

# Decision following the hearing of an application for resource consent under the Resource Management Act 1991



## Proposal

Subdivision consent to undertake a boundary adjustment between two existing properties, and land use consent for the construction of a new dwelling, associated earthworks, and tree removal.

These resource consents are **GRANTED**. The reasons are set out below:

<b>Application numbers:</b>	SUB60365047 / LUC60365048 (BUN60365046)
<b>Site address:</b>	27 Moreton Drive and 6 Glamis Avenue, Manly
<b>Applicant:</b>	Roger Spooner Family Trust
<b>Hearing commenced:</b>	9.30am Tuesday 19 and Wednesday 20 October 2021 Online (via Microsoft Teams)
<b>Hearing panel:</b>	Philip Brown (Chair) Peter Kensington
<b>Appearances:</b>	<p><u>For the Applicant:</u> Roger Spooner Family Trust represented by: Russell Bartlett QC, Legal Counsel Roger Spooner, Applicant Martin Green, Planning Consultant Christian Anderson, Architect Bridget Gilbert, Landscape Architect Professor Lennard Gillman, Ecologist Richard Peers, Arborist Maurice Harris, Engineer</p> <p><u>For the Local Board</u> Janet Fitzgerald for the Hibiscus and Bays Local Board</p> <p><u>For the Submitters:</u> Walter Titchener Howard Small The Tree Council represented by Sean Freeman (Chair) and Ken Scarlett (Arborist)</p> <p><u>For Council:</u> Steve Seager, Team Leader</p>

	Claire Phillips, Planner (consultant) Stephen Quin, Landscape Architect Gavin Donaldson, Senior Arborist West Fynn, Heritage Arborist Simon Andrew, Auckland Transport Ray Smith, Development Engineer Bevan Donovan, Hearings Advisor
<b>Hearing adjourned</b>	Wednesday 20 October 2021
<b>Commissioners' site visit</b>	Monday 18 October 2021
<b>Hearing closed:</b>	Monday 15 November 2021

## Introduction

1. This decision is made on behalf of the Auckland Council (“**the Council**”) by Independent Hearing Commissioners Philip Brown and Peter Kensington, appointed and acting under delegated authority under section 34A of the Resource Management Act 1991 (“**the RMA**”).
2. This decision contains the findings from our deliberations on the application for resource consents and has been prepared in accordance with section 113 of the RMA.
3. The application was publicly notified on 7 May 2021. A total of 19 submissions were received, with 14 in support and 5 in opposition. There were no late submissions.
4. The applicant also obtained several written approvals from nearby property owners and occupiers, which were included with the application. These approvals were from the owners and occupiers of all contiguous properties and a number of other sites that are located nearby or overlook the applicant’s land. One of the adjacent owners that had previously provided written approval, Mr Small of 2 Glamis Avenue, made it clear before and during the hearing that he generally supported the proposal but had some concerns regarding stormwater disposal, flooding and stream erosion. With the exception of Mr Small, we have disregarded the effects of the proposal on those persons that provided written approvals.

## Summary of proposal and activity status

5. The applicant proposes subdivision consent to undertake a boundary adjustment between two existing properties, and land use consent for the construction of a new dwelling and associated earthworks and tree removal. The land use consent for tree removal relates to a notable *Macrocarpa* tree.
6. The properties are located at the western end of Manly Beach. A formed cul-de-sac at the northern end of Moreton Drive provides frontage to the site at 27 Moreton Drive, with the western and northern boundaries being defined by the unformed road

reserve of The Esplanade. That legal road effectively comprises part of Manly Beach. We were advised that it is regularly used for access by beach users, and we observed that during our site visit.

7. A number of large trees are located on the site and on the adjoining road reserve, including a *Macrocarpa* tree and a *Pohutukawa* tree that are scheduled as 'Notable Trees' in the Auckland Unitary Plan Operative in Part ("**AUP**").
8. Other than the trees, the properties contain no dwellings and are largely comprised in grass and are relatively flat, other than the slight undulations of the dune landform. Surrounding sites are occupied by relatively substantial houses in a variety of architectural styles.
9. The proposal encompasses two main elements, being the boundary adjustment between two existing lots and the establishment of a new dwelling on one of the newly defined sites.
10. The boundary adjustment would alter the existing boundary between 27 Moreton Drive and 6 Glamis Avenue. The site at 27 Moreton Drive currently has an area of 1,239m<sup>2</sup>. It is vacant, as the previously existing dwelling was demolished some time ago. This property is to be increased in area to 1,592m<sup>2</sup> and is shown as Lot 1 on the proposed scheme plan of subdivision. Lot 1 will gain access via a new right of way (Right of way A) over Lot 2 from Glamis Avenue, utilising a 4.0m wide crossing. The adjoining site at 6 Glamis Avenue currently has an area of 1,275m<sup>2</sup> and is also vacant of buildings. This property is to be decreased in area to 953m<sup>2</sup> and is shown as Lot 2 on the proposed scheme plan. Lot 2 will continue to gain access from Glamis Avenue through the same right of way that will serve Lot 1. Service connections will be provided to both lots.
11. The applicant proposes to establish a new double-storey dwelling on Lot 1. The ground floor will have an area of 411m<sup>2</sup>, and include garage space sufficient to accommodate four cars). The upper floor is smaller, with an area of 152m<sup>2</sup>. Earthworks are required to create a platform for the development, together with landscape structures (a pavilion, and outdoor fireplace) and the removal of trees that are established on or close to the building platform.
12. Four *Monterrey Cypress* (*Macrocarpa*) trees are proposed to be removed along with some other smaller shrubs and plants. One of the *Macrocarpa* trees is protected by the AUP through its status as a Notable Tree (reference 2316) while another is located in the road reserve so is protected on that basis. The other trees to be removed are not protected and consent is not required for their removal. Works are also proposed within the root zones of three *Pohutukawa* trees growing adjacent to the western boundary of Lot 1.
13. The proposal includes on-site mitigation planting with an emphasis on endemic coastal species. Off-site planting, on the adjacent road reserve, is also proposed by the applicant. That planting is primarily in response to the Tree Asset Owner

Approval, which has been provided by Auckland Council (on behalf of Auckland Transport) for the removal of the existing Macrocarpa tree located within the road reserve.

14. The proposal requires resource consent for the following reasons:

**Subdivision consent (s11 RMA) – SUB60365047**

- E38.4.1(A11) - subdivision of land within the coastal erosion hazard area is a restricted discretionary activity.
- E38.4.2(A32) – a boundary adjustment subdivision that will create sites that exceed 10 per cent of the net site area of each site is not provided for in Tables E38.4.1 and E38.4.2 is a discretionary activity.
- E38.4.2(A16) - vacant sites subdivision involving parent sites of less than 1ha complying with Standard E38.8.2.3 is a restricted discretionary activity.

**Land use consent (s9 RMA) – LUC60365048**

- D13.4.1(A7) - removal of a notable tree is a discretionary activity. The proposal involves the removal of notable tree 2316 Monterey cypress (Macrocarpa).
- E12.4.1(A5) - earthworks within a residential zone greater than 1,000m<sup>2</sup> up to 2,500m<sup>2</sup> is a restricted discretionary activity. Earthworks are proposed over an area of 1,593m<sup>2</sup>.
- E12.4.1(A8) - earthworks within a residential zone greater than 250m<sup>3</sup> up to 1,000m<sup>3</sup> is a restricted discretionary activity. Earthworks are proposed with a volume of 900m<sup>3</sup>.
- E15.4.1(A21) - tree alteration or tree removal of any indigenous tree over 3m in height within 20m of mean high-water springs within a residential zone is a restricted discretionary activity. Works are proposed within the root zone of three Pohutukawa trees that are located within 20m of MHWS.
- E15.4.1(A22) - tree alteration or tree removal of any indigenous tree over 3m in height, that is within 150m of mean high-water springs is a restricted discretionary activity. Works are proposed within the root zone of three Pohutukawa trees that are located within 20m of MHWS.
- E17.4.1(A10) - tree removal of any tree greater than 4m in height or greater than 400mm in girth is a restricted discretionary activity within the road. Removal of a Monterey Cypress tree over 4m in height is proposed within the (unformed) road reserve adjacent to Lot 1.

- E36.4.1(A4) – The proposed dwelling is located on land in the coastal erosion hazard area, which is restricted discretionary activity.
- E36.4.1 (A41) - diverting the entry or exit point, piping or reducing the capacity of any part of an overland flow path is a restricted discretionary activity. The proposal includes the piping of an overland flow path.

C.1.9(2) – an activity that that is classed as a permitted, controlled or restricted discretionary activity but that does not comply with one or more of the standards applying to that activity is a restricted discretionary activity. The proposal does not meet the Residential - Single House Zone standards in the following aspects:

- Standard H3.6.7. Height in relation to boundary. Buildings must not project beyond a 45-degree recession plane measured from a point 2.5m vertically above ground level alongside and rear boundaries.

Gutter Infringements:

- Garage 665mm wide x 250mm high
- Piano Room 25mm wide x 250mm high

Chimney / Flue infringements:

- Piano Room: 1580mm wide x 960 mm depth x 2170mm high and 250mm wide x 250mm
- Main House: 1580mm wide x 1730mm depth x 1840mm high
- Standard H3.6.8. Yards. Buildings shall be setback 3 metres from the front boundary and 1 metre from the site and rear boundaries. The pavilion is to be located 2.265 metres to the front boundary and its eaves of the roof structure are located 2.54 metres to the front boundary. The main dwelling is located 2.15 metres to the front boundary and the eaves are located 1.525 metres.
- Standard H3.6.10 Building coverage. The maximum building coverage shall not exceed 35% of net site area. The total building coverage is 593m<sup>2</sup> or 37.22% of the net site area.

15. Overall, the proposal has been considered as a **discretionary activity** due to the proposed removal of the Notable Tree (*Macrocarpa*) and the extent of the boundary adjustment. We are satisfied that the various consents have overlapping effects and are interrelated to the extent that they should appropriately be bundled and considered together.

## **Procedural matters**

16. There were no late submissions received, and no party raised any procedural issue that the Commissioners were required to address.
17. We record that the hearing was conducted in an online format, due to the 'COVID-19' lockdown restrictions that were in place for Auckland at the time.

## **Background**

18. The application as lodged originally sought to provide access to 27 Moreton Drive directly from the end of that road, passing over a short length of unformed road. That aspect of the proposal would have required resource consent for works in the root zone of the Notable Pohutukawa tree.
19. However, the applicant amended the application prior to the hearing to provide access to 27 Moreton Drive via an easement over 6 Glamis Drive. That amendment avoided the need to undertake earthworks within the dripline of the Notable Pohutukawa tree.
20. We were advised that the applicant has obtained Tree Asset Owner Approval for removal of the Macrocarpa tree that is located outside of the site boundary on the adjacent road reserve. Resource consent is still required to facilitate its removal.

## **Relevant statutory provisions considered**

21. In accordance with section 104 of the RMA, we have had regard to the relevant statutory provisions including the relevant sections of Part 2 and sections 104B, 106, 108, 108AA and 220.

## **Relevant standards, policy statements and plan provisions considered**

22. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statements and plan provisions of the following documents.
  - National Policy Statement on Urban Development (NPSUD) – s104(1)(b)(iii)
  - New Zealand Coastal Policy Statement 2010 (NZCPS) – s104(1)(b)(iv)
  - Auckland Regional Policy Statement (RPS) – s104(1)(b)(v)
  - Auckland Unitary Plan – section 104(1)(b)(vi).
23. We also considered the following other matters to be relevant and reasonably necessary to determine the application in accordance with section 104(1)(c) of the RMA.
  - Auckland's Urban Ngahere (Forest) Strategy.

24. We record that the submissions were fully considered but we do not see those as a s104(1)(c) matter, given that we must consider them (alongside the application for resource consents) in accordance with s104(1).

### **Local Board comments**

25. Local Board comment was sought and obtained from the Hibiscus and Bays Local Board. The Board expressed support for the application, including the removal of the notable tree but requested that suitable mitigation planting is undertaken. One of the Board members, Janet Fitzgerald, also addressed the Commissioners at the hearing and confirmed that the Board supported the removal of the Notable tree and the other trees proposed to be removed. We have taken the Board's views into account in making our decision.

### **Summary of evidence heard**

26. The Council planning officer's section 42A recommendation report (the "**s42A report**") was prepared by Ms Claire Phillips, a consultant planner. It was circulated prior to the hearing and taken as read. Ms Phillips recommended that consent be granted, subject to conditions.
27. The evidence presented at the hearing responded to the issues and concerns identified in the s42A report, the application itself, and the submissions made on the application.
28. The evidence presented at the hearing is briefly summarised below.

### **Applicant**

29. Legal submissions on behalf of the applicant were presented by **Russell Bartlett QC**. Mr Bartlett introduced the proposal and set out the principal legal issues that arose from the application. Mr Bartlett identified that the key issues were those related to the proposed removal of the scheduled Macrocarpa tree.
30. Mr Bartlett set out the pivotal RPS and District Plan provisions under the AUP that he considered to be relevant to the proposal to remove the Notable Tree on the site. He submitted that any decision to remove the tree needs to be considered squarely within the framework established by those provisions.
31. **Roger Spooner** is the applicant's representative, being a trustee of the Roger Spooner Family Trust. His evidence traversed his association with Manly throughout his life and explained the process by which the site was acquired. His intention is to build a new home on 27 Moreton Drive for himself and his family to reside in.
32. Mr Spooner considers that the Macrocarpa tree was scheduled at the request of the previous owner of the site, based on his clear recollection from discussions with them when they still owned the land. Mr Spooner confirmed his intention to undertake replanting and landscaping of the site, and he provided some photographs

to demonstrate the standard of landscaping that he has established at his current Manly residence.

33. **Christian Anderson** is the project architect. He described his association with the project and the considerations that have shaped the design of the proposed dwelling. Mr Anderson considers that the Notable Macrocarpa tree would have significant adverse effects on the proposed building platform, particularly through shading, and would preclude a high-quality architectural design response for any residential use of the site.
34. **Maurice Harris** is a consulting civil engineer. He provided written evidence addressing the proposal to pipe and fill the open watercourse that flows through the site, and the hydrological effects of that in terms of flooding of adjacent sites. Mr Harris considers that the works on the site will have no effects on adjacent properties, including Mr Small's site at 2 Glamis Avenue that also includes a length of the same watercourse.
35. Arboricultural evidence was provided by **Richard Peers**, a qualified arborist. Mr Peers confirmed that the Notable Macrocarpa tree is in a good state of health and described the previous pruning that has resulted in its current form. Mr Peers considered that the tree would be vulnerable to failure of a large part of its crown once it was exposed to differing wind forces following removal of surrounding trees. He stated that there would be a significant element of unpredictability around how the tree would respond to high wind events once standing in a more isolated situation. He also suggested that 'serious' pruning of the tree would likely be required to remove existing decay and reduce crown weight, which may then diminish the attributes of the tree, including its size.
36. Professor **Lennard Gillman** holds a PhD in forest ecology. Professor Gillman's evidence set out his opinion as to the heightened safety risks associated with Macrocarpa trees, based on a review of published data that indicates a particular susceptibility to structural failure for this species. He noted that the incidence of failure is often not signalled by any obvious defect in the tree.
37. Professor Gillman also considers that the Notable Macrocarpa tree would not meet or come close to the qualifying factors in the RPS that would allow it to be classified as a Notable tree, if assessed today. He also opined that removal of the exotic trees and implementation of the proposed replacement tree planting would help to restore the natural character of the coastal environment.
38. **Bridget Gilbert** is an experienced landscape architect. Her evidence covered the landscape, natural character and visual effects of the proposed tree removal and the replacement mitigation planting. Ms Gilbert concluded that the adverse landscape effects of the proposal would be low due to the limited visual appeal, visibility, natural character and landscape value of the trees proposed to be removed, with positive landscape effects (over time) resulting from the likely enhanced health and form of

the remaining Notable Pohutukawa, and the improved visual fit of the mitigation planting.

39. Planning evidence was provided on behalf of the applicant by **Martin Green**. Mr Green addressed the relevant planning framework, with particular discussion of the regional and district objectives, policies and rules relevant to the proposal to remove the Notable tree. His assessment also included the relevant objectives and policies relating to the Residential - Single House Zone. Mr Green considers that the proposal is consistent with the relevant objectives and policies of the AUP.
40. Mr Green set out his investigations into the circumstances pertaining to the scheduling of the Macrocarpa tree, which he considers supports his conclusion that the tree was scheduled on the basis of it being nominated by the previous land owner. These investigations included liaison with policy planner Alison Pye, from the Council's Plans and Places department. Additionally, Mr Green confirmed that the applicant was not the owner of the properties subject to this application, at the time of submissions on the then Proposed Auckland Unitary Plan.
41. Mr Green was of the opinion that the effects of the proposal are appropriate and can be mitigated through the compensatory planting that is proposed.
42. Brief written statements of evidence were also tabled from **Leigh Dooley** (geotechnical engineering matters), **Aaron Bell-Booth** (landscape design), and **Thomas Bretherton** (surveying). Those statements simply set out each expert's involvement in the project and their conclusions. None of the matters that they raised were controversial or contested through the hearing.
43. A written memorandum was also provided by **Stuart Barton**, an arborist. Mr Barton undertook a climbing survey of the three large Macrocarpa trees (including the Notable tree). His memorandum recorded the extent and nature of pruned branches.
44. Mr Bartlett provided oral closing submissions at the hearing, and a transcript of his submissions was provided after all the evidence was heard and the hearing was adjourned.

### **Submitters**

45. **Walter Titchener** is a long-term resident of Manly and currently resides at the property immediately east of 27 Moreton Drive. He supported the application to remove the trees and recounted instances of Macrocarpa trees dropping branches to support his opinion that the species poses a safety risk.
46. **Howard Small** lives at 2 Glamis Drive, which abuts the applicant's site to the south and west. Mr Small had provided written approval to the project, but made it clear that he opposed one aspect of what was proposed. His concerns relate to the proposal to pipe the open watercourse on the site, which also flows through his property. He considers that the changes to hydrology, water flows, and volume of

water may lead to erosion within the stream length on his land. Mr Small indicated that he does support the removal of the trees on the applicant's site.

47. **Sean Freeman** is the Chair of The Tree Council, and an arborist. Mr Freeman supported the Tree Council's submission in opposition and provided evidence opposing the proposal to remove the Notable Macrocarpa tree. Mr Freeman considers that there is no expert evidence provided by the applicant to suggest that the tree is likely to fail or create a significant safety hazard, and believes that the level of risk had been misrepresented by the applicant.
48. Mr Freeman did not agree with Mr Green's assertion that the presence of the tree effectively rendered the site incapable of reasonable use.
49. **Ken Scarlett** is an arborist and appeared in support of The Tree Council's submission in opposition. Mr Scarlett considers that the Notable Macrocarpa tree is deserving of its scheduled status. He undertook an arboricultural assessment of the tree, focused on its health, ecosystem services values, and its tolerance to construction of buildings. Mr Scarlett concluded that the tree is in good health and shows few signs of any structural concerns.

## Council

50. **Claire Phillips** confirmed her recommendation to grant consent, subject to conditions. Ms Phillips stated that she did not support the imposition of a condition specifying recessive colours for the proposed dwelling (as recommended by Mr Quin), noting that an application for resource consent for the dwelling alone (without the tree removal component) would be assessed as a restricted discretionary activity. In those circumstances, the relevant assessment criteria refer to the established built character of the neighbourhood as the appropriate reference point.
51. Council arborists **West Fynn** and **Gavin Donaldson** remained opposed to the removal of the Notable Macrocarpa tree. Neither Mr Fynn nor Mr Donaldson considered that the tree posed a significant safety risk, based on the expert evidence available. Mr Fynn stated that he would assess the tree as notable based on the relevant AUP criteria for scheduling. Mr Fynn also suggested that the site could be developed for residential purposes, while keeping the Notable Macrocarpa tree; and that, in his opinion, the proposed planting will not achieve a similar scale of tree canopy as that which currently exists on the site.
52. Council landscape architect **Stephen Quin** read a brief supplementary statement outlining his conclusions in terms of landscape effects and appropriate mitigation. He maintained his opinion that restrictions on the colour of the proposed dwelling would be appropriate in order to maintain natural and landscape character.
53. Ms Phillips read a brief written statement from **Ray Smith**, Council's development engineer. Mr Smith had reviewed the evidence of Mr Small and Mr Harris, and stated that he was satisfied that the proposal would not give rise to significant

adverse effects in terms of natural hazards, erosion or inundation. Mr Smith does not support the imposition of a stormwater detention requirement (as suggested by Mr Small) as he considers that this would potentially exacerbate existing flooding.

### **Principal issues in contention**

54. After an analysis of the application and evidence (including proposed mitigation measures), undertaking a site visit, reviewing the s42A report, reviewing the submissions and concluding the hearing process, the proposed activity raises a number of issues for consideration. The principal issues in contention are.

- *Would the effects on the environment be acceptable?*
- *Is the proposal consistent with the relevant objectives, policies and assessment criteria of the Auckland Unitary Plan?*
- *Can the adverse effects of the proposal be appropriately mitigated with conditions of consent?*

### **Main findings on the principal issues in contention**

55. Our main findings on the principal issues that were in contention are set out below.

#### ***Would the effects on the environment be acceptable?***

56. The adverse effects of the proposal that were in contention related to two main aspects of the proposal, being the effects relating to piping and filling the watercourse and the effects of removing the Notable Macrocarpa tree.

57. In relation to the first of these matters, we are satisfied that Mr Small's concerns about consequential effects on his property from piping the watercourse on the site can be addressed through conditions of consent. Evidence from Mr Harris and Mr Smith, who have technical expertise in these matters, confirms that there are not expected to be any adverse effects on Mr Small's property. Erosion protection would be required at the end of the pipe and detention is not favoured at the lower part of the catchment.

58. The other potential adverse effects relate to the proposed tree removal. We were provided with considerable evidence regarding the Notable Macrocarpa tree, relating to its health, vigour, appearance, structural integrity, and landscape values. We were also provided with evidence relating to the effects of the tree on the use of the site for residential purposes, primarily with regard to shading but also addressing safety issues.

59. We acknowledge the thrust of Professor Gillman's evidence regarding the unpredictability of Macrocarpa as a species, and the frequent absence of any warning of impending structural issues within apparently healthy Macrocarpa trees. While we do not necessarily question the veracity of the evidence or the information

it is based on, a conclusion that all Macrocarpa trees are inherently dangerous is not of great assistance to us in considering the effects of the Notable Macrocarpa tree on the safety of people on the site and using the adjacent access to the beach.

60. From our site inspection and from other evidence before us, it was clear that some of the Macrocarpa trees had lost branches at times. That in itself suggests a safety issue to an extent, although all trees will have some potential to drop branches and limbs when unhealthy or under wind load.
61. Based on the evidence, our conclusions in relation to questions of safety are that there is likely to be a level of risk associated with the Macrocarpa trees but that the risk is not so demonstrably great that it effectively determines the application. Rather, the safety risks posed by the trees are one factor that we have weighed amongst other effects of the Macrocarpa trees and their proposed removal.
62. We consider that there are other effects that may be more significant if the Notable Macrocarpa tree is to be retained on the site. The shading diagrams prepared by Mr Anderson demonstrate relatively severe shading across much of the 27 Moreton Drive portion of the site. We consider that this, coupled with the physical domination created by the scale of the tree, has and will continue to have significant adverse effects on residential amenity within the site.
63. In terms of landscape effects, we accept the expert evidence of Ms Gilbert (and Mr Quin) that the removal of the Notable Macrocarpa tree will not have significant adverse effects on the landscape and visual amenity in this location. That is due partly to the relatively confined visual catchment, and the nature and form of the tree, and the nature of the beach environment that the tree is growing within.
64. For these reasons, we are satisfied that the removal of the Notable Macrocarpa tree (and the Macrocarpa tree on the road reserve) will give rise to adverse effects, but that these effects will not be significant in the circumstances of the site and the environment that it is located in.

***Is the proposal consistent with the relevant objectives, policies and assessment criteria of the Auckland Unitary Plan?***

65. The AUP provisions that relate to the Notable Macrocarpa tree are essentially twofold. At a higher level, there are the RPS objectives and policies of B4.5 that set out the 'criteria' for scheduling a tree. These provisions identify the factors that are relevant for a tree to be identified as 'notable' (although that term is not defined in the AUP). The other provisions are the district plan level objectives and policies at Chapter D13, which effectively set out the matters to be considered for a discretionary application to remove a scheduled/'notable' tree.
66. There is a question as to the relevance of the RPS provisions, given that those provisions relate to the scheduling of a tree and the application does not seek to do that. That question is tied to other questions about the circumstances leading to the

scheduling of the tree and whether the Notable Macrocarpa tree would pass the threshold for scheduling if it were assessed afresh under the AUP.

67. We have given careful consideration to these matters in our assessment of the application. Our conclusion is that the reasons for scheduling the tree in the first instance are not relevant to our consideration. The fact is that the tree is scheduled as 'notable' and we need to consider it on that basis, notwithstanding the circumstances that applied when it was scheduled. Similarly, we have also determined that the exercise of re-evaluating the tree in the context of the current AUP listing factors is of little assistance as it does not change the status of the tree or the matters that we need to consider.
68. However, we do consider that the listing factors in B4.5 are of some relevance to the application, as it is logical to consider the matters that apply to listing a tree when determining an application to effectively 'delist' it (through removal). For the most part, the factors in B4.5 are mirrored in general terms within the objectives and policies of Chapter D13.
69. We have assessed the objectives and policies noted above and considered the planning evidence of Mr Green and Ms Phillips, both of whom conclude that the proposal is consistent with those objectives and policies. We agree. In reaching this view, we consider that the scale and adverse effects of the tree will dominate the site and disproportionately impact on its reasonable use for residential purposes. We also consider that the tree does not have values of such significance that its retention should outweigh the reasons supporting the proposal for removal.
70. In reaching our conclusion on the relevant objectives and policies of the AUP, we are cognisant that the application is a discretionary activity and that the objectives and policies in Chapter D13 contemplate instances where removal of a Notable tree will be acceptable. We consider that the current application is one such instance.
71. Our overall consideration has included the objectives and policies of the Residential - Single House Zone, which envisage and encourage development of the site for residential purposes. The tension between these provisions and those that seek to protect Notable trees are evident in this instance. We record that the outcomes sought by the Residential - Single House Zone objectives and policies are also a factor, albeit relatively limited, in our decision to grant consent.
72. Other matters of a policy nature, such as the NPSUD, NZCPS, and Auckland's Urban Ngahere (Forest) Strategy, are relevant in our view but not a significant factor in the outcome of our deliberations. Part 2 matters are adequately addressed through the objectives and policies of the AUP.

***Can the adverse effects of the proposal be appropriately mitigated with conditions of consent?***

73. The application proposes an extensive landscape design and planting plan by way of mitigation. The plan includes two large-grade specimen Pohutukawa trees (1,000 litre), to be planted within the immediately adjacent road reserve, and two Tawapou trees. Based on the evidence of Ms Gilbert and Mr Quin, we are satisfied that the proposed planting will provide appropriate mitigation and comprises species that are suitable for the site's coastal setting.
74. We note that Mr Spooner undertook to contribute to additional off-site planting. While we record that offer, which would no doubt result in positive environmental effects, we have not considered it as direct mitigation for the adverse effects of the proposed tree removal and do not impose it as a condition on the consent.
75. There were some points of contention between Mr Quin for the Council and the applicant, in terms of mitigation. The first of these pertained to the size of the Pohutukawa specimens in the planting schedule, with Mr Quin seeking 2,000 litre plant sizes and Ms Gilbert and Mr Peers asserting that 1,000 litre plant sizes would be sufficient and would be likely to grow faster. Mr Quin also sought that the dwelling be finished in recessive colours with low reflectance value.
76. Based on the evidence of the applicant's witnesses, and the opinion of Ms Phillips, we consider that the Pohutukawa sizes of 1,000 litres grade will be sufficient. We are also not persuaded that recessive colours are required for the dwelling, in the context of the existing environment and the assessment criteria that would apply to the establishment of a dwelling on the site (in the absence of the bundled tree removal).
77. All the other effects of the proposal, relating to matters such as the subdivision and associated works on the site, can be appropriately mitigated through the conditions of consent that we have imposed. We are satisfied, on the basis of the evidence from Mr Smith and Mr Harris, that the subdivision can appropriately mitigate natural hazards and that there is no reason to invoke powers provided by s106 RMA.

**Decision**

78. In exercising our delegation under section 34A of the RMA and having regard to the foregoing matters, sections 104, 104B, 106, 108, and Part 2 of the RMA, we determine that subdivision consent to undertake a boundary adjustment between two existing properties, and land use consent for the construction of a new dwelling, associated earthworks, and tree removal at 27 Moreton Drive and 6 Glamis Avenue, Manly, is **granted** for the reasons and subject to the conditions set out below.

## Reasons for the decision

- i. In accordance with an assessment under ss104(1)(a) and (ab) of the RMA, we find that the actual and potential effects from the proposal are acceptable.
- ii. In accordance with an assessment under s104(1)(b) of the RMA, we find that the proposal is consistent with the relevant statutory documents, and in particular the objectives and policies of the Auckland Unitary Plan (Operative in Part).
- iii. In accordance with an assessment under s104(1)(c) of the RMA no other matters were reasonably necessary to determine the application.
- iv. The proposal is consistent with the Purpose and Principles set out in Part 2 of the Resource Management Act 1991.

## Conditions

Under sections 108 and 108AA and 220 of the RMA, these consents are subject to the following conditions:

## General conditions

These conditions apply to all resource consents.

1. These consents shall be carried out in accordance with the documents and drawings and all supporting additional information submitted with the application, detailed below, and all referenced by the council as resource consent numbers SUB60365047 and LUC60365048 under BUN60375046.
  - a. Application Form and Assessment of Environmental Effects prepared by Martin Green of Green Group Ltd dated 12 October 2020, response to section 92 dated 8 December 2020, 18 February and 25 March 2021 and updated information dated 12 May 2021 and 19 May 2021.
  - b. Specialist Reports

Report title and reference	Author	Rev	Dated
Geotechnical Interpretative Report – Referenced P-000848	Initia	A	July 2020
Earthworks and Sediment Control – Referenced CAA 20577	HFC Structures Ltd		August 2020
Coastal Hazard and Inundation Report – Referenced CAA 20577	HFC Structures Ltd		August 2020
Flood Report – Referenced CAA 20577	HFC Structures Ltd		August 2020
Arborist Report	Arbor Connect		2 October 2020

Amenity Assessment of Scheduled Macrocarpa	Len Gillman		20 May 2020
Landscape and Visual Effects Assessment	Bridget Gilbert Landscape Architecture	B	December 2020
Coastal Hazard Assessment – Referenced 21015	Davis Coastal Consultants		25 February 2021
Planting Specific for Mitigation Trees	Aaron Bell- Booth Ltd		27 November 2020
Macrocarpa Hypothetical Assessment	Len Gillman		

c. Plans

<b>Drawing title and reference</b>	<b>Author</b>	<b>Rev</b>	<b>Dated</b>
Drawing Register – Referenced 1915 – Sheet 0.0	Christian Anderson Architects		12-07-21
Perspective Images – Referenced 1915 – Sheet 0.1	Christian Anderson Architects	A	2-10-20
Perspective Images – Referenced 1915 – Sheet 0.2	Christian Anderson Architects	A	2-10-20
Site Master Plan and Elevations – Referenced 1915 – Sheet 1.0	Christian Anderson Architects	C	12-07-21
Site Plan – Referenced 1915 – Sheet 1.1	Christian Anderson Architects	E	12-07-21
Coverages and Minor Infringements Plan – Referenced 1915 – Sheet 1.2	Christian Anderson Architects	B	22-07-21
Ground Floor Plan – Referenced 1915 – Sheet 2.1	Christian Anderson Architects	A	2-10-20
First Floor Plan – Referenced 1915 – Sheet 2.2	Christian Anderson Architects	A	2-10-20
Roof Plan – Referenced 1915 – Sheet 2.5	Christian Anderson Architects	A	2-10-20
Pavilion – Referenced 1915 – Sheet 2.6	Christian Anderson Architects	A	2-10-20
Proposed North Elevations – Referenced 1915 – Sheet 3.1	Christian Anderson Architects	A	2-10-20

Proposed South Elevations – Referenced 1915 – Sheet 3.2	Christian Anderson Architects	A	2-10-20
Proposed West Elevations – Referenced 1915 – Sheet 3.3	Christian Anderson Architects	A	2-10-20
Proposed East Elevations – Referenced 1915 – Sheet 3.4	Christian Anderson Architects	A	2-10-20
Mitigation Planting Plan A1 – Referenced J001873 – Sheet L200	Aaron Bell-Booth Ltd	D	05-10-21
Plan: Coastal Platform – Referenced J001873 – Sheet L2411	Aaron Bell-Booth Ltd	B	16-11-20
Entry Gates & Boundary Fence – Referenced J001873 – Sheet L2411	Aaron Bell-Booth Ltd	B	16-11-20
Drawing Index – Referenced CHA 20577	HFC Structures Ltd		2-10-20
Earthworks & Services Layout – Referenced CHA 20577 – Sheet G100	HFC Structures Ltd	F	18-10-21
Earthworks & Services Sections – Referenced CHA 20577 – Sheet G101	HFC Structures Ltd	C	18-10-21
Earthworks & Services Sections – Referenced CHA 20577 – Sheet G102	HFC Structures Ltd	D	18-10-21
Earthworks & Services Sections & Silt Fence Details – Referenced CHA 20577 – Sheet G103	HFC Structures Ltd	C	18-10-21
Preliminary Tree Location Plan – Referenced 1588 – Drawing 001	Tree Consultancy	A	5-3-20

d. Scheme Plans

Plan title and reference	Author	Rev	Dated
Scheme Plan – Referenced 30961 – Drawing 130 – CO-P3	Envivo	P3	19-07-21

2. Under section 125 of the RMA, SUB60365047 lapses five years after the date it is granted unless:

- a. A survey plan is submitted to council for approval under section 223 of the RMA before the consent lapses, and that plan is deposited within three years of the approval date in accordance with section 224 of the RMA; or
  - b. An application under section 125 of the RMA is made to the council before the consent lapses (five years) to extend the period after which the consent lapses and the council grants an extension.
3. Under section 125 of the RMA, LUC60375048 lapses five years after the date it is granted unless:
- a. The consent is given effect to; or
  - b. The council extends the period after which the consent lapses.
4. The consent holder shall pay the council an initial consent compliance monitoring charge of \$342 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to these consents.

**Advice note:**

*The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent(s). In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge. Only after all conditions of the resource consent(s) have been met, will the council issue a letter confirming compliance on request of the consent holder.*

## **Specific conditions – Subdivision consent SUB60365047**

### **Survey plan approval (s223) conditions**

5. The consent holder must submit a survey plan in accordance with the approved resource consent subdivision scheme plan prepared by Envivo dated 19-07-2021 and referenced 30961-SUR-130-P3, Revision P3. The survey plan must show all easements and any amalgamation conditions required by this subdivision consent.

### **Memorandum of Easements**

6. The right of way and any services easements and/or easements in gross over parts of Lots 1 and 2 (shown as A) must be included in a memorandum of easements endorsed on the survey plan and must be created, granted or reserved as necessary. The consent holder must meet the costs for the preparation, review, and registration of the easement instruments on the relevant computer registers (records of title).

### **Overland flow path**

7. Any overland flow paths over Lot 1 shall be defined on the survey plan as an “area to be subject to land covenants”.

### **Section 224(c) compliance conditions**

8. Before the Council will issue a certificate pursuant to section 224(c) of the Act, the consent holder shall satisfy the following conditions at his/her/its full cost:

#### **Engineering plans**

- a. The infrastructure works required by this consent shall comply with the Council's “Standards”. Engineering Plans, as specified in the “Standards”, shall be submitted to the Council, and approval thereto received in writing, prior to the commencement of any works on the site.

The term 'engineering works' includes but is not limited the laying of pipes and other ancillary equipment to be vested in the Council for water supply, drainage or sewage disposal.

#### ***Advice note:***

*The plans required under this condition are separate to, and do not form part of, any Building Consent that may be required on the subject site.*

#### **Stormwater reticulation**

- b. Extend the public stormwater system to serve Lot 2 of the development to the requirements of the Council's “Standards” to become part of the public services of the District.

#### **Construction of private way**

- c. The private way over parts of Lot 2 and the vehicle crossing thereto shall be constructed to a residential concrete standard to the Council's “Standards”.

#### **Water supply reticulation**

- d. If required, provide a fire hydrant within 135m of the development proposed on Lot 1 or confirm that one is currently in place that would comply with Auckland Council and Watercare Standards for Fire Fighting requirements.

#### **As built record plans**

- e. As Built record plans to the requirements of the Council's “Standards” shall be submitted to the Council, and approval thereof received in writing.

### **Provide for electric power**

- f. Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an electric supply has been made available by underground means to Lots 1 and 2 created and that all the network supplier's requirements for making such means of supply available have been met or satisfactory arrangements have been concluded with the Consent Holder to complete the provision of the supply.

### **Provide for telephone**

- g. Written confirmation shall be provided from the telecommunications network supplier responsible for the area, that provision of telephone services has been made available by underground means to Lots 1 and 2 created and that all the network supplier's requirements for making such services available have been met or satisfactory arrangements have been concluded with the Consent Holder to complete the provision of the service.

### **Consent Notices**

9. The following conditions of consent shall be complied with on a continuing basis by the consent holder (which includes the subdividing owner and subsequent owners) and shall be recorded in a consent notice issued pursuant to s221 of the Resource Management Act 1991 registered on the title.

### **Building/site restrictions**

- a. Any buildings erected on lot 1 shall be subject to the Geotechnical report recommendations by Initia Geotechnical Specialists, reference – 000848 Rev A, dated July, 2020 and also have regard to the earthworks certification report or certifications required by the land use condition. Building development and ongoing site maintenance shall also be undertaken in accordance with the report by Davis Coastal Consultants, reference 21015, dated 25 February, 2021. Copies of the said report(s) will be held at the offices of the Council.
- b. Unless otherwise approved by Council, any buildings erected on Lots 1 and 2 shall be subject to a minimum habitable floor level not lower than RL 4.0m, LINZ Datum. The construction of any buildings on Lots 1 and 2 shall be carried out in such a manner that increased localised flood levels do not occur as a result of placement of any structures below the 1% AEP stormwater flood level of RL 3.5m.

### **Overland flow path**

- c. No buildings or other structures, including fences, shall be erected, nor shall the ground contour be changed in any way, that would impede the surface flow of

stormwater within the overland flow path identified on Lot 1 and defined on the survey plan.

## **Specific conditions – Land use consent LUC60365048**

### **Notification of commencement**

10. At least 7 days prior to the work commencing the resource consent holder shall notify the Council's RMA Compliance Administrator by telephone (0800 426 5169) the expected date of work commencing so that a pre-construction meeting can occur.

### **Earthworks design**

11. All earthworks shall be specifically designed and supervised to the "Standards" and NZS 4431 by a Chartered Professional Engineer experienced in soil mechanics. The works shall be carried out in accordance with the Geotechnical report recommendations by Initia Geotechnical Specialists, reference – 000848 Rev A, dated July, 2020.

### **Flood storage compensation**

12. Any fill placed on the site below an RL of 3.5m shall be compensated for elsewhere on the site to ensure that offsite localised increases in flooding do not occur.

#### ***Advice note:***

*On completion of works, an as built plan shall be provided to Council detailing where fill has occurred and where additional storage has been provided.*

### **Temporary support of adjoining property**

13. Any proposed excavations shall occur in such a manner that the land and any structures on the adjoining property will not collapse or become unstable.

### **Silt retention**

14. Before the commencement of any work on site, adequate silt retention structures as detailed in the Auckland Regional Council Technical Publication No. 90 "Erosion and sediment Control Guidelines for Land Disturbing Activities in the Auckland Region" or GD 05 including suitably constructed stabilised entrances shall be installed. These structures shall be maintained and cleaned out as necessary until such time as complete grass cover, or other non-erodible surfacing, has been established or re-established over the site.

### **Dust control**

15. All necessary actions shall be taken to prevent a dust nuisance to neighbouring properties and public roads; including, as required:

- a. The staging of areas of the works;
- b. The retention of any existing vegetation;
- c. The installation and maintenance of wind fences and vegetated strips;
- d. Spraying of load dumping operations;
- e. Suspension of all operations if necessitated by the prevailing conditions.

The site, or parts thereof as appropriate, shall be regrassed or otherwise protected from wind and water erosion immediately on the completion of bulk earthworks whether or not other works are completed.

### **Health and Safety Plan**

16. A detailed Health and Safety Plan to the requirements of the Health and Safety at Work Act 2015, specifically addressing control of works on and adjacent to public land, and the protection of the public, shall be confirmed to Council as having been completed prior to any tree removal works commencing. A copy of the Health and Safety Plan shall be kept on the site at all times. All measures for the protection of the public and other personnel set out in the Plan shall be maintained and complied with at all times until such time as the works are completed.

### **Completion of earthworks**

17. On completion of earthworks, an Earthworks Completion Report, a PS 4 or other certification acceptable to Council, signed by the Chartered Professional Engineer who designed and supervised the works, shall be provided to the Consents Engineer.

### **Implementation of the Concept Tree Mitigation Plan**

18. The consent holder shall implement the mitigation planting plan which has been approved by the Council under condition (1) and thereafter retain and maintain this planting to the satisfaction of Council. The planting must be completed by the end of the first planting season following the completion of the dwelling works. Such planting works as may be practically undertaken prior to the completion of the dwelling, which may include the planting of street trees in accordance with Tree Owner Approval, must be undertaken as soon as possible following the removal of the street tree and other trees on site having regard to the planting season.
19. Undertake all works and protections, including the on-site tree removal required by the Tree Owner Approval issued by Steven Krebs Senior Urban Forest Specialist Regional Specialist Team, Community Facilities dated 4-3-21.

## **All works to be carried out in accordance with good arboricultural practice**

20. All tree work must be carried out using accepted arboricultural standards and practice, including tree dismantling procedures which control the fall of stems and branches by approved lowering techniques, in recognition of the relatively confined location and the need to avoid damage to understorey vegetation and built structures.

## **Suitably qualified and experienced arborist**

21. Prior to any works commencing on the site, the consent holder must engage the services of a suitably qualified and experienced arborist. The consent holder must inform Council in writing of the qualifications and contact details of the arborist. The arborist is to advise upon, direct, supervise and monitor all tree works and removal for the duration of the project. The arborist must ensure that best practice is employed when there is any excavation or pruning of trees. The arborist must also ensure that no unauthorised work is undertaken on the trees. The arborist must liaise with the main contractor and hold regular meetings to discuss tree care matters before during and after construction. The arborist must supervise the tree protection measures required to ensure that the works have no adverse impact upon any retained protected trees.

## **Protection fencing**

22. A tree protection fence of sturdy construction must be erected at a minimum distance of 1m from the outside edge of the canopy spread of the trees to be protected on the site. The fence must accord with the minimum requirements in the industry best practice publication titled A Guideline for Tree Protection Fencing on Development Sites published by the New Zealand Arboricultural Association dated April 2011. The fence must be erected prior to the commencement of any work on the site, including site earth works and must remain in place until the completion of all works on the site.

The purpose of the fence is to protect the trees from the effects of earthworks, including excavation, overfilling and construction works on the site. No work must be carried out within the protected area and no building or fill materials must be stored or placed within the protected area, either on a temporary or permanent basis.

### ***Advice note:***

*A high visibility mesh fence which is not resistant to impact and is easily breached will not generally be an appropriate means of complying with this condition.*

## **Fencing inspection**

23. Prior to the start of any vegetation clearance, excavation, or construction work the consent holder must contact the council to arrange for an inspection of the vegetation protection fence by Council. The purpose of the inspection is to confirm that the

vegetation protection fence has been constructed in accordance with condition 22. Five working days' notice is required to arrange a site inspection visit.

**Advice note:**

*Please contact Council on [insert phone number or email address or monitoring@aucklandcouncil.govt.nz].*

**Reporting during works**

24. From the commencement of all works on site until all tree works authorised by this consent are complete the consent holder must provide a written report to Council on a monthly basis. The report must: identify the occasions when the consent holder's arborist has been present on site to supervise and monitor works in the root zone of protected trees; document (including photographs) all activities which have been undertaken on or within the root zone of protected trees; provide confirmation (or otherwise) from the consent holder's arborist that all tree related works undertaken have been carried out in accordance with the conditions of consent.

**Hand digging works**

25. All excavations carried out within the root zone of protected trees must be hand dug with handheld tools to minimise root disturbance and must occur under the direct on-site supervision of the consent holder's suitably qualified and experienced arborist. Roots with a diameter of less than 35mm encountered during the excavation which cannot be retained must be cleanly cut back to the excavation face. Any roots larger than 35mm must not be removed without an on-site assessment of effects having been undertaken by the consent holder's suitably qualified and experienced arborist. That assessment should be communicated to Council. The removal works must not proceed until Council has approved the assessment and the proposed works.

**Excavated root work**

26. Any severed or damaged roots of protected trees encountered during excavation must be cleanly cut back to the excavation face using a sharp implement such as handsaw or secateurs under the supervision of a suitably qualified and experienced arborist.

Exposed retained roots and cut faces must be protected from direct contact with concrete during any concrete pour using best arboricultural practice.

**Advice note:**

*Lining the excavation with plastic prior to any concrete pour and leaving that plastic to remain as a permanent root barrier may be considered a best practice option*

## **Service installation by horizontal drilling/thrusting below ground**

27. All earthworks required to facilitate services and drainage which occur within the root zone of protected trees must be undertaken using trenchless technologies such as pipe drilling and thrusting. Any ground openings necessary to provide machine entry and exit pits, service connections etc., and must be sited outside the root zone of protected trees.

## **Replanting**

28. The replacement trees must be located in a position that takes into consideration their long-term growth and development. The replacement trees must be maintained in accordance with best arboricultural practice including irrigation, mulching, and formative pruning as necessary, for the duration of the consented activity.
29. The replacement tree's growth and development must be monitored for three years following planting. If the tree dies or declines beyond recovery during this period, it must be replaced by the consent holder with a new specimen of a similar size and species to that which was originally planted.
30. Any replacement trees that fail to establish, or that decline or die at any time, must be replaced to the satisfaction of the Council. The replacement trees must be of similar grade and size to that originally planted and must be maintained in accordance with the stipulations above.
31. Throughout the 3-year establishment period the consent holder must ensure that: a weed free environment is maintained directly over the root ball of the replacement trees; any stakes and ties are secure and in place; and the rootball is covered with a composted mulch to a depth of 80mm. An alternative maintenance arrangement may be negotiated to the satisfaction of the asset owner for trees that are within the road reserve, with evidence of any such arrangement to be provided to Council's monitoring officer.

## **Reporting after completion**

32. A completion report prepared by a suitably qualified and experienced arborist must be supplied to Council within one month of completion of all site works. The completion report must confirm (or otherwise) that: the works have been undertaken in accordance with the tree protection measures contained in the conditions of consent, the works were completed under the direction of a suitably qualified and experienced arborist, the impact of the works on the protected trees has been no greater than that permitted by the conditions of consent.

### **Surveyor roof framing check**

33. No building works shall proceed beyond the roof framing stage until a registered surveyor or licensed cadastral surveyor, engaged by the consent holder, has provided written certification to the Team Leader Monitoring NW1 that the works completed:
- a. have been completed in accordance with the approved plans as referred to in condition 1 of this consent, or
  - b. do not exceed the vertical or horizontal extent of any breach, infringement, or non-compliance approved under this consent.

#### **Advice note:**

*The purposes of certification at the roof framing stage of construction are to:*

- *provide assurance that the building works, to that point, have been undertaken in accordance with the consent*
- *reduce the risk of non-compliance as the works are completed.*
- *Written certification should include the following:*
- *the finished ground level is clearly marked on the subject site*
- *the relevant consent reference number and site address*
- *levels, calculations, plans and drawings of the structure(s) that are the subject of certification*
- *the quantification of the extent of any breach, infringement or non-compliance identified at the time of survey, where this has occurred.*

*Written certification is to be provided directly to the officer specified in this condition.*

### **Construction Traffic Management Plan**

34. Prior to the commencement of any works on the site, the consent holder shall submit to and have approved by the Council's Team Leader Northern Monitoring, a Construction Traffic Management Plan (CTMP) The CTMP shall be prepared in accordance with the Council's requirements for traffic management plans or CTMPs (as applicable) and New Zealand Transport Authority's Code of Practice for Temporary Traffic Management and shall address the surrounding environment including pedestrian and bicycle traffic. No construction activity shall commence until the CTMP has been approved by the Council's Team Leader Northern and all construction traffic shall be managed at all times in accordance with the approved CTMP.

#### **Advice notes:**

- *All applications for temporary use of the road reserve during construction must be submitted to Auckland Transport as a Corridor Access Request (CAR).*

Applications are to be submitted electronically via <https://www.submitica.co.nz/Applications>

- *Unless the applicant can reasonably demonstrate the impracticalities to the satisfaction of Auckland Transport, the use of any part of the road reserve (the public space between the property boundaries on opposite sides of the road) should not be considered in any applications for temporary use of the road reserve including in construction traffic management plans for:*
  - (i) *Carrying out any construction activities*
  - (ii) *Storing and/or stockpiling materials or equipment*
  - (iii) *The parking of vehicles associated with the construction in any way except for the loading or unloading of materials and equipment while the vehicle is parked in an approved loading zone*
  - (iv) *Temporary hoardings except as required for the safety of other road users*
  - (v) *Gates and/or doors from the site or other structure opening outwards across any part of the road reserve*
- *Heavy vehicles are to be managed to avoid*
  - (i) *Movements to or from the site during peak traffic periods, generally 7.00am to 9.00am and 4.00pm to 6.00pm*
  - (ii) *Parking or waiting in the surrounding streets or at the site entry points*
  - (iii) *Reversing into or out of the site.*

### **Avoid damaging assets**

35. Unless specifically provided for by this consent approval, there shall be no damage to public roads, footpaths, berms, kerbs, drains, reserves or other public asset as a result of the earthworks and construction activity. In the event that such damage does occur, the Council's Team Leader Northern Monitoring will be notified within 24 hours of its discovery. The costs of rectifying such damage and restoring the asset to its original condition shall be met by the consent holder.

### **Engineering Plan Approval**

36. Prior to the commencement of any construction work, the consent holder shall submit 2 hard copies and one PDF /CD version of complete engineering plans (including engineering calculations and specifications) to the Principal Development Engineer, North Consenting and Resource Consenting and Compliance. Details of the Chartered Professional Engineer who shall act as the developer's representative for

the duration of the works shall also be provided with the application for Engineering Plan Approval.

### **Accidental Discovery Protocol)**

37. If, at any time during site works, potential koiwi (human remains), archaeology or artefacts are discovered, then the following discovery protocol is to be followed:
- a. All earthworks will cease in the immediate vicinity (at least 10m from the site of the discovery) while a suitably qualified archaeologist is consulted to establish the type of remains.
  - b. If the material is identified by the archaeologist as human, archaeology or artefact, earthworks must not be resumed in the affected area (as defined by the archaeologist). The consent holder must immediately advise the Team Leader Compliance Monitoring NW2, Heritage New Zealand Pouhere Taonga and Police (if human remains are found) and arrange a site inspection with these parties.
  - c. If the discovery contains koiwi, archaeology or artefacts of Maori origin, representatives from the relevant Mana Whenua groups are to be provided information on the nature and location of the discovery.
  - d. The consent holder shall not recommence works until approved by the Team Leader Compliance Monitoring NW1.

#### **Advice note:**

*If any archaeological features are uncovered on the site, works should cease and the Team Leader Compliance Monitoring NW2 and Heritage New Zealand Pouhere Taonga (09 307 9920) should be notified immediately. The Heritage New Zealand Pouhere Taonga Act 2014 provides for the identification, protection, preservation and conservation of the historic and cultural heritage of New Zealand. It is an offence under this Act to destroy, damage or modify any archaeological site without an authority from Heritage New Zealand Pouhere Taonga. An archaeological site is defined as a place associated with pre-1900 human activity where there may be evidence relating to history of New Zealand. Archaeological features' may include old whaling stations, shipwrecks, shell middens, hangi or ovens, pit depressions, defensive ditches, artefacts, or koiwi tangata (human skeletal remains), etc. For guidance and advice on managing the discovery of archaeological features, contact the Team Leader Cultural Heritage Implementation on 09 301 0101.*

### **Advice notes**

1. Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.

2. *For the purpose of compliance with the conditions of consent, “the council” refers to the council’s monitoring officer unless otherwise specified. Please email [monitoring@aucklandcouncil.govt.nz](mailto:monitoring@aucklandcouncil.govt.nz) to identify your allocated officer.*
3. *For more information on the resource consent process with Auckland Council see the council’s website: [www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz). General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment’s website: [www.mfe.govt.nz](http://www.mfe.govt.nz).*
4. *The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.*
5. *Unless where otherwise detailed, the reference to the Councils “Standards” in the above conditions refers to Councils “Code of Practise for Land Development and Subdivision”.*
6. *Except as provided for by this consent, no works adversely affecting trees protected by rules contained in the Auckland Unitary Plan – Operative in Part and/or the Auckland Council District Plan – Hauraki Gulf Islands Section (as the case may be), should proceed without a further resource consent.*
7. *Advice should be sought regarding the use of root barriers to avoid future conflicts with adjacent structures and underground services, and to enable more flexibility with planting locations.*
8. *The consent holder is advised that the installation of silt fences within the root zone of retained trees should not involve the excavation or alteration of ground levels. This requirement also applies where tree protection and silt/erosion control fences are combined into the one fence and constructed within the protected root zone area.*
9. *The consent holder is advised that soils with a high plasticity index such as some clay types have a greater potential for moisture shrinkage over summer and re-hydration during winter. Structures founded on soil types which are subject to volume change may move. NZ Building Research Bureau publications from 1963 (based upon D.S.I.R. information) have identified potential soil hazard zones on expansive clay sites and recommends that the foundations of structures on such soils be designed accordingly.*
10. *The consent holder is therefore advised of the need to assess potential soil volume changes prior to construction and to consider the proximity of existing trees on the site when designing the type and depth of foundations for the proposed structure.*

11. *Prior to carrying out any work in the road corridor, the applicant shall submit to Auckland Transport a Corridor Access Request (CAR) and temporary traffic management plan (TMP), the latter prepared by an NZ Transport Agency qualified person and work shall not commence until such time as the applicant has approval in the form of a Works Access Permit (WAP). The application may be made through <http://www.beforeudig.co.nz/> and 15 working days should be allowed for approval. It will be the responsibility of the applicant to determine the presence of any underground services that may be affected by the applicants work in the road reserve. Should any services exist, the applicant shall contact the owners of those and agree on the service owner's future access for maintenance and upgrades. Services information may be obtained from <http://www.beforeudig.co.nz/>*



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Philip Brown  
**Chairperson**  
3 December 2021