of 26 Woolcombe Terrace. Mr Whyte's statement then comments on the Council Officer's section 42A report and the earlier notification report, and the evidence prepared for this hearing on behalf of the Applicant.
28. I note that Mr Whyte's affidavit dated 20 March 2024 sets out a chronology of events relating to the construction of Mr & Mrs Roach's house at 26 Woolcombe Terrace up until that time.
29. **Ms Emma McRae** (Principal Landscape Architect, Boffa Miskell Ltd, Registered Member of NZILA). Ms McRae's statement of evidence¹⁶ provides a landscape and visual assessment of the as built development at 26 Woolcombe Terrace with consideration of the relevant provisions of the PDP. Ms McRae's evidence also includes comments on the landscape evidence of Mr McEwan, landscape peer review evidence of Mr Bain, and the Council Officer's notification and s42A reports. Ms McRae's evidence also appends a methods statement from the Aotearoa New Zealand Landscape Assessment Guidelines.

¹⁶ Dated 19 March 2025.

30. **Ms Kathryn Hooper** (Principal Planner & Executive Director, Landpro Limited, Member of New Zealand Planning Institute). Ms Hooper's statement of evidence¹⁷ provides a planning assessment against the relevant statutory documents of the as built development at 26 Woolcombe Terrace. Ms Hooper also responds to the s42A Report prepared by Mr Robinson and to the relevant planning matters in the evidence filed on behalf of the Applicant. Ms Hooper's evidence appends the PDP matters of discretion relevant to MRZ-S4, MRZ-R31 and MRZ-R33; and relevant PDP strategic objectives.

Council Section 42 Reporting Officer

31. Following the submitter's presentation, the reporting officer, **Mr Cambell Robinson** (Senior Planner (Consultant) for New Plymouth District Council, and Director of Future Proof Planning Ltd) provided an overview of the issues and answered questions on his s42A Report. Mr Robinson confirmed that there was nothing that he had heard in the course of the hearing that changed his opinion that it is appropriate for consent to be granted subject to mitigation conditions.

32. Key points made by Mr Robinson were:

- a) Care needs to be taken if consent is granted, that mitigation conditions do not create a scope issue by triggering the need for additional resource consent.
- b) There is agreement amongst the planning experts that any streetscape and shading effects are less than minor.
- c) Considers that privacy effects are less than minor when compared to a credible permitted baseline and with the proposed mitigation of front deck and window louvers and a pergola and climbing foliage to screen the open deck (if in compliance with the PDP).
- d) Has taken a broad view of the applicable effects given the full discretionary activity status of the application.
- e) Considers that the relevant PDP rules to this application are MRZ-R1, MRZ-R4, MRZ-R31, MRZ-R33, and CRZ-R5, and therefore that MRZ-S4 Alternative Height in Relation to Boundary is applicable.
- f) In response to Mr Cameron's concern that the Council did not commission any independent landscape evidence, Mr Robinson advised that with the assessment being of an as-built building and with the clarifications provided by further information he was comfortable that he could assess the relevant PDP provisions.
- g) Regarding the effect of the sense of enclosure, Mr Robinson considered it sufficient to warrant limited notification. He advised however that with the proposed mitigation and considering the PDP policy direction for change in the MDRZ over time in terms of increased density, on balance he retains his recommendation that consent can be granted subject to conditions.

¹⁷ Dated 19 March 2025.

Reply Submissions and Evidence Following Hearing Adjournment

33. Additional information, evidence and the submission in reply on behalf of the Applicant, are not summarised in this schedule and are rather referred to in the body of the decision.