

# Decision on an application for resource consents under the Resource Management Act 1991



## Decision one – Restricted Discretionary land use consent (s9)

<b>Application numbers:</b>	BUN60380705 (Council Reference) LUC60380706 (s9 land use consent)
<b>Applicant:</b>	Barry Satchell Consultants Limited
<b>Site address:</b>	36A Eaglehurst Road
<b>Legal description:</b>	Lot 2 DP 167980 {NAI0ID/827}
<b>Proposal:</b>	To construct 19 dwellings with associated access and land disturbance

Resource consent is required for the following reasons:

### Land use consent (s9) – LUC60380706

#### Auckland Unitary Plan (Operative in part)

##### **District land use (operative plan provisions)**

##### *H4 Residential – Mixed Housing Suburban Zone*

- To construct four or more dwellings is a restricted discretionary activity under rule H4.4.1(A4).
- To develop new buildings as the development of new buildings or any additions has the same activity status as the land use activity, is a restricted discretionary activity under rule H4.4.1(A34).

##### *E12 Land Disturbance - District*

- To undertake general earthworks of 2730m<sup>2</sup> and 710m<sup>3</sup>, as the earthworks are greater than 2,500 m<sup>2</sup> and 250m<sup>3</sup> in a residential zone, is a restricted discretionary activity under rules E.12.4.1(A6) and (A8) respectively.

##### *D13. Notable Trees Overlay*

- The proposal involves works within the protected root zone of a notable Pohutukawa Tree not otherwise provided for which requires consent as a Restricted Discretionary Activity under Standard D13.4.1(A9)
- The proposal involves Tree trimming or alteration that does not comply with Standard D13.6.1 being tree trimming exceeding a maximum branch diameter of 50mm at severance. This is a Restricted Discretionary Activity under D13.4.1(A6).

## National Environmental Standard for Soil Contamination

- The proposed development involves soil disturbance that exceeds an area of 10m<sup>3</sup>/500m<sup>2</sup> at 25m<sup>3</sup>/500m<sup>2</sup> on a site subject to Hazardous Activities and Industries List (HAIL) including F4, I, and H, a Detailed Site Inspection is provided, which is a **Restricted Discretionary** activity under Regulation 10 of NESCS.

## Decision

I have read the application, supporting documents, and the report and recommendations on the application for resource consents. I am satisfied that I have adequate information to consider the matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on the application.

Acting under delegated authority, under sections 104, 104C, and Part 2 of the RMA, the resource consents are **GRANTED**.

## Reasons

The reasons for this decision are:

1. In accordance with an assessment under ss104(1)(a) and (ab) of the RMA the actual and potential effects from the proposal will be acceptable as:
  - a. The proposal is of an intensity, type and form that fits within the existing and established neighbourhood character of the zone. In terms of building intensity, there is existing and new infill subdivision of a comparable intensity which has been undertaken in the surrounding area. The buildings have been broken down into three blocks which is considered to break up the bulk of the development. The proposed buildings have an acceptable appearance, with design features used such as articulation and modulation noting the variety in building materials, roof forms and setbacks. Units 1 -4 are directly adjacent to the street and the front facades include a large amount of glazing and front doors and landscaping to achieve attractive and safe streets.
  - b. Adverse residential amenity effects are mitigated by the building design and form, setbacks and the use of different cladding materials and modulated built form. The locations of the outlook spaces and outdoor living areas are located a minimum of 12m from the adjacent sites which reduces the potential for overlooking and privacy effects. Due to the distance from the proposed dwellings to the adjacent sites a reasonable standard of sunlight access will be maintained.
  - c. In terms of residential amenity for the proposed dwellings, outdoor living areas have been provided on the ground floor and all meet the minimum 20m<sup>2</sup> dimension and are North (dwellings 5 – 19) and West (dwellings 1 - 4) facing. There are additional secondary outdoor living areas which are located to the rear of the dwellings. The dwellings are designed with sufficient internal space and storage. The orientation of the dwellings with the main living areas being North (dwellings 5 – 19) and West (dwellings 1 – 4) will ensure residents are provided with a reasonable amount of sunlight. The applicant has proffered a condition requiring mechanical ventilation systems to be installed for each dwelling to mitigate any adverse effects from the activities located on

the adjacent Business – Light Industry Zone. This will enable habitable rooms to be occupied without the need to open windows or external doors. There is sufficient separation from the outdoor living areas, the pedestrian pathway and the common accessway.

- d. The proposed earthworks will be temporary in nature and are deemed to be necessary in order to enable the development. Ongoing and temporary instability, noise, odour, lighting, and traffic effects relating to the earthworks and construction activities on neighbouring sites and the wider environment will be appropriately managed and mitigated. Silt and erosion mechanisms in accordance with GD05 are included shown at the low points of the site to manage the erosion runoff for the site
  - e. The proposed works within the root zone of the Notable Pohutukawa Tree are to be supervised by a qualified Arborist and protection fencing is required when undertaking works in close proximity to the street tree. It is considered that appropriate control measures are proposed to be in place when works are being undertaken therefore any effects will be acceptable.
  - f. In terms of soil contamination, the proposed works will be undertaken in accordance with the remedial action plan which includes mitigation measures for soil management of the contaminated soil. This will be adhered with when undertaking the proposed earthworks, therefore any contamination effects are considered to be less than minor.
2. In accordance with an assessment under s104(1)(b) of the RMA the proposal is consistent with the relevant statutory documents, insofar as they relate to the matters over which discretion is restricted. In particular

#### *H4.2 Objectives, H4.3 Policies & H4.8.2 Assessment Criteria*

The development is in keeping with the neighbourhoods planned suburban built character of predominantly two storey buildings which are detached. Sunlight access, privacy and visual dominance effects are reduced by the design and form of the buildings and by the sufficient setbacks provided. Quality on-site residential amenity for residents is provided by the north and west facing outdoor living spaces secondary outdoor living spaces and the orientation of the dwellings to face north to receive plenty of sunlight.

#### *E12.2 Objectives, E12.3 Policies & E12.8.2 Assessment Criteria*

The development has proposed sufficient mitigation measures to mitigate adverse noise, vibration, odour, dust, lighting, and traffic effects. A geotechnical report has been prepared and provided by the applicant which has been designed to avoid adverse effects on the stability and safety of surrounding land and buildings.

#### *D13.2 Objectives, D13.3 Policies & D13.8.2 Assessment Criteria*

The proposal has included methods to reduce adverse effects on the protected tree, All works within the protected root zone of the street tree will be carried out under the direction and supervision of a qualified arborist. It is considered that the notable tree is retained and protected from inappropriate use and development.

3. As a restricted discretionary activity, the other matters that can be considered under s104(1)(c) of the RMA must relate to the matters of discretion restricted under the plan. In

this case there are no other matters that can be considered under s104(1)(c). The proposed plan change 78 and 79 are of relevance here, however the proposal was lodged in 2021 well before the proposed plan changes and is subject to a qualifying matter and includes more than 3 dwellings. However, these proposed provisions have not been tested by either submissions or hearings. The provisions may therefore differ as it progresses through the statutory process, including how they may be informed and supported by other plan provisions. As such, all weight has therefore given to the operative plan,

4. In the context of this proposal for a restricted discretionary activity land use consent, where the objectives and policies of the relevant statutory documents were prepared having regard to Part 2 of the RMA, they capture all relevant planning considerations and contain a coherent set of policies designed to achieve clear environmental outcomes. They also provide a clear framework for assessing all relevant potential effects and there is no need to go beyond these provisions and look to Part 2 in making this decision as an assessment against Part 2 would not add anything to the evaluative exercise.
5. Overall, the proposal is consistent with the relevant statutory documents and legislation and will result in acceptable effects.

## Conditions

Under sections 108 and 108AA, of the RMA, this consent is subject to the following conditions:

### General conditions

These conditions apply to all resource consents.

1. This consent must 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 number
  - Application Form and Assessment of Environmental Effects prepared by Jake McKenzie dated June 2021

Report title and reference	Author	Rev	Dated
Site Lighting Report	2K0 Engineering Ltd		07/03/2022
Landscape plan set	ALA Planning and Design Limited		05/04/2022
Traffic Impact Assessment	The Traffic Group	2.0	16/12/2021
Waste Management Plan	Rubbish Direct Reliable		07/12/2021
Detailed Site Investigation	Fraser Thomas Limited	1	22/02/2022
Remedial Action Plan	Fraser Thomas Limited	1	31/05/2022
Infrastructure Report	Barry Satchell Consultants Limited		May 2021

Engineering Plan Set drawing No. 301, 302,303,401,402,403,404,405,406,201,202,	Barry Satchell Consultants Limited	12/20
Arboricultural Assessment of proposed development at 36A Eaglehurst Road Ellerslie	Peers Brown Miller Ltd	27/05/2021

Drawing title and reference	Author	Rev	Dated
Site Plan 1:300 – 01A	Architland	-	14.07.2022
Site Plan 1:200 – 02A	Architland	-	14.07.2022
Site Plan 1:200 - 03	Architland	-	14.07.2022
Town Planning Plan - 04	Architland	-	14.07.2022
Outlook Space Compliance Plan - 05	Architland	-	14.07.2022
Lot 1 -12 Lower Floor Plan - 06	Architland	-	14.07.2022
Lot 13 – 19 Lower Floor Plan - 07	Architland	-	14.07.2022
Lot 1 – 12 Upper Floor Plan - 08	Architland	-	14.07.2022
Lot 13 – 19 Upper Floor Plan - 09	Architland	-	14.07.2022
North Elevation - 10	Architland	-	14.07.2022
South Elevation - 11	Architland	-	14.07.2022
West & East Elevation - 12	Architland	-	14.07.2022
Lot 5 & 12 West and East Elevation -13	Architland	-	14.07.2022
Lot 13 & 19 West & East Elevation - 14	Architland	-	14.07.2022
Hard Landscape Plan - 36A_EAG_01_CD1	ALA Planning & Design	-	05.04.2022
Planting Plan - 36A_EAG_02_CD1	ALA Planning & Design	-	05.04.2022
Common accessway plan – 301	Barry Satchell	-	12.2020
Common accessway plan 02 and pavement detail - 302	Barry Satchell	-	12.2020
Common Accessway Long & Cross Section - 303	Barry Satchell	-	12.2020
Public Wastewater & Soakhole Stormwater and Water Plan 01 – 401	Barry Satchell	B	05.2021
Public Wastewater & Soakhole Stormwater and Water Plan 02 - 402	Barry Satchell	A	05.2021
Driveway to Soakhole Longsections - 403	Barry Satchell	A	05.2021
Stormwater Lines A & B Longsection -404	Barry Satchell	-	05.2021
Public Wastewater Lines 1 & 2 Longsections - 405	Barry Satchell	-	05.2021
Wastewater & Water Typical Details – 406	Barry Satchell	-	05.2021
Silt and Sediment Earthworks plan 01 - 201	Barry Satchell	A	06.2021

Silt and Sediement Earthworks Plan 02 - 202	Barry Satchell	A	06.2021
Other additional information	Author	Rev	Dated
S.92 response letter	Jake Mckenzie- Barry Satchell Consultants Ltd	-	20/01/2022
S.92 Response letter	Jake Mckenzie – BarrySatchell Consultants Ltd		13/04/2022

2. Under section 125 of the RMA, this consent lapse five years after the date it is granted unless:
  - a. The consents are given effect to; or
  - b. The council extends the period after which the consents lapses.
3. The consent holder must pay the council an initial consent compliance monitoring charge of \$1010 (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 this consent.

**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, must 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 have been met, will the council issue a letter confirming compliance on request of the consent holder.*

## **Specific conditions – land use consent LUC60380706**

**Pre commencement conditions:**

**Architectural Design Plans:**

4. If any changes are made, Prior to the lodgement of Building Consent, a finalised set of architectural detail drawings and materials specifications must be submitted to Council for written certification of design compliance. The information must include the following:
  - details of the building's façade treatment / architectural features;
  - materials schedule and specification, sample palette of materials, surface finishes, and colour schemes (including colour swatches) referenced on the architectural elevations; and
  - external / rooftop services / plant, and visual / aural screening elements.

*Advice note: Please ensure the colour and material schedule are updated to reflect the material and colours as shown on the architectural elevations.*

5. The finalised set of drawings must ensure that the building's proposed architectural treatment and finished appearance is consistent with the plans and information referenced at condition 1.

All works must then be carried out with the details confirmed by Council, and thereafter retained and maintained, to the satisfaction of the Council.

*Advice note: As part of the condition monitoring process, Council's monitoring inspectors will liaise with members of the Council's Urban Design Unit to Provide confirmation of design compliance in relation to architectural drawings and materials specifications under this condition. The confirmation of design compliance does not relate to Building Act 2004 or Building Code compliance. A separate building consent application is required, and all building work must comply with the provisions of the Building Act and Building Code. We recommend that you seek appropriate specialist advice to ensure coordination between compliance with design requirements and Building Act and Building Code compliance.*

### **Lighting Plans**

6. If any changes are made, Prior to the lodgement of Building Consent, the consent holder must provide a Lighting Plan and Certification/ Specifications prepared by a qualified Lighting Engineer, to the Council. The submitted information must be consistent with the consented Lighting Plan prepared by 2KO Engineering Ltd, dated 07 March 2022 as referenced in Condition 1. The purpose of this condition is to provide adequate lighting for the safety of people residing, working or visiting the premises and its immediate environs outside of daylight hours. The Lighting Plan must:

- include all accessible areas of the premises where movement of people are expected. Such locations include, but are not limited to the shared driveway, building entrances, building frontage, outdoor or undercroft carpark, footpath or common access areas.
- Include lighting, such as sensor or timer lighting, at the front door of each unit.
- include proposed locations, lux levels and types of lighting (i.e. manufacturer's specifications once a lighting style has been determined) and any light support structures required to control timing, level of lighting, or to minimise light spill, glare, and loss of night time viewing.
- Demonstrate compliance with the relevant standards in E24.6.1 Lighting of the Auckland Unitary Plan (Operative in Part).
- Demonstrate compliance with the AS/NZS 1158 P requirements and clearly specify what P Category the lighting design will achieve. The selection criteria for the chosen lighting category should also be presented (i.e. pedestrian/cycle activity, risk of crime etc.). For clarity, lighting should at least be designed to meet the following minimum P subcategories:
  - PR2 is the minimum for driveways and accessways;
  - PC2 is the minimum for car parking;
  - PP3 is the minimum for paths; and
  - PA3 is the minimum for connecting elements, steps, stairways and ramps.

- The lighting must be on an automatic control so that it is on when dark and should be supplied from a common supply which cannot be disabled by residents.
  - Include an executive summary of the above information in plain English that outlines the relevant requirements to their application and their design response to them.
7. The finalised design details certified by the qualified Lighting Engineer must be established prior to the development hereby consented being first occupied, and thereafter retained and maintained, to the satisfaction of the Council.

*Advice Note: The purpose of this condition is to ensure that adequate lighting is provided to frequently used areas within the proposed development for the safety of users. Adequate lighting is the amount of lighting at eye level for a person with average eyesight so they can identify any potential threat approaching them from at least a 15-metre distance.*

**Finalised landscape design drawings, specifications and maintenance requirements**

8. Prior to the lodgement of building consent, the consent holder must provide to the Council for written approval, a finalised set of detailed landscape design drawings and supporting written documentation which have been prepared by a landscape architect or suitably qualified professional. The submitted information must be consistent with the consented landscape concept plan(s) prepared by ALA Planning and Design Limited, dated 05 April 2022, and, at a minimum, must include landscape design drawings, specifications and maintenance requirements including:
- An annotated planting plan(s) which communicate the proposed location and extent of all areas of planting, including any revegetation, reinstatement planting, mitigation planting and natural revegetation (if relevant)
  - Annotated cross-sections and/or design details with key dimensions to illustrate that adequate widths and depths are provided for planter boxes / garden beds
  - A plant schedule based on the submitted planting plan(s) which details specific plant species, plant sourcing, the number of plants, height and/or grade (litre) / Pb size at time of planting, and estimated height / canopy spread at maturity, including:
    - The proposed species and size (minimum 45L) for the specimen trees within the front yard of Lots 1-2;
  - Details of draft specification documentation for any specific drainage, soil preparation, tree pits, staking, irrigation and mulching requirements
  - An annotated pavement plan and related specifications, detailing proposed site levels and the materiality and colour of all proposed hard surfacing, including:
    - A minimum 1.5m wide raised pedestrian crossing within the driveway.
  - An annotated street furniture plan and related specifications which confirm the location and type of all seats, bins, lights, fences, walls and other structural landscape design elements
  - A landscape maintenance plan (report) and related drawings and specifications for all aspects of the finalised landscape design, including in relation to the following requirements:



- i. Irrigation
- ii. Weed and pest control
- iii. Plant replacement
- iv. Inspection timeframes
- v. Contractor responsibilities

The finalised landscape design must be consistent with the landscape design intent / objectives identified in the conceptual plans and information referenced at condition 1 and confirm responsibilities for ongoing maintenance requirements.

*Advice note:*

*It is recommended that the consent holder consider a minimum three-year management / maintenance programme for plant establishment and provide, in particular, details of maintenance methodology and frequency, allowance for fertilising, weed removal / spraying, replacement of plants, including specimen trees in case plants are severely damaged / die over the first five years of the planting being established and watering to maintain soil moisture. As part of the approval process, the Council's monitoring team will liaise with landscape architects from the Council's Urban Design Unit to ensure that the submitted drawings and related information are consistent with the originally consented landscape concept plan(s).*

### **Construction Traffic Management Plan**

9. Prior to the commencement of any works on the site, the consent holder must submit to and have certified by the Council in writing a Construction Traffic Management Plan (CTMP). The CTMP must 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 must address the surrounding environment including pedestrian-and bicycle traffic as well as public transport. No construction activity must commence until the CTMP has been certified by the Council and all construction traffic must be managed at all times in accordance with the certified CTMP. The CTMP must be included in the application for a Corridor Access Request.
10. At least five days prior to work taking place on site, including site earthworks and the demolition of the existing dwelling tree protection fence of sturdy construction (in agreement with Councils arborist) must be erected 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. This fence must remain in place until the completion of all works on the site.

*Advice note: 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.*

*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.*

11. Prior to the commencement of the construction and / or earthworks activity, the consent holder must hold a pre-start meeting that:
  - a. is located on the subject site
  - b. is scheduled not less than 5 days before the anticipated commencement of construction and/or earthworks
  - c. includes Auckland Council Arborist
  - d. includes representation from the contractors who will undertake the works [and any suitably qualified professionals if required by other conditions e.g. the appointed Arborist]

#### **Contamination**

12. At least ten working days prior to commencement, the Council must be informed in writing of the commencement of the earthworks

*Advice Note:*

*For the purpose of compliance with the conditions of consent, “the Council” refers to the council’s monitoring inspector unless otherwise specified. Please email [monitoring@aucklandcouncil.govt.nz](mailto:monitoring@aucklandcouncil.govt.nz) to identify your allocated officer.*

13. Prior to any soil disturbed on site, TCLP testing must be undertaken on lead contaminated soil in accordance with the Remedial Action Plan referenced in Condition 01. The results of the TCLP testing must be included in the Site Validation Report referenced in Condition 41.

#### **Implementation and maintenance of approved landscape design**

14. Prior to the development being first occupied and within an appropriate planting season, the consent holder must implement the landscape design which has been approved by the Council under condition 8 and thereafter retain and maintain this landscape (planting, pavement and street furniture) in perpetuity to the satisfaction of the Council in accordance with the maintenance plan which has been approved under condition (1).

#### **Earthwork conditions**

15. The subdivider must take all necessary measures to control silt-contaminated stormwater at all times during the earthworks and during building development in

accordance with Auckland Council's Erosion and Sediment Control guide:  
<http://content.aucklanddesignmanual.co.nz/project-type/infrastructure/technicalguidance/Documents/GD05%20Erosion%20and%20Sediment%20Control.pdf>

16. All care must be taken during construction of this development to preserve the integrity and stability of the adjacent road reserve and underground services and neighbouring sites. Earthwork abutting neighbouring properties must be supported during excavation.

### **Engineering Plans**

17. All wastewater, water and stormwater connections must be in general accordance with the infrastructure and stormwater reports referenced in condition 1 of this consent.
18. The dwellings are reliant on infiltration/ soakage as means of stormwater disposal. The consent holder must test, design and construct an on-site stormwater management system as a disposal point for stormwater runoff from the lot(s) in accordance with the infrastructure report by Barry Satchell Consultants Limited dated May 2021 and in general accordance with Auckland Council's Standards.
19. The stormwater management device as shown in public wastewater soakhole stormwater and water plan by Barry Satchell dated 18/05/21 or system must be installed or built generally in accordance with the design specifications by a suitably qualified service provider
20. The stormwater management device or system must be fully operational before the use of the impervious area.
21. Within three months of the practical completion of the works, the consent holder must provide the following to the satisfaction of the Council
  - a. Written evidence that the stormwater management device or system was installed or built generally in accordance with the design specification, and by a suitably qualified service provider; and
  - b. As-built plans of the stormwater management device or system, certified (signed) by a suitably qualified service provider as a true record of the stormwater management system. The stormwater management device or system must be operated and maintained in accordance with best practice for the device or system.
22. Details of all inspections and maintenance for the stormwater management system, for the preceding three years, must be retained by the consent holder. These records must be provided to the council on request.

### **Avoid Damaging Assets**

23. Unless specifically provided for by this consent approval, there must 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 will be notified within 24 hours of its discovery. The costs of rectifying such damage and restoring the asset to its original condition must be met by the consent holder.

## **Crossings and Footpaths**

24. All new vehicle crossings must be designed and formed to Auckland Transport's Transport Design Manual. This must be undertaken at the consent holder's expense and to the satisfaction of the Council.
25. Prior to the occupation of the new buildings, all redundant vehicle crossings must be removed and reinstated as kerbing, berm and footpath to Auckland Transport's Transport Design Manual requirements, including a regrade of the footpath across the vehicle crossing to 2% cross-fall. This must be undertaken at the consent holder's expense and to the satisfaction of the Council.

## **Speed hump & signage re-location**

26. Prior to the occupation of any residential building at the site, the consent holder must relocate the existing speed hump and speed hump signage within Eaglehurst Road outside the application site in the road reserve. The new speed hump must be designed in accordance with the Auckland Transport engineering standards. The speed hump is to be re-located north of the proposed accessway.

### *Advice Note*

*Permanent traffic and parking controls as per condition 26) above are subject to a Resolution approval from Auckland Transport. Changes to traffic / parking controls on the road reserve will require Auckland Transport Traffic Control Committee (TCC) resolutions. The resolutions, prepared by a qualified traffic engineer, will need to be approved so that the changes to the road reserve can be legally implemented and enforced. The resolution process requires external consultation to be undertaken in accordance with Auckland Transport's standard procedures. It is the responsibility of the consent holder to prepare and submit a permanent Traffic and Parking Changes report to Auckland Transport Traffic Control Committee (TCC) for review and approval. No changes to the traffic and parking controls will be allowed before the resolution is approved by the Auckland Transport Traffic Control Committee (TCC). All costs must be borne by the consent holder.*

*Application details and can be found from the following Auckland Transport website link:*

*<https://at.govt.nz/about-us/working-with-at/traffic-and-parking-controls>*

## **Resolutions**

27. A copy of the Resolution from the Traffic Control Committee of Auckland Transport must be submitted to the Council prior to the commencement of the activity provided for by this consent approval.

### *Advice Notes*

### *Resolutions*

*Prior to lodging the Resolutions Report, the consent holder should submit a copy of detailed design plans for the re-located speed hump and signage on Eaglehurst Road to*

*the Auckland Transport Engineering Team (trafficengineering@at.govt.nz). This process can streamline any design issues and avoid any delays to the Resolution Report once it is submitted.*

#### **Corridor Access Requests**

*It will be the responsibility of the consent holder 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 must contact the owners of those and agree on the service owners' future access for maintenance and upgrades. Services information may be obtained from <https://www.beforeudig.co.nz/>.*

*All work in the road reserve must be carried out in accordance with the general requirements of The National Code of Practice for Utility Operators' Access to Transport Corridors <http://nzuag.org.nz/national-code/ApprovedNationalCodeFeb13.pdf> and Auckland Transport Design Manual <https://at.govt.nz/about-us/manuals-guidelines/transport-design-manual/>*

*Prior to carrying out any work in the road corridor, the consent holder must 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 must not commence until such time as the applicant has approval in the form of a Works Access Permit (WAP). The application may be made at <https://at.govt.nz/about-us/working-on-the-road/corridor-access-requests/apply-for-a-car/> and 15 working days should be allowed for approval.*

#### **Arborist**

28. The consent holder must ensure that all contractors, sub-contractors, and workers engaged in any activities covered by this consent are advised of the tree protection measures contained in the conditions of this consent and the report titled Arboricultural Assessment of Proposed Works at 36A Eaglehurst Road, Ellerslie by Chris Scott-Dye for Peers Brown Miller and dated 27<sup>th</sup> May 2021 and that they operate in accordance with them.
29. All tree work to the notable Pohutukawa tree must be carried out in accordance with accepted arboricultural standards and practice, by a suitably qualified and experienced arborist, trained in natural target pruning and approved tree climbing techniques to the satisfaction of the Council.
30. The portion of the vehicle crossing and driveway which is within the protected root zone of the notable Pohutukawa Street must be established at the highest permissible grade to minimise excavations and root disturbance and to ensure the longevity of the surface.
31. Prior to the construction of any boundary fencing within the protected root zone of the notable Pohutukawa tree the consent holder must provide the design and methodology of the installation of the boundary fencing in writing for written certification to the Council, construction of the boundary fencing must be supervised by the appointed Works Arborist.

## **Mechanical Ventilation System**

32. Prior to occupation of the dwellings, Dwellings 1 - 19 must have installed a mechanical ventilation system which does not generate a noise level greater than 35 dB  $L_{Aeq}$  in bedrooms when measured 1m from the diffuser at the minimum air flows required to achieve the design temperatures and air flows in AUP (OP) E25.6.10 (3) (b) (i) or (ii) or an alternative temperature control system to the satisfaction of Council.

### *Advice note*

*Measures to mitigate the effects of noise are likely to include the use of insulation materials, and ventilation systems that enable habitable rooms to be occupied without the need to open windows or external doors. Note that Standard E25.6.10 (3) of the Auckland Unitary Plan outlines the ventilation, mechanical cooling and/or air supply requirements for noise sensitive spaces, for purposes of thermal comfort. Should these requirements be unable to be complied with, a further resource consent may be required.*

33. The remediation and soil disturbance on the site must be undertaken in accordance with the Remedial Action Plan: 36A Eaglehurst Road, Elleslie, prepared by Fraser Thomas Limited and dated 31 May 2022. Any variations to the RAP must be submitted to the Council for written certification.

### *Advice Note:*

*The Council acknowledges that the Remedial Action Plan is intended to provide flexibility of the management of the works and contaminant discharges. Accordingly, the updated plan may need to be further revised. Any updates should be limited to the scope of this consent and be consistent with the conditions of this consent. If you would like to confirm that any proposed updates are within scope, please contact the Council.*

34. During earthworks all necessary action must be taken to prevent dust generation and sufficient water must be available to dampen exposed soil, and/or other dust suppressing measures must be available to avoid dust formation. The consent holder must ensure that dust management during the excavation works generally complies with the Good Practice Guide for Assessing and Managing Dust (Ministry for the Environment, 2016).
35. In the event of the incidental discovery of contamination during remediation/soil disturbance which has not been previously identified, the consent holder must immediately cease the works in the vicinity of the contamination hotspot and notify the Council and engage a suitably qualified and experienced contaminated land practitioner (SQEP) to assess the situation (including possible sampling and testing) and decide in conjunction with the Council on the best option for managing the material.
36. Excavated soil that is not re-used on site must be disposed of at an appropriate facility licensed to accept the levels of any identified contamination. Excavated soil must not be disposed of as 'Cleanfill' unless it has been appropriately tested and characterised by a SQEP as meeting the 'Cleanfill material' definition, set out in the AUP(OP).
37. Excavated soil that is not located within the proposed areas of remediation and is not re-used on site must be tested prior to off-site disposal in accordance with the Remedial Action Plan referenced in Condition 33

38. If soil in the area of soil sample locations SS01 and SS02, as shown in the Detailed Site Investigation, 36A Eaglehurst Road, Ellerslie, prepared by Fraser Thomas Limited and dated 22 February 2022, is disturbed, then validation sampling must be undertaken and the samples analysed for zinc. The results of the validation sampling must be included within the Site Validation Report referenced in Condition 41.
39. The contamination levels of any soil or fill material imported to the site must be certified by a SQEP and, unless otherwise agreed with Council, must meet the definition of 'Cleanfill material', as defined by the AUP(OP). The SQEP's certification must include testing of imported soil at a minimum rate of 1 sample per 500m<sup>3</sup> (analysed for heavy metals, polycyclic aromatic hydrocarbons, total petroleum hydrocarbons, and asbestos content) and verification that the fill material imported to site originates from:
- a. A site that has been determined by a SQEP to have had no known history of potentially contaminating activities, as detailed on the Hazardous Activities and Industries List (Ministry for the Environment, 2011); or
  - b. A site that has been adequately investigated by a SQEP, in accordance with Contaminated Land Management Guidelines, No.5: Site Investigation and Analysis of Soils (Ministry for the Environment, revised 2021) or any updates to this document, to meet the 'Cleanfill material' definition, as prescribed in the AUP(OP); or
  - c. A commercial quarry (sampling is not required for hardfill material sourced from a commercial quarry).
40. All sampling and testing of contamination on the site must be overseen by a SQEP. All sampling must be undertaken in accordance with the Contaminated Land Management Guidelines, No.5: Site Investigation and Analysis of Soils (Ministry for the Environment, 2021).
41. Within three months of the completion of remediation and soil disturbance on the site, and prior to providing an approval under section 224(c) of the Resource Management Act 1991 for the subdivision, a Site Validation Report (SVR) must be submitted to the Council for certification. The SVR must be prepared by a SQEP in accordance with the Contaminated Land Management Guidelines, No. 1: Reporting on Contaminated Sites in New Zealand (Ministry for the Environment, 2021) and contain sufficient detail to address the following matters:
- a. A summary of the remediation and soil disturbance undertaken, including the location and dimensions of the excavations carried out and the volume of soil excavated.
  - b. Details and results of validation sampling undertaken (including validation sampling required by Condition CS.8), and sampling required by Condition CS.7 and interpretation of the results in the context of the NES:CS and AUP (OP).
  - c. Records/evidence of the appropriate disposal for any material removed from the site

- d. Details of any validation sampling undertaken on materials re-used or imported to site
- e. Records of any unexpected contamination encountered during the works and response actions, if applicable
- f. Conditions of the final site ground surface
- g. Reports of any complaints, health and safety incidents related to contamination, and/or contingency events during the earthworks
- h. A statement certifying that all works have been carried out in accordance with the requirements of approved plans and consent conditions, otherwise providing details of relevant breaches, if applicable.

*The SVR will enable the Council to update the property file information relating to soil contamination. Until a SVR is submitted and certified by the Council, the Land Information Memorandum for the property cannot be updated to reflect any soil contamination remediation work undertaken.*

*If any contamination exceeding the Permitted Activity soil acceptance criteria, set out in Chapter E30 of the AUP(OP) is retained within the site upon the completion of the proposed land-disturbance activity, a long-term contaminant discharge consent under Chapter E30 of the AUP(OP) may be required for the site.*

*If you are demolishing any building that may have asbestos containing materials (ACM) in it:*

- *You have obligations under the relevant regulations for the management and removal of asbestos, including the need to engage a Competent Asbestos Surveyor to confirm the presence or absence of any ACM.*
- *Work may have to be carried out under the control of person holding a WorkSafe NZ Certificate of Competence (CoC) for restricted works.*
- *If any ACM is found, removal or demolition will have to meet the Health and Safety at Work (Asbestos) Regulations 2016.*

*Information on asbestos containing materials and your obligations can be found at [www.worksafe.govt.nz](http://www.worksafe.govt.nz).*

## **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. *If you disagree with any of the above conditions, and/or disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).*
5. *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.*

**Delegated decision maker:**

Name: Jennifer Chivers

Title: Team Leader Resource Consents

Signed:



Date: 2 September 2022

# Decision on an application for resource consents under the Resource Management Act 1991



## Decision two – non-complying activity subdivision consent (s11)

<b>Application numbers:</b>	BUN60380705 (Council Reference) SUB60380707 (s11 subdivision consent)
<b>Applicant:</b>	Barry Satchell Consultants Limited
<b>Site address:</b>	36A Eaglehurst Road
<b>Legal description:</b>	Lot 2 DP 167980 {NAI0ID/827}
<b>Proposal:</b>	The vacant lot subdivision

Resource consent is required for the following reasons:

### Subdivision consent (s11) – SUB60380707

#### Auckland Unitary Plan (Operative in part)

##### **Subdivision (operative plan provisions)**

###### *E38 Subdivision - Urban*

- To subdivide the parent site into three lots and one jointly owned access lot, which is a subdivision in a residential zone that is in accordance with an approved land use resource consent that complies with standard E38.8.2.1, is a restricted discretionary activity under rule E38.4.2(A14).
- The proposed vacant lot, Lot 21 within Light Industry Zone is 558m<sup>2</sup>, which does not meet the minimum 1000m<sup>2</sup> requirement required under Rule 38.9.2.3.1, is a **non-complying** activity under rule E38.4.1(A11).

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESC)

- Subdivision of land that does not meet the provisions of Regulation 9(3) is a restricted discretionary activity under Regulation 10(1) and (2).

## Decision

I have read the application, supporting documents, and the report and recommendations on the application for resource consents. I am satisfied that I have adequate information to consider

the matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on the application.

Acting under delegated authority, under sections 104, 104D, 104B, 106 and Part 2 of the RMA, the resource consent is **GRANTED**.

## Reasons

The reasons for this decision are:

1. In accordance with an assessment under ss104(1)(a) and (ab) of the RMA the actual and potential effects from the proposal will be acceptable as:
  - a. The portion of the site which is located in the Mixed Housing Suburban Zone (proposed to be Mixed Housing Urban under PC78) is being developed to be consistent with that anticipated under the zone and will remain unchanged from the land use activity, ensuring onsite and offsite effects will not exceed those already approved.
  - b. In terms of the vacant lot subdivision not meeting the minimum required net site area. It is considered that there is still adequate area (558m<sup>2</sup>) to enable light industrial activities to locate on this portion of the site. This vacant lot will be provided with the required access, services and easements to allow for light industrial activities to locate and function efficiently in this area.
  - c. Stormwater runoff will be adequately managed by soakage pits and detention tanks will be installed within the common accessway. Consent notices and a common entity have been proffered to ensure the maintenance of these shared assets.
  - d. All wastewater will be adequately disposed of via proposed connections to the public system. It has been determined that there is adequate capacity in the network for this to cope with the increased residential activity.
  - e. Appropriate easements for drainage and Right of Way access to the proposed lots have been provided.
  - f. A no complaints consent notice has been proffered by the applicant which restricts the proposed dwellings located in the Mixed Housing Suburban Zone portion of the site from complaining about future activities located in the portion of the site that is located in the Business – Light Industry Zone, this is considered to protect the Business – Light Industry Zone from reverse sensitivity effects. The activity consented under LUC60380706 has also required dwellings on these lots to include mechanical ventilation to reduce effects from noise of the adjacent Light Industry zoning.
  - g. With reference to s104(1)(ab), there are no specific offsetting or environmental compensation measures proposed or agreed to by the applicant to ensure positive effects on the environment
2. In accordance with an assessment under s104(1)(b) of the RMA the proposal is consistent with the relevant statutory documents. In particular...

*E38.2. Objectives, E38.3. Policies & E38.12.2. Assessment Criteria*

The proposed subdivision in accordance with the land use consent is around 19 established dwellings and this is in accordance with the objectives and policies of the Mixed Housing Suburban Zone. The proposed vacant lot subdivision of the Business – Light Industry Zone is still of a size that will allow for activities to be established that support the primary function of this zone. It is considered that the proposed subdivision has a layout which is safe, efficient, convenient and accessible and appropriate infrastructure and easements have been provided for the Lots.

3. In accordance with an assessment under s104(1)(c) of the RMA the following other matters are considered appropriate no other matters are considered relevant. The proposed plan change 78 and 79 are of relevance here, however the proposal was lodged in 2021 well before the proposed plan changes and is subject to a qualifying matter and includes more than 3 dwellings. However, these proposed provisions have not been tested by either submissions or hearings. The provisions may therefore differ as it progresses through the statutory process, including how they may be informed and supported by other plan provisions. As such, all weight has therefore given to the operative plan,
4. There is no prohibition under s104D of the RMA on granting this non-complying activity. This is because the proposal is as discussed in the s.95A assessment above will have less than minor adverse effects on the environment.
5. In the context of this non-complying activity subdivision, where the objectives and policies of the relevant statutory documents were prepared having regard to Part 2 of the RMA, they capture all relevant planning considerations and contain a coherent set of policies designed to achieve clear environmental outcomes. They also provide a clear framework for assessing all relevant potential effects and there is no need to go beyond these provisions and look to Part 2 in making this decision as an assessment against Part 2 would not add anything to the evaluative exercise.
6. Overall, the proposal is consistent with the relevant statutory documents and legislation and will result in acceptable environmental effects.

## Conditions

All conditions contained in this decision must be complied with at time of s224(c). The conditions have been separated into 'General', 'section 223' and 'section 224(c)' conditions in order to assist the consent holder in identifying the conditions that must be completed at the respective stages of implementing the resource consent for subdivision.

Under sections 108, 108AA and 220 of the RMA, this consent is subject to the following conditions:

### General conditions

1. The subdivisional activity must be as described in the application and assessment of environmental effects prepared by Jake McKenzie dated June 2021 and must be carried out in accordance with the plans stamped and referenced by the council as resource consent number SUB60380707. The consent must also be carried out in accordance with all other reports and information detailed below and all referenced by the council as consent number SUB60380707:

Report title and reference	Author	Rev	Dated
Site Lighting Report	2K0 Engineering Ltd		07/03/2022
Infrastructure Report	Barry Satchell Consultants Limited		May 2021
Engineering Plan Set drawing No. 301, 302,303,401,402,403,404,405,406,201,202,	Barry Satchell Consultants Limited		12/02/2022
Scheme Plan Lot 2 DP 167980	Barry Satchell Consultants Limited	C	24/02/2022

#### **Advice Note:**

- *This consent has been granted on the basis of all the documents and information provided by the consent holder, demonstrating that the new lot(s) can be appropriately serviced (infrastructure and access).*
- *Details and specifications for the provision of infrastructure (e.g., public/ private drainage, location, and types of connections) and access (including drainage of accessways, construction standards etc) are subject to a separate Engineering Plan Approval (EPA) and/or Building Consent approval process.*
- *Should it become apparent during the EPA and/or Building Consent process that a component of the granted resource consent cannot be implemented (e.g., detailed tests for soakage fail to achieve sufficient soakage rates, or sufficient gradients for drainage cannot be achieved in accordance with engineering standards/ bylaws etc), changes to the proposal will be required. This may require either a variation to this subdivision consent (under section 127 of the Resource Management Act 1991) or a new consent.*
- *Similarly, should the detailed design stage demonstrate that additional reasons for consent are triggered (e.g., after detailed survey the access gradient increases to now infringe or increase an approved infringement to a standard in the plan), a new or varied resource consent is required.*
- *It is the responsibility of the consent holder to ensure that all information submitted and assessed as part of the subdivision consent is correct and can be implemented as per the subdivision consent (without requiring additional reasons for consent). Any subsequent approval processes (such as the EPA) do not override the necessity to comply with the conditions of this resource consent.*

2. Under section 125 of the RMA, this consent lapses five years after the date it is granted (“the lapse date”) unless:
  - a. A survey plan is submitted to Council for approval under section 223 of the RMA before the lapse date, and that plan is deposited within three years of the date of approval of the survey plan in accordance with section 224(h) of the RMA; or
  - b. An application under section 125 of the RMA is made to the Council before the lapse date to extend the period after which the consent lapses and the Council grants an extension.

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

3. The consent holder must submit a survey plan in accordance with the approved resource consent subdivision scheme plan(s) titled ‘Scheme Plan Lot 2 DP 167980’, prepared by Barry Satchell, dated 24.02.2022. The survey plan must show all lots to vest in Council (including roads, parks and land in lieu of reserves), all easements, any amalgamation conditions, any amalgamation covenants, and any areas subject to other covenants required by this subdivision consent.
4. The right(s)-of-way and any services easements and easements in gross over parts of Lot(s) 1 - 21 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 records of title.

#### **Amalgamation condition**

5. Pursuant to section 220(1)(b)(iv) the COAL (Lot 20) must be shown on the survey plan as to be held by Lots 1-19 and 21 as to undivided shares by the owners of Lots 1-19 and 21 as tenants in common in the said shares and individual computer registers (records of title) must be issued.

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

6. The application for a certificate under section 224(c) of the RMA must be accompanied by certification from a suitably qualified and experienced surveyor or engineering professional that all the conditions of subdivision consent SUB60380707 have been complied with, and identify all those conditions that have not been complied with and are subject to the following:
  - a. a consent notice to be issued in relation to any conditions of this consent to which section 221 applies.

#### **Stormwater connections for Lots 1 – 19, 21 & Lot 20 - JOAL**

7. The lots are reliant on infiltration/ soakage as means of stormwater disposal. The consent holder must test, design and construct an on-site stormwater management system as a disposal point for stormwater runoff from the lot(s) in accordance with the

Public Wastewater & Soakhole Stormwater and Water Plan prepared by Barry Satchell dated 05/21. Certification that works have been satisfactorily undertaken must be provided when applying for a certificate under section 224(c) of the RMA.

*Advice notes*

- *Acceptable forms of evidence include Code of Compliance Certificates.*
- *A building consent for these works will be required.*

**Wastewater connections for Lots 1 – 19 and 21**

8. The consent holder must design and construct connections to the public wastewater reticulation network to serve Lots 1 – 19 and 21 in accordance with the requirements of the wastewater utility provider. Certification from the utility provider that works have been satisfactorily undertaken must be provided when applying for a certificate under section 224(c) of the RMA.

*Advice notes*

- *Acceptable forms of Evidence from the Utility Providers include a Certificate of Acceptance.*
- *Alterations to the public wastewater reticulation network require Engineering Plan Approval. Additional approval is required from Watercare/Veolia as part of the Engineering Plan Approval Process.*
- *Public connections are to be constructed in accordance with the Water and Wastewater Code of Practice.*
- *Plans approved under Resource Consent do not constitute an Engineering Plan Approval and should not be used for the purposes of constructing public reticulation works in the absence of that approval.*
- *If the site is located within an area serviced via a pressurized wastewater Collection system, consultation with the utility provider as to the specific design requirements will be required prior to the consent holder undertaking design or Engineering Plan Approval application.”*

**Water connections for Lots 1 – 19, 21**

9. The consent holder must design and construct connections to the public water reticulation network to serve Lots 1 – 19 and 21 in accordance with the requirements of the water utility provider. Certification from the utility provider that works have been satisfactorily undertaken must be provided when applying for a certificate under the section 224(c) of the RMA.

**Utilities**

10. The consent holder must make provision for telecommunications and electricity to lots 1 – 19, 21 in accordance with the requirements of the respective utility operators. These utilities must be underground. Certification from the utility providers that works have been satisfactorily undertaken must be provided when applying for a certificate under section 224(c) of the RMA.

## Vehicle crossing

11. The consent holder must provide a new vehicle crossing to serve Lot(s) 1-.21 The crossing must be designed and formed in accordance with the requirements of Auckland Transport. The new crossing(s) must maintain an at-grade (level) pedestrian footpath across the length of the crossing, using the same materials, kerbing, pavings, patterns and finish as the footpath on each side of the crossing. Certification that works have been satisfactorily undertaken must be provided when applying for a certificate under section 224(c) of the RMA.

### *Advice Note:*

- *An approval letter and completion certificate from Auckland Transport is required to be submitted to Auckland Council as a verification that Auckland Transport has completed approval and a final vehicle crossing inspection before this condition is considered fulfilled.*
- *Works within the road reserve require prior approval from Auckland Transport. The consent holder should contact Auckland Transport as soon as possible to ensure any required approvals are issued prior to construction.*
- *A vehicle crossing approval permit is required to be obtained from Auckland Transport for these works.*
- *Please note that any redundant vehicle crossings are required to be reinstated.*

## Vehicle Access

12. The consent holder must design and construct a vehicle accessway to serve Lots 1-19, 21 in accordance with the requirements of Auckland Council. Certification from a suitably qualified and experienced engineer that works have been satisfactorily undertaken must be provided when applying for a certificate under section 224(c) of the RMA.

### *Advice Note:*

- *The consent holder may also provide gas servicing to the lot(s), but this is not a requirement of the AUP(OP) and no proof is required at time of section 224(c). Any gas lines are required to be installed underground.*

## Covenant

13. Prior to the residential occupation of the proposed dwellings on Lots 1 – 19 , the consent hold must provide evidence to Council that a restrictive no-complaints covenant has been registered on the title(s) to the property, by the landowner (and binding any successors in title), so as to not complain as to effects generated by the lawful operation of the activities located in the rear portion of the site which is zoned Business – Light Industry.

The consent holder shall contact the Council (Team Leader Central Monitoring) to initiate the preparation of the covenant. A copy of the updated Computer Register(s) (certificate of title(s)) showing that the covenant has been registered shall be provided to the



Council's Team Leader Central Monitoring prior to commencement of the activity.  
The covenant shall:

- Restrict the owners or occupiers of the dwellings from making any complaint about the lawful generation of noise from any activity and/or event that complies with the rules of the Auckland Unitary Plan; and
  - Be drafted by the Council's nominated Solicitor at the consent holder's costs
  - Be registered against the Computer Register (certificate of title) to the affected land by the consent holder at their cost; and
  - Require the consent holder to
    - a) Be responsible for all legal fees, disbursements and other expenses incurred by the Council in connection with the covenant, and procure its solicitor to give an undertaking to the council for payment of the same; and
    - b) Indemnify the council for costs, fees, disbursements and other expenses incurred by the council as a direct or indirect result of the council being a party to this covenant.
14. The subdivider must cause to be registered against the Certificate of Title for Lots 1 – 19 , 21; a Consent Notice pursuant to Section 221 of the Resource Management Act 1991, recording the following conditions which are to be complied with on a continuing basis:

*Detention tanks*

*The lot is reliant on stormwater disposal to the public s/w system. The lot owner must provide and maintain an outlet to dispose of stormwater runoff for a 10% AEP storm event to the predevelopment discharge rate. The ongoing maintenance and associated costs are the responsibility of the lot owner."*

15. The subdivision of Lots 1 – 21 must be undertaken in accordance with the land use resource consent referenced as *BUN60380705 and/or LUC60380706*.

To ensure that this condition is complied with on a continuing basis, the following must be registered as a consent notice on the record(s) of title to be issued for Lot(s) 1 - 21:

*"This Lot has been created in accordance with approved land use resource consent BUN60380705 and/or LUC60380706.. All development on this lot must be in accordance with the approved land use resource consent referenced as BUN60380705 and/or LUC60380706., including all its conditions. If this land use resource consent lapses prior to being given effect to, then a new land use resource consent will be required, unless the proposed use and development of the lot is otherwise able to be undertaken as a permitted activity."*

16. The subdivider must cause to be registered against the Certificate of Title for Lots 1 – 19 , 21; a Consent Notice pursuant to Section 221 of the Resource Management Act 1991, recording the following conditions which are to be complied with on a continuing basis:

*Lots 1 – 19 & 21 share three common stormwater devices, common private waste collection (lots 5-19 only), waste collection area, lighting and a common accessway,*

*which are located within Lot 20. To ensure that the relevant Lot(s) 1 – 19 and 21 remain adequately connected to the required provisions, the consent holder must create a common entity to represent and ensure that future owners of Lot(s) 1 – 19 and 21 are jointly responsible and liable for the ongoing operation, maintenance, and repair.*

A copy of the document(s) describing the functions, powers, duties and liabilities of the common entity must be provided to the Council for certification. The document(s) must evidence that the ongoing operation, maintenance and repair obligations of this condition will be adequately provided for

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 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).*
3. *If you disagree with any of the above conditions, and/or disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).*
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.*

Delegated decision maker:

Name: Jennifer Chivers

Title: Team Leader, Resource Consents

Signed:



Date: 5 September 2022

# Decision on an application to vary/cancel a consent notice under section 221 of the Resource Management Act 1991



## Application under section 221(3)

**Application number:** VCN70019463 (s221(3) Cancellation of consent notice condition) (Variation/cancellation of consent notice)

**Consent notice number:** C886206.3

**Original subdivision consent number(s):** Barry Satchell Consultants Limited

**Applicant:**

**Site address:** 36A Eaglehurst Road

**Legal description:** Lot 2 DP 167980 {NAI0ID/827}

**Proposal:**  
To cancel consent notice C886206.3

*Note: For the avoidance of doubt, unless the context requires otherwise, any reference in this decision to 'application' shall be taken to mean an application to vary or cancel a consent notice under s221 of the RMA.*

This activity under s221(3) of the Resource Management Act 1991 (RMA) is for a cancellation of consent notices C886206.3 involving the following amendments (with strikethrough for deletion, underline for insertions):

### Cancellation to consent notice # C886206.3

- a. ~~Prior to any site works substantial solid fences to a height of 2.0 metres are to be constructed at least 1.0m outside the drip line of the foliage for trees for Lots 1 & 2. The construction of every fence is to be inspected and approved to the satisfaction of the Development Services Manager.~~
- b. ~~Such fences shall be in place prior to any site works commencing and maintained until all works have been completed."~~
- c. ~~No buildings are to be located within the area of canopy of the trees and/or 1.0m beyond the exterior edge of the dripline of the foliage of the trees on Lots 1 & 2.~~

## Decision

I have read the application, supporting documents, and the report and recommendations on the application for cancellation of a consent notice. I am satisfied that I have sufficient information to consider the matters required by the RMA and make a decision under delegated authority on the application.

Acting under delegated authority, under sections 221, 104 and Part 2 of the RMA, the application is **GRANTED**.

## 24. Reasons

The reasons for this decision are:

2. In accordance with an assessment under s104(1)(a)-(ab) as required by s221(3A) of the RMA, the actual and potential effects from the application will be acceptable as:
  - a. It is proposed to cancel consent notice C886206.3 as it was placed to ensure that fences are required during construction of a previous subdivision and that any consented buildings are located 1m from the canopy of the tree. Given that this tree is now protected under D13 Notable trees Overlay it is considered that the consent notice is now redundant.
  - b. With reference to s104(1)(ab), there are no specific offsetting or environmental compensation measures proposed or agreed to by the applicant to ensure positive effects on the environment
3. In accordance with an assessment under s104(1)(b) as required by s221(3A) of the RMA, the application is consistent with the relevant statutory documents.
4. In accordance with an assessment under s104(1)(c) and s221(3A) of the RMA, no other matters are considered relevant.
5. In the context of this application, where the objectives and policies of the relevant statutory documents were prepared having regard to Part 2 of the RMA, they capture all relevant planning considerations and contain a coherent set of policies designed to achieve clear environmental outcomes. They also provide a clear framework for assessing all relevant potential effects and there is no need to go beyond these provisions and look to Part 2 in making this decision as an assessment against Part 2 would not add anything to the evaluative exercise.
6. Overall the proposal is acceptable as assessed above.

## Advice notes

17. *A copy of the revised consent notices as amended included as attachment 1 to this section 221(3) decision.*

18. *This decision is to be read in conjunction with any other relevant approved resource consent(s) and does not negate the requirement to continue to comply with the conditions of any previously granted resource consent(s) that have been implemented, and any existing consent notices.*

Delegated decision maker:

Name: Jennifer Chivers

Title: Team Leader, Resource Consents

Signed:



Date: 5 September 2022

**IN THE MATTER** of the Resource Management  
Act 1991 ("the Act")

**AND**

**IN THE MATTER** of Consent Notice No. C886206.3

**AND**

**IN THE MATTER** of Record of Title Identifier NA101D/827

**CANCELLATION OF CONSENT NOTICE C886206.3**  
**(Pursuant to Section 221(3) of the Act)**

That Council resolves pursuant to Section 221(3) of the Resource Management Act 1991 that, the Consent Notice C886206.3 registered against the record of title for Lot 2 DP 167980, be cancelled.

**Schedule: The Land**

Lot 2 DP 167980 being all of the land in Record of Title Identifier NA101D/827.

DATED at Auckland this 2nd day of September 2022.

**AUTHENTICATED** by the Council

by Jennifer Chivers  
Team Leader, Resource Consents

)

on behalf of, and by  
authority of the AUCKLAND COUNCIL

)

)



Principal Administrative Officer

## Resource Consent Notice of Works S

Please email this form to [monitoring@aucklandcouncil.govt.nz](mailto:monitoring@aucklandcouncil.govt.nz) at least 5 days prior to work starting on your development or post it to the address at the bottom of the page.

<b>Site address:</b>				
<b>AREA (please tick the box)</b>	Auckland CBD <input type="checkbox"/>	Auckland Isthmus <input type="checkbox"/>	Hauraki Gulf Islands <input type="checkbox"/>	Waitakere <input type="checkbox"/>
Manukau <input type="checkbox"/>	Rodney <input type="checkbox"/>	North Shore <input type="checkbox"/>	Papakura <input type="checkbox"/>	Franklin <input type="checkbox"/>
Resource consent number:			Associated building consent:	
Expected start date of work:			Expected duration of work:	

Primary contact	Name	Mobile / Landline	Address	Email address
Owner				
Project manager				
Builder				
Earthmover				
Arborist				
Other (specify)				

<b>Signature:</b> Owner / Project Manager (indicate which)	<b>Date:</b>
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Once you have been contacted by the Monitoring Officer, all correspondence should be sent directly to them.

### **SAVE \$\$\$ minimise monitoring costs!**

The council will review your property for start of works every three months from the date of issue of the resource consent and charge for the time spent. You can contact your Resource Consent Monitoring Officer on 09 301 0101 or via [monitoring@aucklandcouncil.govt.nz](mailto:monitoring@aucklandcouncil.govt.nz) to discuss a likely timetable of works before the inspection is carried out and to avoid incurring this cost.