

FOR THE NEW PLYMOUTH DISTRICT COUNCIL

IN THE MATTER OF the Resource Management
Act 1991 (“RMA”)

AND

IN THE MATTER OF **LUC/47704** – Land Use
Consent application for a Six
Level Mixed Use Central City
Development with Zone
Height and Viewshaft
Infringements, Removal of a
Notable Tree and Partial
Damage of an Archaeological
Feature.

DECISION REPORT OF INDEPENDENT HEARING COMMISSIONER

DATE OF HEARING: 25 February 2021

VENUE: New Plymouth District Council, 84
Liardet Street, New Plymouth

HEARING COMMISSIONER: **Stephen Daysh** (acting under a
delegated authority from New Plymouth
District Council (“NPDC”) pursuant to s
34A(1) of the RMA).

PARTIES AND ATTENDANCES: As recorded and available on the NPDC
Website
<https://www.newplymouthnz.com/Council/Meetings/Hearings/Past-Hearings>

COUNCIL REPORTING OFFICIER: **Luke Balchin**

COUNSEL APPEARANCE FOR APPLICANT: **Scott Grieve**

SUBMITTER APPEARANCES:

June Moseley

Terry Boon

Anne Sanderson (Written statement supplied)

Sarah Mako (Te Kotahitanga o Te Atiawa)

Julie Healy (Ngāti Te Whiti hapū)

Hadyn Te Ruki (Ngāti Te Whiti hapū)

RESOURCE CONSENT APPLICATION AND ACTIVITY STATUS

1. In April 2020 NPDC received a land use consent application from K D Holdings Limited under section 88 of the RMA for a site at 45, 49 and 51 Brougham Street and 33 Devon Street West, New Plymouth.
2. The nature of the proposal is summarised in the Council s 42A Report¹ as follows:
“Construction of a six-level mixed use building with a basement car park. Levels 1 to 5 are proposed to be for commercial tenancies and the top floor to be a three-bedroom residential apartment. To facilitate the proposal, it is required to relocate the Halamoana sculpture and to remove a notable tree located on a New Plymouth District Council owned parcel of land.”
3. Two further information requests were made pursuant to Section 92 of the RMA, the first dated 3 June 2020 and the second dated 21 October 2020, after input from the Council specialists and the closing of the submissions period². The applicant responded to each of these information requests, and in response to first information request furnished a comprehensive updated application and assessment of environmental effects (“the Applicants AEE”), including some new reports on 4 September 2020.³
4. The application falls to be considered under s 104, s 104B and s 104D of the RMA and under the Operative New Plymouth District Plan (ODP) and the Proposed New Plymouth District Plan (PDP). Following the well-established “bundling

¹ s 42A Hearing Report, L Balchin, Pages 1 and 2.

² s 42A Hearing Report, L Balchin, Pages 2.

³ Brougham Street Commercial Development - Resource Consent Application and Assessment of Environmental Effects, BTW Company, Revision 2, 4 September 2020.

approach” the most stringent activity status requires the resource consent to be assessed as a Non-Complying Activity under rule TREE-R10 of the PDP⁴.

5. I questioned the use of the bundling approach in this circumstance at the hearing with Messrs Balchin and Twigley. They both confirmed their written evidence that in their opinion this was the correct approach, based on their understanding of the RMA, knowledge of the relevant Plans, and the case law. In his right of reply, Mr Grieve queried whether it was correct to treat this particular listed notable tree as falling under rule TREE-R10 of the PDP, and thereby having immediate legal effect under s 86B (3) of the RMA. He submitted that *“...it does not appear that the subject tree is one of “historic heritage” requiring protection either, when on Mr MacDonald’s evidence, it is an exotic, self-seeded tree with a limited future life and no record of any historic significance”*⁵
6. I note that there was some disagreement around the origin and values of the notable tree between Mr MacDonald and the Council’s arborist Mr Paice, but in any event, there is no doubt that the tree is a scheduled notable tree in the PDP (Schedule 4), and the rule in question is identified as having immediate legal effect. I am therefore satisfied that for decision making purposes the application is to be assessed as a **Non-Complying Activity**. On this basis, assessment is first required under s 104D, and provided it passes one of the gateway tests in that section, the application then must be considered on its merits under s 104 of the RMA.

PUBLIC NOTIFICATION AND SUBMISSIONS

7. The applicant was publicly notified at the request of the applicant under s 95A(3)(a) of the RMA on 12 September 2020 with the submission period closing on 9 October 2021. Nine submissions were received; four in general opposition, two neutral and seeking specific conditions if consent is granted (Powerco and FENZ), and three in general support.

⁴ See Section 42A Hearing Report, L Balchin, Page 3 and Statement of Evidence of C Twigley, Paragraph 9.

⁵ Applicants Right of Reply, 5 March 2021, Page 7, Paragraph 14.

8. A summary of those submissions is provided in Mr Balchin's Section 42A Report⁶. Prior to the beginning of the hearing, I read through the submissions and have considered these in my decision-making.
9. I note that the themes of those submissions in opposition include the following concerns (in no particular order), many of which are occur in more than one submission:
- Building height;
 - Impact on viewshafts;
 - Removal of a protected tree;
 - Effects on heritage values of the area;
 - Pedestrian safety;
 - Carparking;
 - Highway safety;
 - Shading of Victor Davies Park;
 - Precedent effects of granting the application
10. The submissions in support included the following reasons for their support:
- Economic benefits for CBD area;
 - Balance of heritage and sustainable building design;
 - Facilitation of the visual and physical connection to the Huatoki River area for public and pedestrians;
 - Potential for positive effects with respect to the relationship that Ngati Te Whiti has with the site, including their cultural traditions with ancestral lands, water, sites, waahi tapu and other taonga;
 - Provision of a landmark building;
11. I appreciated the time taken by Ms Moseley, Mr Boon, Ms Mako, Ms Healy, and Mr Te Ruki to personally present the issues of relevance to them, and for providing the opportunity for me to ask them questions of clarification. This process assisted me in considering the issues and making my decision.

⁶ Section 42A Hearing Report, L Balchin, Table 1, Pages 18 and 19

HEARING PROCESS AND INFORMATION

12. A record of relevant information associated with the hearing and this decision report can be found on the NPDC Website under the URL address:
<https://www.newplymouthnz.com/Council/Meetings/Hearings/Past-Hearings>
13. This information was regularly updated as the hearing process proceeded and includes:
- The application documentation;
 - Submissions
 - Notice of Hearing;
 - Council Section 42A Report and Appendices;
 - Commissioner Directions;
 - Applicant and submitter evidence and submissions;
 - Counsel for applicant opening submission and right of reply.
14. I have considered all this information in my decision making (alongside the verbal evidence I heard during the hearing). I have requested that NPDC maintain this website as the hearing record through the appeal period and that a record of all information associated with the application is appropriately archived for future reference as might be needed.
15. I adjourned my decision at the conclusion of hearing on 21 February 2021, pending receipt of the applicant's written right of reply and receipt of a further set of draft conditions for my consideration, based on questions from me and discussions with the Planners regarding aspects of the recommended conditions. I requested that this conditions update be prepared by the Planners Mr Balchin and Mr Twigley, in consultation with Ms Mako. I asked that where there was disagreement as to any of the revised conditions, this was to be tabled to me in a memorandum, along with reasons for any disagreement.
16. The applicants right of reply and conditions update was received by Council on 5 March 2020, along with an email to the Hearings Manager from Mr Balchin confirming that the updated set of conditions provided had been agreed as between himself and Mr Twigley on behalf of the applicant, and that these had

also been sent to Ms Mako for her review. No areas of disagreement were noted.

17. Following my second site visit recorded below, I formally closed the hearing on 16 March 2021.

SITE DESCRIPTION AND SURROUNDING ENVIRONMENT

18. I visited the site and surrounding areas including several viewshaft location on the morning of the hearing – 21 February 2021, accompanied by Council officer Ms Rook. During the hearing Ms Mako invited me to join representatives of Ngāti Te Whiti Hapū alongside Puke Ariki staff so I could gain a better “on the ground” understanding of the site and surrounding Huatoki Awa area from an historical and cultural perspective.

19. Following the hearing, and during the adjournment period I decided to accept this invitation and requested the Council Hearings Administrator liaise with the parties who attended the hearing so they were also invited. A record of this visit and attendance is set out in my Commissioners Direction No. 2⁷. This additional site visit and explanations by our host, Mr Ritai, was extremely valuable and I would like to sincerely thank Ngāti Te Whiti Hapū for the invitation and all those who took time to take part in the site visit.

20. In relation to the details of the site description and the surrounding environment I adopt the sections of the Council Section 42A, prepared by Mr Balchin relating to these matters⁸. As none of this was in contention during the hearing, it is not necessary for me to paraphrase or repeat that information here.

OUTLINE OF EVIDENCE AND SUBMISSIONS

Applicants Opening Submissions

21. **Mr Scott Grieve**, counsel for the applicant, introduced the proposal and presented the applicant’s legal case.

22. Mr Grieves overall submission is that the proposal can pass through both the Section 104D “gateways”, will meet the sustainable management purpose set

⁷ KD Holdings Commissioner Direction 2, 16 March 2021

⁸ Section 42A Hearing Report, L Balchin, Paragraphs 7 to 20, Pages 7 to 20.

out in Section 5 of the RMA, and will also appropriately avoid, remedy or mitigate any adverse effects on the environment⁹.

23. On the question of the correct legal approach to considering an application for a Non-Complying Activity under s 104D, Mr Grieve helpfully cited a number of relevant paragraphs from the 2018 decision of Principal Environment Court Judge Newhook in SKP Incorporated v Auckland Council¹⁰. The key guidance for my decision on this application can be found in the following paragraphs of this case:

“[48] As to the “effects” gateway we may take into account aspects of mitigation and outcomes of imposing conditions of consent.

[49] As will be seen from our later analysis of effects on the environment, there are some which individually can be described as more than minor, for instance in connection with visual amenity from certain properties, but the law is that the evaluation under this provision is to be undertaken on a “holistic basis, looking over the entire application and range of effects”¹¹, not individual effects.

[50] The evaluation under subsection 1(b) is again, not an approach focussed on each relevant provision, but rather something more of a holistic approach. As has been observed in many other decisions, it is usually found that there are sets of objectives and policies running either way, and it is only if there is an important set to which the application is contrary, that the consent authority might conclude that this gateway is not passed¹².

24. Mr Grieve refers to a range of other case law in his opening submissions in relation to the “minor effects gateway” in s 104(D) (1) (a) including His Honour Judge Skelton’s Bethwaite and Church Property Trustees v Christchurch City Council¹³ decision which states that “...in using the word “minor” Parliament

⁹ Outline of Submissions of Counsel for Applicant, S. Grieve, Paragraphs 7 and 8, Page 3.

¹⁰ [2018] NZEnvC 81.

¹¹ See for instance *Cookson Road Character Preservation Society Inc v Rotorua District Council* [2013] NZENVC 194 at [46] and subsequent paragraphs

¹² See for instance *Cookson Road Preservation Society decision, Akaroa Trust v Christchurch City Council* [2010] NZEenvC 110 at [73] – [74]; *Man O’ War Station Limited v Auckland City Council* NZEnvC 248. Guiding this jurisprudence has been the seminal decision of the Court of Appeal, *Dye v [Auckland] Regional Council* [2002] 1 NZLR 337.

¹³ C85/93

intended that whatever adverse effects there might be they had to be *less than major, but could be more than simply minute or slight*".

25. Mr Grieve's submission is that with reference to the case law he has cited; *the adverse effects of the proposal on the environment, as proposed to be remedied, and/or mitigated, and taken as a whole, will be no more than 'minor'*¹⁴. His summary of the mitigation measures that the applicant proposes can be found at paragraph 11 of his opening submissions.
26. In relation to the second s 104D (1) (b) gateway test Mr Grieve submits that in their expert planning evidence, both Mr Twigley and Mr Balchin conclude that the activities for which the application has been made will not be contrary to the objectives and policies of the ODP and PDP for reasons that have been clearly set out¹⁵.
27. Mr Grieve has referenced a line of well-known cases relating to the application of s 104D (1) (b) including Arrigato Investments v Auckland Regional Council [2001] NZRMA 481 at [18](CA), New Zealand Rail Limited v Marlborough District Council [1994] NZRMA 70 (HC), at page 80. He concludes his case law analysis with the paragraph from Wilson v Whangarei District Council¹⁶ below:
- [35] It is self-evident that a non-complying activity will rarely, if ever, find direct support in the objectives and policies of a Plan, but an absence of support does not equate to the activity being *contrary* to those provisions. *Contrary* in this context means....*repugnant to...or...opposed to...the objectives and policies as a whole: - see Monowai Properties Ltd v Rodney DC (A215/03).*"
28. In paragraphs 33 to 35 of his outline of submissions Mr Grieve submits that:
- The proposal is not repugnant to, opposed to or contrary to the thrust of the objectives and policies of the ODP and PDP, evaluated holistically;
 - The relevant objectives and policies contained in those plans seek to retain and enhance the core CBD of New Plymouth and the proposal will assist to achieve those aspirations; and

¹⁴ Outline of Submissions of Counsel for Applicant, S. Grieve, Paragraph 26, Page 20.

¹⁵ Evidence of C Twigley, paras 93, 112; Officer's Report, para 225-226.

¹⁶ W20/2007

- Both those plans expressly contemplate buildings of this nature on the site, despite the bundling classifying this proposal as non-complying.
29. He considers that the proposal can pass both the 104D gateways/thresholds, and stands to be considered under s 104 and Part 2 of the RMA. I make my own determination on this key matter later in this decision.
30. Mr Grieve continues his opening submissions on the assumption that I conclude that the s 104D gateway tests have been met, which is appropriate in his role as an advocate for the applicant. He refers me to the relevant case law regarding the decision-making framework associated with:
- Part 2 of the RMA;
 - The matters I am required to consider under Section 104(1) of the Act,
 - Precedent Effect; and
 - The formulation of consent conditions under s 108 of the RMA.
31. I am grateful for the legal analysis, summary of key legal direction and the copies of the cases provided by Mr Grieve. For the sake of brevity, I can state that after reviewing the cases and provisions he has cited¹⁷ I agree with Mr Grieves outline of the legal position in relation to the matters outlined in paragraph 30 above.

Outline of Evidence Presented on Behalf of the Applicant

32. **Mr Kevin Doody**, a Company Director of the applicant, K D Holdings Limited presented a statement explaining his long involvement with buildings in the New Plymouth CBD, his passion for preserving heritage values in the city, and his family's desire to develop a quality "environmentally friendly" building on the site. He explained with the higher costs of building an eco-building it was not viable to construct a building of the quality proposed without the extra height which is proposed.
33. In response to questions regarding the involvement of Ngāti Te Whiti hapū in the concept design of the building, Mr Doody said that he had been personally involved in all the dialogue with the hapū including how the building could

¹⁷ Refer in particular to the cases and direction Mr Grieve cites in paragraphs 36 to 42, 47, 66, 69 and 71 to 72 of his Outline of Submissions – copy available on the NPDC website link referenced in my paragraph 12 above.

include an appropriate and agreed cultural narrative that reflected the importance of the site and general area to Ngāti Te Whiti. He confirmed that he and his family were committed to ongoing involvement of the Hapū in finalising the building design and was supportive of the conditions proposed in this regard.

34. His evidence also outlined that he owned the adjoining building at 41/43 Brougham Street that is occupied by the Area 41 restaurant. He said that *“if consent is granted to the proposed development – and with the future opening up of the Huatoki Awa - then my future plans are to open up the back of Area 41 to provide better access to the Awa and further enhance amenity values of the area. I have also recently purchased the building nearby at 31 Devon Street West, and also plan to upgrade that building and its surrounding environment in a similar way in the future¹⁸.”*
35. **Mr Clive Cullen**, an architect with experience in reporting on and managing the restoration of a number of heritage buildings reviewed the drawings in relation to the effects of the proposed building on the Heritage Character Area (HCA) and nearby listed heritage buildings. This review was undertaken in response to questions on these aspects from the Council in the second S 92 further Information request, dated 21 October 2020.
36. He assesses the proposal against the *New Plymouth District Council City and Town Centre Design Guide, July 2019* and concludes with the following key points¹⁹:
- *The building has been designed to interface with the Huatoki Awa and the future development of the adjoining Metro Plaza site.*
 - *The site currently adds little to the HCA, and possibly detracts from it.*
 - *The notable tree has no historic/heritage value – it is notable because of its size only. This issue is dealt with separately (in the evidence of others).*
 - *Relative to being sensitive to the relationship of Te Atiawa to the Huatoki and Te Ao Maori Design principles: these are enhanced by the connection between the street to the Huatoki Awa, and use of a modern*

¹⁸ Statement of K Doody, Paragraphs 19 and 20,

¹⁹ Statement of evidence of C Cullen, Paragraphs 6.6 to 6.11, Pages 4 to 5.

interpretation of Maori design motifs on the exterior glazing drawing on a rich Ngāti Te Whiti cultural narrative.

- *This also adds to the inclusion of building a relationship between mana whenua with the CBD area in the built form of the city.*
- *Within the HCA zone there are examples of old yet modern buildings sitting comfortably with heritage buildings to provide a diverse CBD. This includes:*
 - *The White Hart Hotel / clock tower / Len Lye Centre; and*
 - *The Public Trust Building / King and Queen Hotel Suites*

37. In terms of the four listed heritage buildings in the general vicinity of the proposal Mr Cullen's evidence is that: *"the proposed building is designed in contemporary materials and is specifically not imitating or extending any of the heritage typologies of the adjacent heritage buildings. It will, therefore, present a contrast to the existing buildings, so by comparison will emphasise and enhance their style. It will not be competing with them by trying to copy or imitate, while also reflecting the 'heritage' aesthetic on to its own glass façade."*²⁰

38. Mr Cullen's overall expert opinion is that: *"The proposed building will not adversely affect the heritage values associated with the Heritage Character Area or the nearby heritage buildings. It will add to the amenity of the area in terms of adding connection to Maori cultural values related to the area, and for the other reasons noted above."*²¹

39. **Mr Ivan Bruce**, an experienced New Plymouth based archaeologist, prepared an Archaeological Assessment relating to the Proposal addressing a review of the archaeological record; historic literature; land plans and early maps; and a pedestrian survey of the application area. This report is *Appendix F* of the Applicant's AEE.

40. He confirms the existence on the site of a stone railway embankment which formed part of the 1875 New Plymouth to Waitara Railway. He notes that *"the railway embankment has been recorded as an archaeological site P19/416 on the*

²⁰ Statement of evidence of C Cullen, Paragraphs 9.1 to 9.2, Page 6.

²¹ Statement of evidence of C Cullen, Paragraphs 13.2 to 13.3, Page 9.

NZAA site recording scheme. However, the section of embankment in question is not listed or protected in either the Operative or Proposed District plans.²²

41. He provides evidence that Heritage New Zealand Pouhere Taonga (HNZPT) has granted an archaeological authority to modify this site, as there is potential for the project to damage or destroy a section of the embankment.

42. The conclusions of Mr Bruce's evidence²³ are:

- *The project is compliant with the provisions of Heritage New Zealand Pouhere Taonga Act 2014 with regard to modification of the recorded archaeological site P19/416.*
- *There is adequate protection provided by the conditions of the archaeological authority, to allow for consideration of unexpected archaeological finds of Maori origin.*
- *As such, I consider applicant has fully recognised and provided for the protection of historic heritage from inappropriate subdivision, use and development as outlined in section 6(f) of the RMA.*

43. **Mr Bruce MacDonald** is a qualified arboricultural specialist with over 25 years working both for Councils and in a private consulting capacity. He is the past president of the New Zealand Arboricultural Association. Mr MacDonald produced an Arboricultural Assessment reported as *Appendix E* in the Applicant's AEE relating to the proposed removal of a tree on the site, described as a Willow Myrtle or *Agonis flexuosa* (Site ID 97 in Schedule 4 – Schedule of Notable Trees in the PDP).

44. Mr MacDonald highlighted some disagreement he has with Mr Paige's (NPDC's Arborist) views regarding the origin and form of the tree. He provided evidence as to why he considers that it is more likely to be self-seeded, rather than being specifically planted on the site, and his opinion that the upright form of the tree is because in its early development it would have been close to a large building that was on the western side of the site at the time.

45. His overall conclusions are that:

²² Statement of evidence of I Bruce, Paragraph 2.1 (b), Page 2.

²³ Statement of evidence of I Bruce, Paragraph 9.1 (b), Page 6.

- *“The proposed development concept design will need to be significantly modified to ensure the continued health and structure of the notable Agonis flexuosa. The current design adversely impacts on the root system of the tree that will cause:*
 - *Root anchoring stability concerns that may result in complete root ball failure. This failure will likely cause the partial collapse of the retaining wall from which it grows;*
 - *Severed roots will accelerate the deterioration of a tree that is already in decline. The location of the proposed building is such that numerous feeder roots will be damaged to the extent that adequate water and minerals (nutriment) will not sustain the tree within in the short to medium term.*
- *It is my opinion that based on gathered evidence, known species characteristics and local observations, peer consultation and research, the subject Agonis flexuosa is in the later stages of its lifecycle.”²⁴*

46. **Mr Andrew Fraser** is a chartered civil structural engineer with 40 years of experience, the last 24 years in New Plymouth. He provided expert evidence relating to his engineering assessment of the existing stone retaining wall bordering the Huatoki Awa (considering and advising in respect of foundations for the building and the issues concerning the Notable tree), relevant geotechnical considerations and in respect of the impact of additional floors and effects of dewatering. In his evidence he explained that he has relied on the *Tonkin & Taylor Geotechnical Expert Report, December 2019*, which is included as *Appendix J* of the Applicant’s AEE.

47. His expert opinion on the key engineering effects issues, following his analysis and assessments enabled him to confidently conclude that²⁵:

- *“The effects of these potential issues are mitigated by removing the overburden above the stone wall, designing a suspended concrete floor over the stone wall, and designing bored piles or screw piles to support*

²⁴ Statement of Evidence of B MacDonald Paragraphs 9.1.and 9.2, Page 6.

²⁵ Statement of Evidence of A Fraser, Paragraph 5.2, Page 3.

the building that minimise the impact of vibration; all of which are considered as having minimal to nil adverse effects in my opinion.

- *The potential effects of dewatering within the excavation for the basement of the building (if required) are mitigated by the water table being below the basement excavation level; and, that water ponding within the excavation during construction will be minor and can be removed; all of which are considered as having minimal to nil effects in my opinion.”*

48. I queried Mr Fraser on his choice of the term “minimal to nil” effects in his key evidential conclusions. He confirmed that in his mind the term “minimal” was equivalent to the term “minor” as it applies in Section 104D (a) of the RMA, which deals with adverse effects on the environment.

49. **Mr Shaun Murphy** is an Associate Architect at Boon Team Architects and provided important evidence relating to his expert assessment of shading effects of the proposed building. He explained that his evidence covers a description of the proposed site (in the context of shadow modelling), an outline of modelling techniques and processes, a “permitted baseline” development shadow study, and a proposed commercial development shadow study.

50. He noted that all of the relevant shadow study graphics that he discusses (including all of those submitted to New Plymouth District Council pursuant to section 92 Resource Management Act 1991 requests) were attached as Appendix 1 of his evidence.

51. Mr Murphy explanations of the two shadow studies are outlined in Sections 5 and 6 of his evidence (Page 3) as follows:

Permitted Baseline Development Shadow Study

A permitted baseline development (baseline development) shadow study was modelled using the same technology and survey data discussed above as a tool to compare the potential shadow effects of a compliant permitted activity development with the potential shadow effects of the proposed development.

The baseline development consists of a 14m high commercial development with one hundred percent site coverage which matches the proposed development.

Simulations of the shade effects of the baseline development were generated for June 21st and December 21st (summer and winter solstice) across various times of the day. Refer to Appendix 1.

Proposed Development Shadow Study

The proposed development shadow study was undertaken to determine the potential adverse shadow effect of the proposed development on the adjacent properties. Prior to this, various building forms were modelled and tested with the architect during the sketch design phase of the project in regard to minimising the potential shade effect. Measures were undertaken during design to mitigate any shadow effects where possible (as is also discussed in the evidence of Mr Bhaskar). Such measures included the building materiality and the setback design of the penthouse level to limit the shade. The baseline development and proposed development shading were overlaid to allow a clear visual representation of the effects of a permitted baseline development and that of the proposed development.

I have read the evidence of Mr McEwan. His evidence, amongst other things, assesses the potential shading effects of the baseline development and the proposed development on neighbouring properties and public amenities to the east, west and south of the site. I agree with his assessment and conclusions reached.

52. In response to issues raised in submissions on the application in terms of shading of Sir Victor Davis Park, Mr Murphy undertook further modelling of this particular area which included specific cadastral data supplied by a registered cadastral surveyor. He provided a simulation in Appendix 1 of his evidence generated from this additional modelling for 1 June at 4pm (the time the area in question is potentially worst affected). He concludes by agreeing with the expert opinion of Landscape Architect, Mr McEwan who has provided separate expert evidence relating to the information prepared by Mr Murphy.

53. Mr Daniel McEwan is a Senior Landscape Architect at Boon Team Architects Limited and prepared the Landscape and Visual Assessment (LVA) which is included as *Appendix L* of the Applicant's AEE. He outlines his involvement in the project as follows:

- *Meeting with Council officers and their appointed Landscape Architect, Richard Bain as peer review for the Landscape & Visual Impact Assessment (LVIA), to establish and agree on receptor locations/potential affected parties in undertaking my LVIA report.*
- *Preparation of a LVIA dated 1st September 2020, which included several site visits/investigations, analysis of the wider visual catchment, research into the existing urban form and heritage areas and research into cultural aspects relating to the site. I have additionally contributed input into the architectural form and aesthetics of the building to provide mitigation measures to remedy any potential adverse effects the building affords.*
- *Participation in design team meetings to work through mitigation measures.*
- *Participation in a hikoī and workshop with Te Atiawa Iwi and Ngāti Te Whiti as part of their CIA, and to gain understanding on significant history of the area and form appropriate cultural narrative to the commercial development.²⁶*

54. The evidence produced by Mr McEwan is key evidence as it relates to the scale and degree of effects relating to many of the issues raised by submitters who oppose the application. For this reason, I have produced his detailed summary of his expert opinion in full below²⁷:

- *The proposed buildings height has adverse impact on the Victoria Road view shaft and potential adverse effects on the Marsland Hill/Pūkākā view shaft are considered to be low/minor. As demonstrated in **Appendix A** of my evidence, a permitted activity within the Operative District Plan (ODP) (red dashed line) and proposed permitted activity within the Proposed District Plan (PDP) (blue dashed line) will both afford considerable bulk as*

²⁶ Statement of Evidence of D McEwan, Paragraph 2.1, Pages 1 and 2.

²⁷ Statement of Evidence of D McEwan, Paragraph 5.2, Pages 3 to 5.

indicated within this view. With the proposed setbacks and cladding materials intended to mitigate the additional height of the proposed building; it is considered that the additional height of the top level may not add substantial mass and scale to that of a permitted and proposed activity within this view. Considering the proposed mitigation measures introduced into the building's form and aesthetics, with a strong cultural narrative incorporated into the design of the building, along with benefits/attributes outlined in the architects design statement, and the majority of the New Plymouth District Councils (NPDC) future policies and objectives, it is my view that the potential adverse effects on these two view shafts are mitigated to an acceptable level; resulting in a 'Low' overall adverse effect.

- *The proposed building exceeds the permitted building height within both the ODP and the PDP, which will result in a noticeable change in the existing built form. It is my view that this change can primarily be absorbed into the existing urban form and aligns with key objectives and policies that NPDC propose to ensure successful growth of New Plymouth's CBD.*
- *The proposed building sits just outside the HCA but is directly adjacent to the Area 41 historic building, directly across Brougham Street from the historic Salvation Army Citadel (heritage building H-110) and in proximity to other listed buildings including heritage building H-133 (Social Kitchen – Salvation Army Young Peoples Hall) further along Powderham Street and heritage building H-31 (Key Lime Pie Salon, and Area 41 Restaurant) further down Brougham Street. It is my view that with the mitigation measures implemented in the building's design, along with the wider amenity value that the development will afford, the existing heritage buildings are still celebrated and any potential adverse effects on the HCA will be appropriately mitigated.*
- *The proposed building is positioned adjacent to the Huatoki Awa and is in close proximity to significant historic Māori Pā/papakāinga including Puke Ariki, Te Kawau, Mawhera, Mataipu and Okoare, and two toka tapu*

(sacred stones). Evidence of this pre-European history is indistinguishable or simply no longer present in the sites existing condition (as discussed in Mr Bruce's evidence). It is my view that the proposed building's design and incorporated cultural narrative benefits greatly to restoring reference and knowledge of these lost historical elements, which have been generated in collaboration with Ngāti Te Whiti to ensure appropriate representation is given to these elements.

- *The height of the proposed building will cast additional shade on neighbouring buildings and open space compared with that of a permitted and or proposed permitted activity within the ODP and PDP. The shading analysis provided by the architects (discussed in Mr Murphy's evidence) indicates that any shading effects will be less than minor and only during the winter months. The existing trees at the entrance of Sir Victor Davies Park mean that additional shading will have insignificant impact on the open space portion of this park. It is in my view that shading effects of the proposed building will be to an acceptable level in considering the existing vegetation cover that already casts shade, the limited time during winter months when this may occur and the less utilised portion of the park that the potential additional shade will affect.*
- *The notable 'Agonis flexuosa' tree or 'Willow myrtle' is to be removed with the proposed building development. The assessment of this tree provided in the arborist report as part of the application (and discussed in Mr MacDonald's evidence) states that the tree is in decline, and has an estimated life expectancy of approximately twenty years. The architects' documents within the application show that alternative solutions were considered to retain the tree, but feasibility of these solutions proved unviable options from construction and cost perspectives. With the proposed development's landscape opportunities adjacent to the Huatoki Awa, along with the sustainable features in the building design and the mitigation measures implemented to date, it is my view that the unfortunate removal of the notable tree is an acceptable compromise given the benefits provided in the building design, with its removal offset*

by proposed landscape elements on the Eastern side of the building along with the mitigation measures that assist in reconnecting this portion of the Huatoki Awa with the general public. (my underlining)

55. I questioned Mr McEwan at some length regarding his view on how the various terms he uses to describe his opinion on the level of effects in the above summary (which I have underlined) relate to the use of the term “minor” in S 104D of the RMA. After some discussion, the overall conclusion I took from his expert position was that he confirmed there will be some positive effects from the development. In addition, his overall view seems to be that after considering the proposal holistically and with the conditions and mitigation proposed the proposal would not exceed the “more than minor” threshold.
56. This opinion is important as there is some disagreement between Mr McEwan and Mr Bain on the level of visual effects, especially the rating of effects associated with the height of the proposed building in relation to the Building Height Management Area and Victoria Road Viewshaft in particular. On this point Mr McEwan helpfully sets out the two positions as he sees them²⁸:

Building Height Management Area

Mr Bain refers to the height management areas based on his own ‘Building Heights in New Plymouth’s City Centre’ report from 2018 which is an extensive, thorough report listed as part of the PDP appendices. My only comment on this matter is to note the potential conflict where the risk of reference to a sole practitioner’s own findings and views from this report if no peer, or external, review input has informed this report. My concern is that when referencing this report within Mr Bain’s evidence, there is potential for re-iteration of a single sided professional view/opinion albeit one that has stemmed from a substantial body of research. I disagree that a reduced building height (to further mitigate potential adverse effects) will provide substantial reduction, primarily concerning the Victoria Road Viewshaft, of any adverse effect as perceived by public receptors than that of a 17m

²⁸ Statement of Evidence of D McEwan, Paragraph 14.5 (b), Pages

permitted building activity for the reasons I have previously set out in my LVIA and this evidence (and further below).

Victoria Road View Shaft:

Mr Bain addresses the Victoria Road viewshaft and talks to the building's height being at 25.5m on the northern boundary, and suggests a height of 21.5m might be more appropriate, which is a valid opinion on his part. In response to this I note that the visible portion of the proposed building from the Victoria Road view shaft is the southern boundary - which is 22.8m in height, where the additional 2.7m is below ground basement level. Mr Bain's argument that the building is one level too high may be valid, in his view, but the question I raise is - what affect the proposed 22.8m height building height has, in terms of adverse effects, over that of a proposed 17m permitted activity (within the PDP) in the Victoria Road viewshaft? It is my view that a proposed 17m permitted activity will afford similar adverse effect on public receptors, in terms of bulk and scale within this view as that which the proposed 22.8m high (on the southern boundary) will potentially have. This re-iterates Mr Bain's question (at paragraph 1, page 7) of "how tall is too tall" - where our professional opinions may differ slightly.

57. This opinion is further confirmed in Mr McEwan's concluding comments in his written evidence where he states that:

- *The proposed building will predominantly be received well within the existing urban and landscape context.*
- *The proposed building will contribute greatly to meeting the majority of objectives proposed by NPDC for future growth and enhancement of the CBD.*
- *The implemented mitigation measures for the proposed building will satisfy any adverse effects to an acceptable level considering all aspects of the above points.*
- *I am in agreement with the statement provided by Mr Cullen and the additional arborist information within Ms Martin's response to RMA Section 92 Request for further information – LUC20/47704 – Part Two,*

*along with the additional shading analysis provided in Mr Murphy's statement.*²⁹

58. **Mr Murali Bhaskar** the Project Architect and Director, is a Registered Architect and a Fellow of the New Zealand Institute of Architects with 30 years of experience as a practicing architect. In his evidence (paragraph 3.1) he says he *"particularly enjoys projects with a civic and community focus"*.

59. The brief of evidence prepared by Mr Bhaskar covers the following matters:

- The project description of the site and the proposed activity;
- Design Philosophy - an overview of the process undertaken in designing this project;
- A general description of the proposed development;
- A description of the design process involved;
- A description of the design constraints involved and the solutions proposed;
- Consideration of alternative developments; and
- Comments on the Officer Report and proposed consent conditions

60. I asked a number of questions of Mr Bhaskar relating to the evolution of the design process, and in particular his involvement in meeting with members of Ngāti Te Whiti hapū to address and incorporate matters into the overall design that reflected the relationship of the project site in terms of the matters of national importance covered in Section 6 (e) of the RMA (relating to the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga). He confirmed that the applicant, Mr Doody and project team had fully embraced this matter in the revised design of the building and the updated Applicant's AEE. He outlined that through early dialogue and respect for the wishes of the mana whenua in relation to cultural expression as a key part of the building and surrounding space design, his understand was that Ngāti Te Whiti Hapū were fully supportive of the proposal.

61. We also discussed his evidence at Section 11 regarding the suggestion from the Council s 42A team that a condition be imposed requiring 5 Star NABERSNZ

²⁹ Statement of Evidence of McEwan, Paragraph 16.1, Page 12

certification. He was concerned with this condition saying that while this was certainly a target, and the design strategy for the building included all the key elements of this rating, he would not like to see a hard condition imposed, due to the inherent uncertainties of this certification process.

62. I also asked Mr Bhaskar whether he had considered sunstrike or wind tunnel effects as part of the design statement. During questioning Mr Bhaskar stated he did not consider either would be a particular problem for this building design and location, he requested leave to further consider these matters, and report back to me via the applicant's right of reply. As these are potentially important issues, I granted this leave. His expert position as set out in the applicant's right of reply on these matters is³⁰:

- *Mr Bhaskar does not believe that sunstrike will be an issue due to the angles of sunlight coming over adjacent buildings and due to the transparency of the glass façade (i.e., the sun will go through the building more than it will reflect of the building) and fritting proposed.*
- *Wind tunnelling is a phenomenon usually caused by wind direction and it is usually an issue in large cities with significantly tall buildings often 20 storeys' high or more. There is no evidence of wind tunnelling around New Plymouth city as far as the applicant and its experts are aware, nor are there any specific provisions in the ODP or PDP in respect of same.*

63. Mr Bhaskar's overall conclusions in his written statement relating to architecture and design are:

- *Through rigorous collaborative design and development, I believe we have created a stimulating design that efficiently optimizes a challenging, high profile site.*
- *The design integrates well within its surrounding urban environment and is respectful to its neighbours, whilst making a positive statement about the city, district and region.*
- *The project also ensures that the voice of Ngāti Te Whiti as Mana Whenua and kaitiaki of the area is acknowledged and reflected in the design³¹.*

³⁰ Right of Reply for the Applicant, Paragraph 4 and 5, Pages 2 and 3.

³¹ Evidence of Mr M Bhaskar, Paragraphs 12.1 to 12.3, Page 13.

64. **Mr Cam Twigley** provided comprehensive planning evidence covering a description of the proposal, the regulatory framework, environmental effects, the relevant planning instruments, Part 2 of the RMA, the submissions, and the recommended conditions of consent.

65. In relation to the Non-Complying status and the associated “effects” gateway test of Section 104D (a) Mr Twigley’s opinion is as follows:

- *In this case sub-section (b)(iii) applies as there is both an operative and proposed plan to consider. It should be noted that the proposal is, overall, considered as a non-complying activity solely because of the removal of the notable tree, not due to the height of the building, and solely under the PDP which is not yet operative, and is still in the earlier stages of the plan making process. As previously discussed, in my opinion, the adverse effects resulting from the notable tree removal will be minor.*
- *However, as per the conclusion in the LVIA, the reports of Mr Bain for the Council and the evidence of Mr McEwan, the adverse effects on the Victoria Road viewshaft of the over height building are considered to be more than minor. The proposal therefore does not pass through the section 104D(1)(a) gateway and consideration of whether the activity is contrary to the objectives and policies of the ODP and PDP is required to assess whether the application passes the gateway test.*

66. In relation to the second gateway test of Section 104D (b) Mr Twigley’s opinion is as follows:

“Operative New Plymouth District Plan

- *In summary the proposal, in my opinion, is contrary to Policies 5.2 and 5.3 (urban viewshafts and vegetation) and Objective 11 and Policy 11.1 (notable trees) but is consistent with and not contrary to Objective 1 and Policies 1.1 11 Issue 1, Operative New Plymouth District Plan 2005 – 1.3 (character and amenity), Objective 5 (Adverse effects on the urban environment), Objective 7 and Policy 7.1 (business environment area character), Objective 13 and Policy 13.1 (natural hazards), Objective 19 and Policies 19.1-19.4 (cultural and spiritual values of tangata whenua), Objective 20 and Policies 20.1-20.3 (road safety and efficiency).*

- *While the above provisions to which the proposal is consistent with outnumber those to which it is contrary to, the content of the above provisions is more important. As such, I consider that the positive contributions of the proposal to the character, amenity and vibrancy of the central city through a modern sustainable building providing commercial working space, apartment living and design that embraces a cultural narrative supported by tangata whenua, with connections to a future development of the Huatoki Stream, will be a significant improvement to the amenity of the site and the CBD. These benefits for the character and amenity of the CBD and people and communities will outweigh any moderate adverse effects from the over height component of the building and minor adverse effects from the loss of the tree.*
- *My conclusion is that although the proposal will not be consistent with some of the objectives and policies more narrowly focussed on urban viewshafts and vegetation/notable trees, when taking an overall broad judgement, and considering the positive benefits, it will not be contrary to the objectives and policies of the ODP. I note that Mr Balchin reaches the same conclusion³².³³*

“Proposed New Plymouth District Plan

- *I agree with Mr Balchin’s assessment that the proposal is consistent with the strategic objectives of the PDP³⁴*
- *In terms of the other relevant objectives and policies of the PDP, and generally following the assessment in the application, I consider the proposal is consistent with, and not contrary to, Objective TREE-01 and Policy TREE-P5 (notable trees), Objective VIEWS-O1 and Policies VIEWS P2–4 (viewshafts), Objectives CCZ–02, O4–O8 and Policies CCZ P1, P4 –P6, P8 – P11 (city centre character and amenity).*

³² Paragraph 179 of the Hearings Report.

³³ Statement of Evidence of Mr C Twigley, Paragraphs 76 to 78.

³⁴ Paragraph 179, Table 3 of the Hearings Report.

- *My overall conclusion is that the proposal will be consistent with, and not contrary to, all of the strategic objectives of the PDP and all other relevant objectives and policies.*
- *In my view less weight can be given to the PDP objectives and policies than the ODP in the decision-making process due to the uncertain nature of the final content of those objectives and policies which are yet to be shaped by plan change hearings, decisions and appeal processes. I note Mr Balchin shares a similar opinion³⁵.”*

67. In his evidence, Mr Twigley attached a marked-up version of the recommended conditions provided by Mr Balchin in his Addendum to the S 42A report dated 5 February 2021. At the end of the hearing, I addressed a number of specific conditions matters with three planners present (Mr Twigley, Mr Balchin and Ms Mako) and note that an updated and “agreed” set of conditions have been furnished to me by Mr Balchin on 5 March 2021. I address the question of conditions towards the end of this decision.

Outline of Submissions Presented on Behalf of Submitters

68. As I outlined in paragraph 8 of this decision, I have read all of the written submissions made on the application and have considered all of the points made as part of assessing the application. Further written and verbal submissions were made at the hearing held on 25 February 2021 by some of the submitters, as outlined below.

69. **Ms June Moseley** a resident of New Plymouth for 30 years made a submission opposing the application. At the hearing Ms Moseley presented a further statement³⁶ focusing on her concerns regarding the building’s height, its character in the New Plymouth CBD, pedestrian safety, the lack of underground parking and highway distraction. The main thrust of her evidence is that the building is simply too tall and in her words is “overwhelming” and “not human in nature”. In her statement, Ms Moseley presents, and in some instances challenges, a range of statements from the design experts (Mr Cullen, Mr Bain,

³⁵ Paragraph 180 of the Hearings Report

³⁶ Written statement by Ms J Moseley

and Mr Bhaskar) in support of her views on building height, and their effects on viewshafts and the surrounding built environment. She also draws on a 2014 Report on the New Plymouth CBD prepared by a Mr K Ramsay. In answer to a question Ms Moseley confirmed that she would not be able to see the proposed building from her own residence.

70. In her additional written statement Ms Moseley raises relevant questions relating to the amount of carparking, general highway safety and pedestrian safety on Brougham Street, which I note were addressed by Mr Skerrett later in the hearing (see paragraph 87 below).

71. **Ms Anne Sanderson** is a resident who lives at 336 Tukapa Street, New Plymouth and who also lodged a submission in opposition to the proposal. While she could not attend the hearing, she filed a further statement³⁷ with the Council which was read out by the Hearings Administrator. Her position is captured in the following paragraph of her statement.

I Have opposed the application on the grounds it will breach the height restrictions contained in the Operational DP by 12. 5 meters and if / when the proposed DP comes into effect it will still be 8 meters over. This breach will adversely impact the Heritage Character Area and the protected view shafts between the sea and the high places of New Plymouth.

72. Ms Sanderson is critical of the s 42A Report prepared by Mr Balchin around his view of the balance between the proposed height and mitigating factors and discusses Mr Bain's suggestion that a building height of 4 stories or 21.5 metres might be more appropriate. In summary Ms Sanderson's position is that she "is not satisfied that the applicant has attempted to fully mitigate the significant adverse effects the height of this building will have on the surrounding identified heritage building area of the CBD. I would ask them to consider reducing the height of the building at least in keeping with the PDP"

73. **Mr Terry Boon** made a submission in support of the application and presented a further statement at the hearing which he introduced as follows³⁸:

³⁷ Written Statement by Ms A Sanderson

³⁸ Written Statement of Mr T Boon.

This submission is not presented as an expert witness, but in my professional capacity as a Registered Architect supporting my Form 13 submission as a director of Noremac Properties Ltd dated 02 October 2020, and in response to some of the concerns raised by the objectors. I concur with the statement of evidence of Clive Cullen Architect.

74. In his statement Mr Boon discusses the history of a range of other New Plymouth buildings that he has been involved with and/or which he owns. He considers that the scale and design of the project is appropriate to its setting and discusses wider possibilities (not part of this application) for improving the pedestrian accessibility to the Huatoki River area and a future intention *“to connect visually and physically across Powerdham Street to the south linking with Sir Victor Davies Park”*.
75. In terms of the bulk and location in relation to heritage buildings in the area Mr Boon considers that given *“the transparency of the glazed façade and the upper level set back, the visual impact or bulk is successfully mitigated.*
76. **Ms Sarah Mako** is a Pou Taiao / Environmental Policy Advisor for Te Kotahitanga o Te Atiawa Trust (‘Te Kotahitanga’) with a planning qualification. She presented a statement of evidence supporting the submission of Te Kotahitanga o Te Atiawa Trust and Ngāti Te Whiti hapū. In her evidence, Ms Mako explains her *“specific experience with this application includes a site visit to the application site and along the Huatoki with New Plymouth District Council (‘NPDC’ or ‘Council’) officers on 17 July 2020; a review of the application; supported Ngāti Te Whiti hapū in the preparation and finalisation of the Cultural Impact Assessment (‘CIA’); a hikoi and workshop with representatives from Ngāti Te Whiti hapū, Te Kotahitanga, the applicant and the applicant’s development team and Council officers on 7 August 2020; and a follow up hui with those attendees on 20 August 2020³⁹”*
77. She explained that Ngāti Te Whiti is the Te Ati Awa hapū who are mana whenua over the area of the proposed development and use and that:

³⁹ Statement of Evidence of Ms S Mako, Paragraph 6.

“Te Ati Awa has strong historical, cultural and spiritual connections within this rohe, our environment is a part of who we are. In return, we as kaitiaki, have the responsibility of ensuring the mauri of these environmental and cultural resources is protected and enhanced for future generations.”⁴⁰

78. Ms Mako says that the submitters she represents commend the applicant on their on-going engagement through the application process, including supporting the CIA process. In her evidence she states⁴¹ that:

“The CIA detailed the actual and potential cultural effects from the proposed development. The CIA recommended conditions of consent to avoid, remedy, mitigate or offset the actual and potential adverse effects resulting from the proposal. It is noted that the applicant is supportive and has agreed to these conditions. I conclude that the adverse cultural effects would be no more than minor, subject to those conditions being secured”. and “The proposal is consistent with the objectives and policies within the Te Atiawa iwi environmental management plan Tai Whenua, Tai Tangata, Tai Ao.”

79. **Ms Julie Healey and Mr Haydn Te Ruki** attended the hearing on behalf of Ngāti Te Whiti hapū to talk to their submission in support of the KD application. Ms Healy introduced herself and Ngāti Te Whiti hapū with the following pepeha:

Ko Taranaki te Maunga

Ko Tokomaru te waka

Ko Uatoki te Awa

Ko Te Atiawa te iwi

Ko Ngati te Whiti te hapū

Ko Mawhera tonā kainga

80. She then provided an historical account of the area including during the pre-1840s period and during the arrival and settlement by people of European origin. This information was largely drawn from her own knowledge and from the CIA which she and Mr Te Ruki had helped prepare⁴². The CIA was included in the Applicant’s AEE as *Appendix N*. It is a comprehensive and well written document

⁴⁰ Statement of Evidence of Ms S Mako, Paragraph 9.

⁴¹ Statement of Evidence of Ms S mako, Paragraph 14.

⁴² Brougham Street/Huatoki Project Cultural Impact Assessment, Ngāti Te Whiti hapū, Adopted on 2 September 2020

and provided me with a full understanding of the site and both the historical and existing environment from a Maori cultural perspective. This is important considering the RMA s 6 (e) matter of national importance associated with the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, alongside the Kaitiakitanga responsibility under s 7(a) and Treaty of Waitangi matters cover in s 8 of the RMA.

81. At the conclusion of her presentation, Ms Healy made the following statement:

“Our aspirations for our Hapu are to leave a legacy for our moko moko by leaving a physical presence in this rohe by sharing our purakau (stories) in design. Nga mihi to Kevin and his team for acknowledging Ngati Te Whiti and giving us the opportunity to be part of this building. The footprint of Ngati Te Whiti through soft and hard landscape, design and planning will hopefully be achieved through the development”.

82. Mr Te Ruki gave a verbal presentation covering his knowledge and historical perspective relating to both the land and Huatoki Awa area in and around the application site. He told me that the site was in the general location of a Ngāti Te Whiti kainga called Mawhera and that this was a very important living area beside the river for the hapū. He outlined the long period of difficulty and upheaval that the hapū had endured through the European settlement period and following including the use of legislation such as the Public Works Act. He then described the process of positive and constructive engagement with Mr Doody and his team leading up to the preparation of the CIA and the dialogue, and the work done together working on the cultural design elements of the proposal. He acknowledged Ms Sarah Gibson, Ms Sarah Mako and Mr Sean Zieltjes as “Pou Taiao” for their assistance with the CIA preparation, and for their advice through the process.

Section 42 Reporting

83. The Council s 42A Report was completed on 2 February with the primary author being Mr Luke Balchin, a Senior Planner at New Plymouth District Council. Other contributors to the s 42A Report include:

- Two Peer Reviews of the Landscape and Visual Amenity Report (30 July 2020 and 2 February 2021 undertaken by **Mr Richard Bain**, Principal Landscape Architect, Bluemarble;
- A Heritage Review dated January 2021 undertaken by **Mr Daniel McCurdy**, from Geometria Limited.
- A Memorandum dated 2 February 2020 prepared by the NPDC Arboriculture Co-ordinator, **Mr Joshua Paice**.
- A Traffic review letter prepared by **Mr Andrew Skerrett** from Amtanz Ltd.

84. A s 42A addendum was tabled by Mr Balchin dated on 5 February 2021 which updated the recommended condition 21 in relating to NPDC Land encroachment and an associated advice note.

85. The s 42A report prepared by Mr Balchin provides a comprehensive assessment covering:

- Site Description and Surrounding Environment
- The Proposal
- Applicants Assessment of Effects and Additional Information
- Requirement for other Consents
- Statutory Provisions and Activity Status
- Public Notification Assessment
- Submissions
- Assessment of Environmental Effects
- National Regional and District Objectives and Policies Assessment
- Tai Whenua, Tai Tangata, Tai Ao – To Kotahitanga o Atiawa Taranaki Environmental Management Plan
- Part 2 Assessment
- Decisions on Applications Sections 104 – Gateway Test
- Conclusions
- Recommendation.

86. The s 42A report concludes by recommending consent be granted subject to conditions.

87. At the hearing, following the presentation of the applicants and submitter evidence and written statements, each of the s 42A contributing experts had the

opportunity to add any further comments and below I summarise my understanding of the key additional points made by each.

- Mr Balchin told me that nothing he had heard during the hearing altered his professional view to recommend that the application be granted resource consent. I note that after considering the evidence of Mr Twigley, the planner for the applicant, Mr Balchin had no particular disagreement with the planning position advanced by Mr Twigley. Mr Balchin also contributed to a subsequent question and answer discussion with me regarding conditions at the end of the hearing alongside the other Planners present, Mr Twigley and Ms Mako (see section on conditions below).
- Mr Bain re-confirmed his view in his 2 February Peer Review that in terms of over-height infringements will be **Moderate ‘adverse’** in relation to the Victoria Road viewshaft, and this could only be fully mitigated by reducing the building’s height. We discussed his “LVIA Conclusion” section of his 2 February Peer Review Report, which I reproduce below⁴³:

“The conclusion states the building fits well within the existing fabric with the exception of the Victoria Road Viewshaft.

The conclusion places considerable focus on the positive effects of the building - these being its overall aesthetic, green building practice, visual permeability at pedestrian level and connection to the Huatoki Stream, and cultural narrative.

*The LVIA concludes that there will be a change in effects on the scale of the existing environment but that the overall impact on character and amenity will be **Low**, but will achieve overall ‘**beneficial**’ contributions to the current and future planning and policy objectives. In my opinion, the previous sentence reflects the conundrum of this project. The building will potentially adversely affect the Victoria Road viewshaft and be highly recognisable/distinguishable in other viewshafts and viewpoints, but will also provide a number of benefits -*

⁴³ Peer Review of Landscape and Visual Impact Assessment Report Prepared by R Bain, 2 February 2021, Page 5.

these being in my view, cultural expression, urban vibrancy through increased worker density in the heart of the CBD, positive orientation and access to the Huatoki Stream, and a well-designed aesthetically pleasing architecture.

- Mr Bain maintained his view, as expressed in his Peer Review Report that a building of five stories rather six (21.5m tall vs 25.5m tall as proposed) would be preferable. Again, I have reproduced Mr Bain's rationale for this opinion below, as this issue, in my opinion is the only significant "expert disagreement" remaining in relation to the expert evidence that I have read and heard.

"Assuming the PDP Height Management Area is adopted, it accepts the potential effects created from 17m high buildings and considers that this height will contribute to the city's urban fabric. Given that the proposal is 25.5m tall (at the northern boundary), it is well outside the parameters of both the ODP and PDP. However, balancing the positive potential character and amenity effects of the building and taking its site-specific characteristics into consideration, the building could, in my opinion, be up to 21.5m tall (a five-storey building instead of six), and still provide the identified positive benefits as well as avoid potential adverse effects. If the building was 21.5m tall it would essentially be one storey taller than the 17m height limit in the PDP. While the PDP does not have any bonus floor provisions (as in the Auckland Unitary Plan), the principle could be applied to this project. Bonus floor provisions allow developers to increase the floor space of a development by providing public access or benefit, such as through-site access, public viewing decks, plazas, and so on. Given that the Brougham Street project includes ground level amenity adjacent to the Huatoki Stream and entrance and foyer design referencing the head of the Huatoki estuary, the principle of a 'bonus floor provision' could apply.

- Mr McCurdy told me that had nothing significant to add in terms of the evidence on heritage and archaeology which he had heard from the other experts.
- Mr Paice, the Council Arborist reconfirmed his professional view that he thought it more likely than not that the notable tree on the site had been planted rather than being self-seeded, and also disagreed with the position of Mr MacDonald regarding the way the tree developed over time, in relation to its surroundings.
- I requested that Mr Skerrett address the particular concerns raised by Ms Moseley in her written statement associated with the amount of carparking, general highway safety and pedestrian safety on Brougham Street. In relation to these specific matters Mr Skerrett told the hearing that as a professional traffic engineer, he was comfortable that the effects of the proposal (including the conditions proposed) were acceptable following his assessment of the information provided by the applicant, and his detailed knowledge of the site and the New Plymouth traffic and pedestrian network.

APPLICANTS RIGHT OF REPLY

88. On 5 March 2021, Mr Greive tabled the applicants written right of reply⁴⁴. As I have previously discussed in this decision report, Mr Grieve provided some more information from the applicant's project team on the questions regarding potential sunstrike and wind tunnel effects, which I had requested him to do. I record that I am satisfied by the answers provided, and that these matters will not cause any undue adverse effects.

89. Mr Grieve then discusses his view on the position of Ms Moseley as she presented to the hearing in her additional written statement. The main points he makes in relation to Ms Moseley's statement (which I have paraphrased below) are:

⁴⁴ Right of Reply for the Applicant, 5 March 2021

- He disagrees with the statement that he proposed height of the building was not “human in nature”, citing the fact that there are many buildings of this scale and taller that are used and appreciated by people in New Plymouth and around the world. He also says that the permeable nature of the glazed façade with proposed visual interaction with tenants and residents and across all floors will provide human connection. Finally, on this point, he says that all sides of the building can be engaged with, along with the cultural narrative that connects the exterior surface treatments (especially on the Huatoki awa side), meaning the building provides substantial elements that consider human scale.
- Mr Grieve challenges the credibility and relevance of the 2014 New Plymouth central area building height study prepared by M Ramsay. He says that at the time of this study Mr Ramsay was a student at Unitec, with no formal qualifications at the time, and in any event, Mr Ramsay was not available to answer questions associated with this study in this proceeding. Mr Grieve points out the narrow scope of the study and considers no weight should be given to it.
- Mr Grieve also points out that Mr Skerrett, a qualified traffic engineer, did not agree with Ms Moseley’s concerns regarding traffic and pedestrian safety, and parking.

EVALUATION AND FINDINGS

90. After considering all the information and advice before me I make the following findings.

Section 104D Gateway Tests

91. The two “gateway tests” under s 104D are:

(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or

(b) the application is for an activity that will not be contrary to the objectives and policies of—

(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or

(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or

(iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity

92. After considering the proposal and evidence in a holistic way, looking over the entire application and range of effects I agree with the analysis and reasoning of Messrs Balchin and Twigley (as outlined in their evidence and discussed in this decision) that the first “minor effects” gateway test (Section 104D (a)) is not met.

93. I also agree with the Planning evidence before me, and after considering the case law direction set out in the submissions of Mr Grieve, that the proposal is not contrary to the objectives and policies of the ODP and PDP (Section 104D (b)).

94. Given these findings one of the gateway tests of s 104D has been met, and I now consider the s 104 decision-making matters as follows.

Positive Effects / Benefits

95. I agree with Mr Balchin’s summary of the range of positive effects outlined in his evidence in the s 42A Report (Paragraph 172).

- Cultural values of Ngāti Te Whiti hapū
- Connectivity
- Enhancement of amenity values adjacent to the Huatoki River at this location
- Provision of greater diversity amongst building stock
- Economic effects
- Greater recognition of the Huatoki River.

96. I would add to this the positive effect associated with the high quality, sustainable design and construction, and materials use discussed in the evidence of Mr Bhaskar. This is supported by the requirement in the recommended condition 6 that the building achieve a minimum 4-star whole building NABERSNZ certified rating.

97. Overall, I find that the proposal as a whole will achieve significant positive benefits.

Adverse Environmental Effects

98. As I have already stated (Paragraph 87) the only material disagreement in the expert evidence before me relating to adverse environmental effects is the matter of the height of the building and the associated effects (regarding identified viewshafts, CBD character and the building's relationship with nearby heritage buildings). Before moving to consider the evidence on this building height matter, for completeness I record the following findings on other effects:

- In relation to the Willow Myrtle Tree (listed as a notable tree in Schedule 4 of the PDP) I find that after considering the evidence before me the effect of the removing this particular tree as part of the proposal is minor, given its common nature and lack of any compelling evidence as to its historic value or interest. I consider the professional disagreement between the two arborists Mr MacDonald and Mr Paice as to the origin of the tree (whether it was planted or self-seeded), and its growing pattern is not material to my finding regarding its removal.
- I find that there will not be any significant shading effect of the building on the surrounding area, based on the evidence of Messrs Murphy and McEwan.
- I find that there will not be any significant adverse effects associated with traffic or pedestrian safety, or carparking based on the expert evidence of Mr Skerrett.
- I find that the issue of "precedence" raised in the submission of Ms Laird is not a relevant matter, as outlined in the planning evidence of Messrs Twigley and Balchin.

99. Turning to the issue of building height and its associated effects, it is apparent from the expert evidence given by the architecture and landscape architecture experts who have addressed this issue (Messrs Bain, McEwan, Cullen, and Bhaskar), that all agree that some level of additional height over and above that specified as a permitted activity standard in the ODP and PDP is justified, given the positive benefits of the proposal.

100. Messrs McEwan, Cullen and Bhaskar all consider the six-story proposal - 25.5m tall, with the additional mitigation measures they have developed in

response to feedback from Ngāti Te Whiti, Mr Bain and submitters, is appropriate for this site.

101. Mr Bain is more cautious. After careful consideration of the proposal as he reports in his two Peer Review reports commissioned by NPDC, his preference is for a five-story building – 21.5m tall. This is based on applying a “bonus floor” concept to recognise the positive benefits of the proposed sustainable and culturally focused design, along with the vibrancy the building will bring to this part of the New Plymouth CBD. However, relevant to the height calculation and effects, the evidence of Mr McEwan is that when viewed from south along the Victoria Street viewshaft the proposed building is in fact only 22.8m in height (as the additional 2.7m is below ground basement level). This 1.3m difference would be very hard to discern from this key viewshaft.
102. After considering all relevant expert effects related evidence before me on this issue (including the recommendation in the s 42A report) and following my own site visits to the project site, surrounding CBD area, Huatoki Awa corridor and the viewshaft locations, I find that the 6-story proposal set out in the application is appropriate and acceptable.

Part 2 Matters

103. I support and adopt the Part 2 assessment provided in the evidence of Messrs Balchin and Twigley.

Planning Instruments

104. I support and adopt the assessment of relevant national, regional and district planning instruments as outlined in the evidence of Messrs Balchin and Twigley.

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 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.

Reasons

The reasons for this decision are:

- a) The proposal will have significant positive effects and benefits. These relate to:
 - Recognition in the building design and concept of the cultural values of Ngāti Te Whiti hapū
 - Better connectivity within this part of the New Plymouth CBD
 - The enhancement of amenity values adjacent to the Huatoki River at this location
 - Provision of greater diversity amongst building stock (through the provision of high-quality sustainable building design and construction)
 - Economic benefits for the district
 - Greater recognition of and accessibility to the Huatoki River.
- b) Based on the evidence, the identified potential adverse effects of the proposal, when considered in light of the mitigation measures proposed and resource consent conditions will be minor and acceptable.
- c) The proposal is not contrary to the objectives and policies of the New Plymouth ODP and PDP.
- d) The proposal does not run counter to any of the relevant national or regional planning instruments.
- e) Based on my overall broad judgement, including consideration of the Part 2 matters, granting the application as proposed best meets the sustainable management purpose of the RMA.

Signed:



Stephen Graeme Daysh

Independent Hearings Commissioner

8 April 2021

Schedule A – Resource Consent including Conditions



Te Kaunihera-ā-Rohe o Ngāmotu

NEW PLYMOUTH DISTRICT COUNCIL

newplymouthnz.com

RESOURCE CONSENT LUC20/47704

Granted under Sections 95A, 95B, 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 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.

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 made to council and titled Resource Consent Application and Assessment of Environmental Effects, Brougham Street Commercial Development – Rev 2 – Date 04/09/2020); 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	31/08/2020	Proposed L2,3,4,5 Plan
A2.04	25/08/2020	Proposed L6 Floor Plan
A3.01	25/08/2020	Elevations
A3.02	25/08/2020	Elevations
A4.01	25/08/2020	Cross Sections
A9.01	03/09/2020	Shade Diagrams Summer Solstice
A9.02	03/09/2020	Shade Diagrams Winter Solstice
A9.04	07/12/2020	Shade Diagrams
A9.05	07/12/2020	Shade Diagrams

Façade Composition, External Building Form and Top Floor Design Features

2. Final detailed design plans of the building shall be submitted to Council's Planning Lead, or nominee, for certification prior to the application for a building consent being lodged. The final detailed design plans shall confirm the following building design elements:
 - i. A glazed façade design and finish which achieves a Visual Light Transmission (VLT) of between 50-60%.
 - ii. The final cultural narrative and fritting design on the external glass facades as determined in consultation with Ngāti Te Whiti hapu by agreement under the Kaitiaki Forum condition.
 - iii. The final cultural narrative design on the external stairwell as determined in consultation with Ngāti Te Whiti hapu under the requirements of the Kaitiaki 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 Kaitiaki Forum
 - v. The confirmed location of the proposed setback internal walls.
 - vi. The finish of the internal timber structural components.
 - vii. The treatment and external materials to be utilised for the top floor apartment; and
 - viii. The treatment and external materials to be utilised for all remaining building elements.

The final detailed design plans shall ensure that the buildings proposed architectural treatment and finished appearance is consistent with the plans and information referenced at Condition 1. All works shall then be carried out with the details certified by the Council, and thereafter retained and maintained, to the satisfaction of the Council's Planning Lead, or nominee.

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 and in respect of the glazing achieve a VLT of between 50-60%.
4. The sixth level (top) balustrade shall be glazed as shown on the consent application drawings referenced A3.01 and A3.02 under condition 1.
5. The final detailed design plans 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 architect and provided to Council's Planning Lead prior to the building consent being lodged. The report shall specifically address Conditions 2, 3 and 4 above.

NABERSNZ Certification TM (National Australian Built Environment Rating System - NZ)

6. The building shall achieve a minimum of a 4 star whole building NABERSNZ certified rating. Evidence of this certified rating shall be provided to the Council Planning Lead within 2 years of the building being fully occupied.

Cultural Items and Kaitiaki Forum

7. 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.
8. 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.
9. 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

10. 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.

11. 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.
12. A copy of the Forum Collaboration Agreement shall be provided to the New Plymouth District Council Planning Lead or nominee.

Building Height

13. The maximum building height, including any ancillary components, shall not exceed 25.5 metres above the lowest existing ground level on the site at the time of granting of this consent and measured from a recognised Taranaki Datum height within the site.
14. A survey certificate provided by a Licensed Cadastral Surveyor shall be supplied to the Council at foundation pour for the concrete slab to confirm slab height is as per the approved building consent plans. Then a further survey certificate shall be supplied within one calendar month following practical completion of the building to confirm that the overall height of the building does not exceed 25.5m as per condition 13.

Landscaping

15. A landscaping plan demonstrating the measures being applied to soften the appearance of the top level apartment shall be submitted for certification to the Council's Planning Lead, or nominee, prior to the building consent being lodged. The landscaping plan shall detail the landscape planting on the top level apartment as proposed within the BOON Landscape & Visual Impact Assessment, Revision A, Dated 1st September 2020.
16. Landscaping in accordance with the approved landscaping plan shall be implemented within the first planting season after the completion of the construction of the building.

17. On completion of the landscaping, a landscape architect shall certify that these works have been completed in accordance with the approved landscaping plan and provide this certification to the Council's Planning Lead no less than 30 days following the completion of the landscape planting.
18. 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 as soon as reasonably possible.

NPDC Land Encroachment

19. 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 Note 1

- 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 NPDC-owned land.*
- 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 process would need to be completed prior to any application for a building consent.*
- d) *The sale and purchase and leasehold values associated with the above will need to be determined through an independent valuation process.*

Basement Car Park and Vehicle Access

20. 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: A2.01, Date 12/01/2021.

Archaeology

21. 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 prior to the building consent being lodged.

Earthworks and Construction Management

22. At least 15 days prior to any earthworks commencing on the site, the consent holder shall submit to the Council's Planning Lead, or nominee, for certification the following:
 - a) A copy of the Construction Traffic Management Plan (CTMP) to Council's Planning Lead, or nominee. The CTMP will demonstrate how it will manage construction traffic to:
 - i. Protect public safety;
 - ii. Minimise delays to road users;
 - iii. Minimise disruption to property access; and
 - iv. Inform the public about any potential impacts on the road network in advance to the works occurring.

The CTMP shall include, but not be limited to:

- i. Details of traffic management activities and sequencing proposed for the Project;
- ii. Methods for managing construction related traffic movements;
- iii. Provisions to ensure that, as far as practicable, road users will not be held up by construction activities for an unreasonable period of time (such time to be specified within the CTMP); and
- iv. Provisions for emergency services to have access along SH45 24 hours per day.

b) An Earthworks Management Plan (EMP) which identifies specific procedures associated with stormwater and soil management, dust and sediment control measures. The Earthworks Management Plan must include the following:

- i. Dates for earthworks, timing and proposed duration;
- ii. Details of the sediment and dust control measures to be implemented on the site;
- iii. Measures for avoiding any carry of soil or any other material onto public roads;
- iv. Proposed earthworks traffic route;
- v. No undermining of any adjoining areas of road reserve; and
- vi. 24 hour contact phone numbers of the designated site liaison person/s responsible for handling queries and complaints regarding the earthwork activities.

c) A Construction Management Plan (CMP) which identifies specific procedures associated with site incidents and prevention of potential effects on the surrounding environment and community, proposed long-term site management, occupational safety and health issues and measures. The Construction Management Plan must include:

- i. A copy of the consent conditions;
- ii. 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;
- iii. An engagement process to inform adjoining business owners of the timetable of construction work;
- iv. Methodology for logging and handling queries and complaints regarding the construction programme and all construction activities;
- v. Proposed transportation route/s;
- vi. Work hours, scheduling and timing of vehicle movements;
- vii. 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;
- viii. The location and design of a temporary construction vehicle access point and traffic circulation through the site over the entire construction period;
- ix. Storage of construction plant and material; and
- x. Notification procedures between the consent holder and the Council's monitoring planner, in respect of any changes to the approved CMP.

23. Once the CTMP, EMP and CMP are certified, all earthworks and construction activities shall be undertaken in accordance with these management plans.

24. The consent holder must pay the council's actual and reasonable costs incurred to ensure compliance with the conditions attached to this consent.

Water Connections

25. 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 Practice SNZ PAS 4509:2008.

Advice Note 2

- a) *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

26. Prior to lodging a building consent a stormwater management report shall be provided to Council's Planning Lead, or nominee for certification. The stormwater report shall detail how all stormwater on site, including the basement carpark, is going to be managed and treated prior to discharge to the receiving environment..

Advice Note 3

- a) *NPDC's Water and Waste Department shall be required to 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.*

Utilities

27. Prior to the commencement of any site works associated with the project, the consent holder shall accurately identify the location of existing underground network utilities (www.beforeudig.co.nz). Construction plans must identify the locations of the existing network utilities and appropriate physical indicators must be placed on the ground showing specific surveyed locations. All construction personnel, including contractors, are to be made aware of the presence and location of the various existing network utilities which traverse, or are in close proximity to the project area, and the restrictions in place in relation to those existing network utilities.

Roading

28. 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).

Advice Note 4

- a) 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*

General 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 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.*
- 3. A general commercial development contribution will be assessed and charged to the consent holder.*
- 4. Under section 125 of the Resource Management Act 1991 this consent lapses five years from the date it is granted unless given effect to prior to this date.*