

**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 RICHARD ALEXANDER BAIN ON  
BEHALF OF BRYAN & KIM ROACH**

**1. INTRODUCTION**

- 1.1 My name is Richard Alexander Bain. I hold an honours degree in Landscape Architecture from Lincoln University (1992) and am a registered member of the New Zealand Institute of Landscape Architects.
- 1.2 I have over 30 years of experience in New Plymouth as principal of Bluemarble Landscape Architects, specializing in site design and visual assessment.
- 1.3 This evidence is given in support of the land use consent application (“the application”) lodged by Bryan & Kim Roach, and South Taranaki Trustees Limited (“the applicant”), for a dwelling and associated retaining and fencing, located at 24/26 Woolcombe Terrace, New Plymouth (LUC24/48512).
- 1.4 I am authorised to present this evidence on behalf of the applicant.

## **2. INVOLVEMENT IN THE PROJECT**

- 2.1 I was not involved with this project before preparation of this hearing evidence.
- 2.2 I have reviewed the following documents submitted with the application, including:
- (a) The original application for consent dated 07 June 2024.
  - (b) The original BOON architectural plans dated 29 May 2024.
  - (c) Council's RFI dated 4 July 2024.
  - (d) The amended BOON architectural plans dated 6 August 2024.
  - (e) The amended application for consent dated 14 August 2024.
  - (f) The amended BOON architectural plans dated 20 September 2024.
  - (g) Council's s95 report dated 30 October 2024.
- 2.3 In preparation of this evidence, I have also reviewed the evidence of Mr Daniel McEwan landscape architect, Mr Kyle Arnold associate director of Boon Ltd, Mr Jono Murdoch architect, and Mr Ben Lawn the project's planner.

## **3. CODE OF CONDUCT**

- 3.1 I confirm that I have read the Code of Conduct for expert witnesses contained in the 2023 Environment Court Practice Note and that I agree to comply with it. I confirm I have considered all the material facts that I am aware of that might alter or detract from the opinions I express. In particular, unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

## **4. PURPOSE AND SCOPE OF EVIDENCE**

- 4.1 I have been engaged by the applicant to conduct a peer review of Daniel McEwan's evidence regarding the potential visual and amenity effects of the proposal. My review follows the peer review guidelines outlined in the NZILA Aotearoa New Zealand Landscape Assessment Guidelines - ***Te Tangi a te Manu***.
- 4.2 The purpose is to assist the hearing decision maker by confirming (or otherwise) that the assessment:

- Follows a sound methodology;
- Considers the relevant statutory provisions and any other matters;
- Accurately describes, interprets, and evaluates the relevant landscape character and values;
- Analyses the effects on landscape values (for proposal-driven assessments) in a balanced and reasoned way;
- Reaches credible findings supported by reasons; and
- Makes appropriate recommendations with respect to findings (depending on the type of assessment).

4.3 I have read the submissions on the Application and the Council Officer's Report.

4.4 I have visited the site and surrounding area on multiple occasions, most recently on 18 February 2025. This visit included access to the submitters' property (Mr. and Mrs. G.M. & J.S. Whyte), who granted permission.

4.5 Where my evidence relates to contentious matters, I will provide detailed reasoning. Otherwise, I will summarize key conclusions from the application and the AEE prepared by Ben Lawn of McKinlay Surveyors Limited.

4.6 My evidence is structured as follows:

- (a) Summary (**Section 5**);
- (b) The Application (**Section 6**);
- (c) Visual Assessment/Analysis Peer Review (**Section 7**);
- (d) Matters Raised in Submissions (**Section 8**);
- (e) Council Officer's Report (**Section 9**);
- (f) Proposed Conditions of Consent (**Section 10**); and
- (g) Concluding Comments (**Section 11**).

## 5. SUMMARY

5.1 The key landscape related issues in my opinion are:

- (a) The effects of the building's over-height breaches in relation to the Proposed District Plan – Appeals Version (PDP-AV) when assessed against permitted activity standards.
  - (b) Potential effects including dominance, shading, enclosure, privacy loss, and compatibility with the streetscape and coastal setting.
- 5.2 Based on my review of Daniel McEwan's evidence and site assessments, I conclude that:
  - (a) The proposal creates low adverse effects when compared to a permitted dwelling. Using the NZILA *Te Tangi a te Manu* seven-point scale and their RMA equivalents, 'low' effects straddle 'less than minor' and 'minor'. This is shown in Figure 1 of Mr McEwan's evidence. The guidelines do not provide complementary explanations for each level, but practitioners commonly do so. In this case, I would describe 'low' as effects as those that are barely discernible with little change to the existing character, features or landscape quality.

## **6. THE APPLICATION**

- 6.1 The details of the application are well documented in the Section 42A and Section 95 reports. The primary landscape character and visual amenity issues raised in these reports are addressed in Section 10 of Mr McEwan's evidence, with which I generally agree.

## **7. VISUAL ASSESSMENT/ANALYSIS PEER REVIEW**

- 7.1 Mr McEwan's assessment follows the *Te Tangi a te Manu* guidelines, which are widely regarded as best practice. My review also applies these guidelines, specifically the peer review section (pages 160–163).

### **Appropriate methodology and method**

- 7.2 I can confirm that the evidence of Mr McEwan contains a methodology statement that is consistent with the concepts and principles set out in the *Tangi a te Manu*' Guidelines. His approach effectively evaluates site context, statutory planning provisions, potential landscape effects (dominance, enclosure, privacy, and bulk), and the proposal's scale in its setting.
- 7.3 The assessment has been carried out consistently with its stated method and specifically references (Figure 1 in Mr McEwan's evidence) the '*Tangi a te Manu*' Guidelines 7-point rating of magnitude of effects. His assessment uses

this scale appropriately by providing reasoned consideration of effects in the context of the site's setting and statutory provisions.

### **Existing landscape**

- 7.4 Mr McEwan has supplemented his evidence with photographs of the streetscape, shade, and visual amenity. These images identify the relevant context and spatial scale and support his assessment that the constructed dwelling is consistent in form, scale and function with the other dwellings on Woolcombe Terrace and Octavius Place. I have visited the street at various times of day and in my view Mr McEwan's assessment is accurate. Further, several dwellings in this area are hard up against each other (some have party walls). In this context the subject building is well separated from its neighbours.

### **Statutory planning provisions**

- 7.5 Regarding statutory provisions, Mr McEwan assesses the height breaches using the *Te Tangi a te Manu* 7-point scale, concluding a 'Low' effect level, which aligns with a 'Less Than Minor' determination under the RMA. This equivalence of Low/Less Than Minor is generally agreed among the landscape architecture profession but as noted in the guidelines (footnote 164), "*Opinions on whether effects are minor (or less than or more than)—or significant—usually fall to planners who look across all disciplines and effects.*" That said, as mentioned earlier in my evidence, I describe low effects as barely discernible with little change to the area's character. In this case the constructed dwelling's breaches constitute an insignificant component of the viewer experience.
- 7.6 I have read the relevant District Plan provisions and reviewed the building plans, and I agree with Mr McEwan that the completed dwelling at 26 Woolcombe Terrace is consistent with the expectation of the PDP-AV MRZ Zone. Notwithstanding matters of discretion under MRZ-S3 (where the standards are not strictly achieved), and that under CE-R5 the building activity is discretionary, the plan anticipates dwellings such as this in position, form, and scale, notwithstanding the minimal daylighting breaches. The building matches the characteristics of the surrounding area and has no negative impact on the coastal environment.
- 7.7 I have also considered the PDP-AV 'alternative pathway' impacts, provided for under MRZ-S4. In my view, the height-to-boundary exceedance impacts are minimal compared to a building complying with the permitted standards under MRZ-S3, but far less than what is anticipated under the alternative consent pathway under MRZ-S4. The alternative height boundary rule

requires resource consent but sets out matters of discretion and indicates what is anticipated. In this context, the constructed building results in lesser character and amenity effects than those anticipated under MRZ-S4, as there is significantly more daylight between the constructed building and its neighbours. **Photo 1** in **Appendix A** of this evidence shows the constructed building and its eastern neighbour (28 Woolcombe Terrace) as viewed from the street.

### **Landscape (including visual) effects**

- 7.8 To establish the extent of the breaches BOON architects have prepared plans and diagrams, some of which are appended to Mr Ewan's evidence. I have also reviewed these and agree with Mr Ewan's opinion that the breach of the 45-degree daylighting angle (PDP-AV 'height in relation to boundary') applies to approximately three-quarters of the length of the dwelling, not the full length. Further, he considers that it is only the vertical highest point of the breached areas that afford any adverse effects.
- 7.9 In my view, the BOON drawings clearly show the extents of the breach. The 3D model is easy to understand and the areas where the building projects above the daylighting angle are small in height and extent. As stated in paragraph 7 of Mr McEwan's evidence, the maximum breach is 0.74m with the northern most breach being 0.62m above the daylighting angle.
- 7.10 The important issue here is the effect (if any) created by this breach on the neighbouring property (28 Woolcombe Terrace), noting that the purpose of the daylighting angle is to protect daylight for the adjacent property. To assess this, shading diagrams were produced by BOON in response to a council RFI. These include shading extents at various times of the year and day, and shade created by a permitted building. As stated in Mr Murdoch's evidence in paragraph 8.5, *"No shading occurs on the outdoor areas of 28 Woolcombe Terrace from the as built dwelling between 9am and 4pm. Therefore, I consider that the as built dwelling meets the shading requirements of MRZ-R33"*.
- 7.11 A shading diagram is also appended (Appendix B) in Mr McEwan's evidence. Mr McEwan assesses that any resulting shade is 'Very Low' on the 7-point scale. He considers that there are 'Low' effects on privacy loss, dominance and sense of enclosure on 28 Woolcombe Terrace, as well as and the wider receiving environment including streetscape. In my opinion, given the small extent (22.526m long) of the height to boundary breach with a maximum height of 0.73m, and the nature of the breach (edges of the building with a small slither of a window), Mr McEwan's assessment is valid. The effects are

barely discernible and create little change to the existing character, features or landscape quality.

7.12 Concerning the breach of the retaining wall/fence at the road boundary, this does not comply with MRZ-S10 because it is greater than 1.4m above ground level. The constructed rock wall itself complies with MRZ-10 as it is 1.20m above existing ground level. It is the glass balustrade above the wall that creates the exceedance of permitted height. I understand that the rock wall is the face of a retaining structure, and the glass balustrade is to prevent potential falls.

7.13 I agree with Mr McEwan's assessment that potential dominance effects are also avoided by the wall being set back from the legal boundary and the balustrade being offset 300m from the wall. I consider that the rock wall is an attractive structure that creates no visual dominance or adverse character effect on the streetscape, coast, or neighbouring property. Being relatively transparent (tinted glass), the balustrade avoids enclosure, and similar sized walls occur on many road frontages along Woolcombe Terrace.

## **8. SUBMISSIONS**

8.1 I have reviewed the submission received from Mr and Mrs Whyte which raises the following matters within my field of expertise:

- (a) Character effects within the PDP-AV Medium Density Zone.
- (b) Amenity impacts including:
  - (i) Shade effects (over what would result from a permitted activity), including in the rear yard.
  - (ii) Sense of enclosure and dominance effect along the eastern boundary.
  - (iii) Loss of view of Taranaki mouna are affected.
  - (iv) Loss of privacy.

8.2 The following comments on Mr McEwan's evidence are also informed by my visit to Mr and Mrs Whyte's property on the 18<sup>th</sup> of February 2025.

### **Character**

- 8.3 Mr McEwan has responded to these matters in his evidence. Concerning the MRZ, he considers that the building aligns with the purpose and objectives of the MRZ and Coastal Environment, noting the area's high degree of modification resulting from buildings. Based on my knowledge of the area and visits, I believe that there are negligible effects on coastal character and that the building is consistent in bulk, location, and form with the area and the outcomes anticipated in the MRZ.

### **Shade**

- 8.4 Mr McEwan addresses the submitter's contention that the building adversely affects the submitter's amenity including shading over what would result from permitted activity by stating that a baseline activity would afford the same or greater effects. As described in Mr Murdoch's evidence, I understand that the constructed dwelling creates no more shade than a permitted dwelling. Concerning the rear yard, notwithstanding its potential future use for outdoor living, Mr McEwan considers that a building complying with all the permitted standards (MRZ-S3) would cast greater shade, and that the breached portion of the constructed dwelling makes negligible difference is potential shade effects. In my view this conclusion reflects an accurate assessment of the shade effects.

### **Sense of enclosure and dominance effects along the eastern boundary**

- 8.5 Concerning visual dominance and sense of enclosure, Mr McEwan considers that when assessed against a building that complies with the permitted building standards, and taking the constructed building's design features (colour, façade, angled window alcove, deck area setback and staggered roof form) into consideration, any dominance or sense of enclosure is reduced to a 'Low' level of effect. Based on my site visit, I agree that the building's form creates a lesser effect than those potential effects from a building that complies with the permitted building standards. In my view, the building's 'height to boundary' breaches create a minimal additional sense of enclosure and or dominance. This is primarily due to the small scale and extent of the breaches in the context of the building's eastern façade. I viewed the breach areas from several positions when visiting the Whyte property. Photographs of from these viewpoints are appended to this evidence. From these viewpoints, while the breach areas are identifiable, in my view they contribute little additional enclosure and/or dominance over and above if the breach areas were not there. The constructed dwelling at 26 Woolcombe



Terrace is substantial and visually dominates the western flank of the submitters' property. However, this dominance is created primarily by the compliant parts of the dwelling.

### **Views of Taranaki Mounga**

- 8.6 During my visit to the Whyte property Taranaki Mounga was not visible due to inclement weather. However, based on the photograph of the mountain in the submitters' evidence I have a good idea of how much of the mountain view is impacted from the specific windows from which the photo was taken. It would appear that the constructed dwelling screens part of the mountain view but not all of it, and not the summit from the window on level 1, and all of the mountain from the window of level 2 – although this would need to be verified by viewing when the mountain is clear. However, in both cases, the breach areas of the constructed dwelling do not create the screening. I agree with Mr McEwan that many versions of a permitted building could similarly limit these views.

### **Loss of privacy**

- 8.7 Mr McEwan addresses privacy in his evidence and considers that the constructed dwelling minimizes effects on privacy and aligns with the MRZ rules. From my site visit I noted the position of windows on the constructed dwelling. I cross-referenced these with the plans to determine the activity likely to occur that may be visible from these windows.
- 8.8 Consequently, it is unlikely that the constructed dwelling creates a loss of privacy for the submitters as the main activities (living, kitchen) within the constructed dwelling primarily face north and west.
- 8.9 Further, the height to boundary breach areas creates no additional loss of privacy, as they do not include any windows other than a small slither at the northern end. **Photo 4** in my Appendix shows this window as viewed from the submitters' main living area. There is potential loss of privacy from this window, however it should be noted that the breach portion is a small area along the top, and that this part of the submitters' property includes large expansive windows/doors facing seaward – visible in **Photo 3** in my Appendix.

## **9. COUNCIL OFFICER S95 REPORT**

- 9.1 I have read the Section 95 Report (report) dated 30 October 2024, which identifies building dominance as a potential 'minor' effect. However, as indicated above, I consider the effects to be 'Low' and have explained what that means to me, namely that the breach areas constitute only an insignificant component of or change to the wider view. In my view, the breach areas create a very limited effect on the overall quality of the scene of viewer experience. Certainly, I do not consider the dominance effects to be significant or of any material concern due to the limited scale, extent and position of the height-to-boundary breaches. In my view the breaches are barely discernible, whether potentially obstructing views or creating shade.

### **S42A Report**

- 9.2 Concerning character and visual amenity, the Council's section 42A report raises no matters with which I disagree regarding the nature or level of effects identified and assessed.

## **10. PROPOSED CONDITIONS OF CONSENT**

- 10.1 I have reviewed the proposed conditions of consent (Appendix 3 of the s42A report). Concerning landscape character and visual amenity, draft Condition 2 proposes that, in order to achieve compliance with Effects Standard MRZ-S5 of the PDP, the installation of the vertical timber louvers at the eastern edge of the first-floor balcony, as shown in the SK2.1 and SK3.0 in the Application should be undertaken. However, I note that the reference to the plans is incorrect and should refer to SK3.0 and SK3.1.
- 10.2 In my view, installing louvers will have a neutral impact on the character of the area while potentially reducing privacy concerns for the neighbouring property. I note that the applicant, in their evidence, is requesting flexibility regarding the exact placement of the louvers, which, in my opinion, will still allow them to enhance privacy.

## **11. CONCLUSION**

- 11.1 Mr McEwan's conclusions are well-reasoned and align with my independent analysis. His assessment findings and overall conclusions are credible and consistent with best practice

**Richard Bain**  
**Bluemarble Landscape Architects**

**12 March 2025**

## **APPENDIX 1 – Photographs from Whyte Property**