



**Reference: LUC20/47704  
ECM8468453**

**New Plymouth District Council  
Addendum – Change to Draft Conditions**

**Commissioner’s Direction 1  
Dated: 5 February 2021**

**Direction**

1. On 4 February 2021 I was contacted by the Hearing Administrator outlining that the Council’s Section 42A reporting officer, Mr Balchin, had made a request to amend one of his recommended conditions of consent in his report furnished on 2 February 2021.
2. I have considered this request and the attached Addendum to the Section 42A report and agree that it would be appropriate for this addendum to be tabled, given Mr Balchin’s explanation for the request.
3. This additional matter has been raised promptly with me, and as the applicant and other parties have yet to table their evidence and supporting submissions and have an opportunity to consider the matter and respond, I have determined that no party will be prejudiced by this change to Mr Balchin’s recommended conditions.
4. Accordingly, I have decided to allow the tabling of this addendum and have requested that this brief minute and the Section 42A Addendum be circulated to all parties and placed on the Council’s website today.

A handwritten signature in black ink, appearing to read 'Stephen Daysh', is placed over a white rectangular background.

Commissioner Stephen Daysh (Chair)



Te Kaunihera-ā-Rohe o Ngāmotu

# New Plymouth District Council

## **ADDENDUM TO SECTION 42A REPORT – LUC20/47704**

Please see below an amended set of conditions, the changes required relate to the conditions and advice notes listed under the heading “NPDC Land Encroachment”.

A change to the conditions is necessary due to a misunderstanding between the applicant and I regarding the formalisation of future pedestrian access associated with the buildings proposed ground floor connection.

I believe it is not a necessity to condition this at this point, as it will instead be determined as part of a separate process between the applicant and NPDC as the adjoining landowner. Of which is detailed in the underlying advice notes.

The revised conditions and advice notes are as follows. A full set of the revised draft conditions are also included for completeness.

### **NPDC Land Encroachment**

21. A connection shall be provided through the building’s ground floor to the adjoining NPDC-owned land as shown on Drawing Number A2.02 - 27/08/2020 - Proposed L1 Plan.

### **Advice notes**

- a) *The granting of this consent does not permit the building encroachments into the NPDC-owned adjoining property to the north-east (Lot 2 DP 15492). The consent holder is advised to formalise arrangements for the use of that land on such terms as the landowner NPDC determines appropriate as soon as possible and prior to any application for a building consent.*
  
- b) *With regard to the encroachment of the canopy shown on Drawing Number A2.02 along the building’s eastern elevation, the consent holder will need to enter into a lease or such alternative formal legal arrangement as may be acceptable to NPDC, in order to formally document the encroachment of the canopy into NPDC-owned Lot 2 DP 15492 and access to the building over that NPDC-owned land.*

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c) *With regard to the encroachment of the stairwell and the small corner section of the building (north-east corner) as shown on Drawing Number A2.02, the consent holder will need to enter into a sale and purchase agreement for the purchase of that part of NPDC-owned Lot 2 DP 15492 which is encroached upon and complete the consequential boundary adjustment required to enable the land to be transferred pursuant to that agreement. Discussions as to possible pedestrian access through the connection referred to in condition 1 above, will form part of these negotiations. The boundary adjustment would need to be approved prior to any application for a building consent.*

d) *The sale and purchase, leasehold and any access values associated with the above will need to be determined through an independent valuation process.*

#### **RESOURCE CONSENT LUC20/47704**

**Granted under Sections 95A, 95B, 95D, 95E, 104, 104B, 104D and 108 of the Resource Management Act 1991.**

**Applicant:** K.D. Holdings Limited

**Location:** 45, 49 and 51 Brougham Street and 33 Devon Street West, New Plymouth.

**Legal Description:** PT Section 683 Town of New Plymouth, PT Lot 6 DP 3466 and Lot 2 DP 15492

**Activity Status under Operative District Plan:** Restricted Discretionary Activity

**Activity Status under Proposed District Plan:** Non-Complying Activity

**Proposal:** Construction of a six-level mixed use building exceeding the 14-metre height restriction for the Business A Environment Area, the 14-metre height restrictions for the Section 2 Cameron Street Viewshaft, Section 2 Victoria Street Viewshaft and Section 4 Marsland Hill Viewshaft, associated earthworks and removal of notable tree ID 97.

#### **DECISION:**

- In accordance with Sections 104, 104B and 104D of the Resource Management Act 1991, consent is granted to the application made by K.D. Holdings Limited for the Construction of a
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six-level mixed use building with a basement car park within PT Section 683 Town of New Plymouth, PT Lot 6 DP 3466 and Lot 2 DP 15492 and the removal of notable tree ID 97 within Lot 2 DP 15492.

- The development shall proceed as shown on the scheme plans prepared by BOON teamarchitects on behalf of K.D. Holdings Limited and entitled: “Brougham Street Development – 51 Brougham Street, New Plymouth”, Job No: 6400, Drawing No: A1.01, A2.02, A2.03, A2.04, A3.01, A3.02, A4.01, A9.01, A9.02 and A9.03, dated 27/08/2020 and A2.01 dated 12/01/2021.
- Pursuant to section 125 of the Resource Management Act 1991 this consent shall have a five year lapse date from the date of granting.

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

1. The use and development of the site shall be as described within the application, including any subsequent information submitted by the applicant, and shall be substantially in accordance with the plans detailed below, and all referenced by the council as consent number LUC20/47704;

Drawing Number	Date	Drawing Name
A1.01	27/08/2020	Proposed Site Plan
A2.01	12/01/2021	Proposed L0 Plan
A2.02	27/08/2020	Proposed L1 Plan
A2.03	27/08/2020	Proposed L2,3,4,5 Plan
A2.04	27/08/2020	Proposed L6 Floor Plan
A3.01	27/08/2020	Elevations
A3.02	27/08/2020	Elevations
A4.01	27/08/2020	Cross Sections
A9.01	27/08/2020	Shade Diagrams Summer Solstice
A9.02	27/08/2020	Shade Diagrams Winter Solstice

**External Façades and Building Design Features**

2. The final detailed design of the building shall be submitted to Council’s Planning Lead for approval prior to the application for a building consent. The final detailed design shall confirm the following:
    - i. The glazed façade design and finish is required to achieve visual permeability.
    - ii. The final cultural narrative and fritting design on the external glass facades as determined in consultation with Ngāti Te Whiti hapu under the requirements of the Kaitiake Forum condition.
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- iii. The final cultural narrative design on the external stairwell as determined in consultation with Ngāti Te Whiti hapu under the requirements of the Kaitiake Forum.
  - iv. The final cultural narrative designs within the internal paved floor achieving the Hinakai (eel net) representations and as determined in consultation with Ngāti Te Whiti hapu under the requirements of the Kaitiake Forum
    - v. The confirmed location of the proposed setback internal walls.
    - vi. The finish of the internal timber structural components finish
    - vii. The treatment and external materials to be utilised for top floor apartment; and
    - viii. The treatment and external materials to be utilised for all remaining building elements
  3. The sixth level (top) residential apartment building shall be detailed to include the same percentage facade perforation and/or transparency (glazing) as shown on the consent application drawings.
  4. The sixth level (top) balustrade shall be glazed as shown on the drawings on the consent application drawings
  5. The Consent Holder shall submit detailed design drawings and supporting information for the building design elements described under condition 2 to the Planning Lead for certification prior to building consent being lodged.
  6. The design shall be consistent with the drawings referred to under Condition 1 above and a report confirming consistency shall be prepared by a suitably qualified and experienced person, confirming this consistency shall be provided as part of the information required above under Condition 5.
  7. Where the design proposed is not in accordance with the drawings listed under Condition 1, the Consent Holder shall submit alternative design drawings to the Planning Lead prior to building consent. The design drawings shall demonstrate compliance with the following
    - i. Building height shall not exceed a maximum of 25.5 metres above ground level as surveyed at the time of the granting of this consent; and
    - ii. That any design amendments result in a reduction of overall effects.

#### **Advice Note**

- a) The purpose of conditions 5 to 7 is to ensure that any proposed changes to the design that will not result in additional adverse visual or amenity effects on the surrounding environment and is intended to provide an alternative process to a formal s127 variation or consent application for design changes within the scope of consent. Excepting that Council reserves the right to require the consent holder to make a s127 application, or, as appropriate, new application for resource consent, if necessary.
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## **Landscaping**

8. A landscaping plan shall be submitted for approval to the Council's Planning Lead prior to the commencement of the development. The landscaping plan shall show the landscape planting on the top level apartment as proposed within the BOON Landscape & Visual Impact Assessment, Revision A, Dated 1<sup>st</sup> September 2020.
9. The landscaping required by Condition 8 shall illustrate how the proposed landscaping will soften the impacts of the building.
10. Landscaping shall be implemented within the first planting season on the completion of the development.
11. On completion of landscaping, the consent holder shall certify that these works have been completed and provide this certification to the Council's Planning Lead.
12. For the duration of this consent, the consent holder shall maintain all planting in a good and healthy condition. Any planting not in a good and healthy condition shall be replaced.

## **Building Height**

13. The building shall not exceed 25.5 metres above the existing ground level at the time of the granting of this consent and as measured from the identified Taranaki Datum height within the site.
14. To facilitate Condition 13. A survey certificate shall be undertaken by the consent holder and supplied to council within 20 working days of the appeals period closing.

## **Cultural Items and Kaitiaki Forum**

15. The consent holder shall engage Ngāti Te Whiti to provide and certify a cultural narrative for the development. Any cultural narrative shall be demonstrated in:
    - a) the exterior of the building (façade and external staircase);
    - b) the foyer and entrance on the ground floor;
    - c) the landscaping and entrance to the building adjoining the Huatoki; and
    - d) any other location agreed between the consent holder and Ngāti Te Whiti.
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16. The consent holder shall engage Ngāti Te Whiti to provide a mauri stone for the water feature to be located in a position to be agreed between the consent holder and Ngāti Te Whiti.
  17. At all times during the exercise of resource consent LUC20/47704, Ngāti Te Whiti Hapū shall be provided the opportunity to and be resourced to monitor all earthworks associated with the development.

#### Kaitiaki Forum

18. The consent holder shall convene and resource a Kaitiaki Forum. This Forum shall be established and commence immediately following granting of consent, prior to the preparation of any plans and any works commencing on site.
19. The function and purpose of the Kaitiaki Forum shall be formally agreed by the Consent Holder, Ngāti Te Whiti Hapū and Te Kotahitanga o Te Atiawa Trust and formally documented in a Forum Collaboration Agreement. This Agreement shall include, but not be limited to;
  - a) The matters the Forum shall consider including but not limited to cultural narrative, changes through the detailed design phase, hard and soft landscaping, mauri stone and associated infrastructure, subsequent developments of the Metro Plaza, cultural monitoring
  - b) The entities to be represented on the Forum
  - c) The number of representatives from the entities on the Forum
  - d) The frequency at which the Forum shall meet
  - e) The certification process that shall be utilised in the Forum
  - f) The duration of the Forum
  - g) A dispute resolution clause.
20. A copy of the Forum Collaboration Agreement shall be provided to the New Plymouth District Council Planning Lead or nominee.

#### **NPDC Land Encroachment**

21. A connection shall be provided through the building's ground floor to the adjoining NPDC-owned land as shown on Drawing Number A2.02 - 27/08/2020 - Proposed L1 Plan.

#### **Advice notes**

- e) *The granting of this consent does not permit the building encroachments into the NPDC-owned adjoining property to the north-east (Lot 2 DP 15492). The consent holder is advised to formalise arrangements for the use of that land on such terms as the landowner NPDC determines appropriate as soon as possible and prior to any application for a building consent.*
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- f) *With regard to the encroachment of the canopy shown on Drawing Number A2.02 along the building's eastern elevation, the consent holder will need to enter into a lease or such alternative formal legal arrangement as may be acceptable to NPDC, in order to formally document the encroachment of the canopy into NPDC-owned Lot 2 DP 15492 and access to the building over that NPDC-owned land.*
- g) *With regard to the encroachment of the stairwell and the small corner section of the building (north-east corner) as shown on Drawing Number A2.02, the consent holder will need to enter into a sale and purchase agreement for the purchase of that part of NPDC-owned Lot 2 DP 15492 which is encroached upon and complete the consequential boundary adjustment required to enable the land to be transferred pursuant to that agreement. Discussions as to possible pedestrian access through the connection referred to in condition 1 above, will form part of these negotiations. The boundary adjustment would need to be approved prior to any application for a building consent.*
- h) *The sale and purchase, leasehold and any access values associated with the above will need to be determined through an independent valuation process.*

#### **Basement Car Park and Vehicle Access**

22. The basement carpark shall be formed in accordance with the scheme plans prepared by BOON teamarchitects on behalf of K.D. Holdings Limited and entitled: "Brougham Street Development – 51 Brougham Street, New Plymouth", Job No: 6400, Drawing No: A2.02, Date 12/01/2021.

#### **Archaeology**

23. The consent holder shall engage a suitably qualified archaeologist to develop archaeological protocols for site works and in obtaining an archaeological authority to damage the stone railway embankment within Lot 2 DP 15492.
24. Archaeological protocols shall be developed so that damage to the stone wall during the removal of the notable tree is limited as far as practicably possible. A copy of the protocols shall be supplied to Councils Planning Lead

#### **Earthworks and Construction Management**

25. Prior to any earthworks commencing on the site, the consent holder shall submit to the Council's Planning Lead, or nominee, for approval:
- i. Prior to earthworks being undertaken the Consent Holder shall provide a copy of an approved Traffic Management Plan to Council's Monitoring Team.
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- ii. An Earthworks Management Plan which identifies specific procedures associated with stormwater and soil management, dust and sediment control measures. The Earthworks Management Plan must include.
- a. Dates for earthworks, timing and proposed duration;
  - b. Details of the sediment and dust control measures to be implemented on the site;
  - c. Measures for avoiding any carry of soil or any other material onto public roads;
  - d. Proposed earthworks traffic route;
  - e. No undermining of any adjoining areas of road reserve;
  - f. and
  - g. 24 hour contact phone numbers of the designated site liaison person/s responsible for handling queries and complaints regarding the earthwork activities;
- i. A Construction Management Plan which identifies specific procedures associated with site incidents and prevention of potential effects on the surrounding environment and community, temporary traffic management associated with traffic, proposed long-term site management, occupation safety and health issues and measures. The Construction Management Plan must include:
- a) A copy of this consent;
  - b) 24 hour contact phone numbers of the designated site liaison person/s responsible for handling queries and complaints regarding the construction programme and all construction activities;
  - c) An engagement process to inform adjoining business owners of the timetable of construction work.
  - d) Methodology for logging and handling queries and complaints regarding the construction programme and all construction activities;
  - e) Proposed transportation route/s;
  - f) Work hours, scheduling and timing of vehicle movements;
  - g) The location and layout of vehicle parking spaces for all vehicles associated with construction activities on the site, including those for construction workers' vehicles and construction related vehicles, over the entire construction period and how this will be managed;
  - h) The location and design of a temporary construction vehicle access point and traffic circulation through the site over the entire construction period;
  - i) Storage of construction plant and material; and
  - j) Notification procedures between the consent holder and the Council's Planning Lead, or nominee, in respect of any changes to the approved Construction Management Plan.
26. Once approved, all earthwork and construction activities shall be undertaken in accordance with the approved Earthworks and Construction Management Plan.
27. The consent holder shall notify the Council Monitoring Officer 17 days prior to any earthworks commencing to enable monitoring of this resource consent.
28. The consent holders shall pay the council's costs of any monitoring that may be necessary to ensure compliance of the use with the conditions specified.
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### **Water Connections**

29. Prior to occupation, the building shall be connected to a water supply system which complies with the New Zealand Fire Service Firefighting Water Supplies Code of Conduct of practice SNZ PAS 4509:2008.
30. There are three existing water connections to the site, existing water connections to this development shall be upgraded to a manifold assembly type if required.

### **Stormwater**

31. A stormwater report detailing how all stormwater on site, including the basement carpark, is going to be managed and treated prior to discharge to the receiving environment shall be provided to Council's Planning Lead. The report will need to be reviewed and approved by the Council's water and waste team prior building consent being lodged.

### **Advice Notes**

- a) *NPDC's Water and Waste Department shall be required confirm that there is available water capacity within the network.*
- b) *The consent holder shall consult with NPDC's Water and Waste Development lead to confirm capacity of the 100mm Wastewater Pipe to service the development.*
- c) *At the time of building consent a stormwater management report shall be required to demonstrate the stormwater management methodology to be applied on site.*
- d) *Secondary flow paths shall be shown on a Plan and shall not be across private property.*

### **Roading**

32. A commercial vehicle crossing shall be constructed to the Standard specified in the Council's Land Development & Subdivision Infrastructure Standard (Cl.3.3.17.1). An application with the appropriate fee shall be made to the Council for a new Vehicle Crossing, and upon approval the vehicle crossing is to be installed by a Council approved contractor at the applicant's cost.
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**NABERSNZ**

33. The building shall achieve a minimum of a 5 star NABERSNZ energy base building certification. Confirmation of certification shall be supplied to Council's Planning Lead within one year of the completion of construction.

**Additional Advice notes:**

1. *Compliance with sound attenuation will be required to be demonstrated as part of the building consent application.*
  
  2. *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](http://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.*
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