

Report for an application for resource consent under the Resource Management Act 1991



Discretionary activity

1. Application description

Application number: LUC60438343 (s9 land use consent)
Applicant: Steven Bernstein
Site address: 13 Church Bay Road, Waiheke Island 1081
Legal description: Lot 9 Deposited Plan 68070
Site area: 2,023 m²

Auckland Council District Plan (Hauraki Gulf Islands Section)

Zoning and precinct: Island Residential 2 (Bush residential)
Overlays, controls, special features, designations, etc: Significant Ridgeline Area
Local Road (Church Bay Road)

Auckland Unitary Plan (Operative in part)

Zoning and precinct: Hauraki Gulf Islands
Overlays, controls, special features, designations, etc: **Overlays:**
High-Use Aquifer Management Areas Overlay - Waiheke Aquifer
Controls:
Stormwater Management Area Control - MATIATIA, Flow 1
Stormwater Management Area Control - BLACKPOOL, Flow 2
Macroinvertebrate Community Index – Rural
Macroinvertebrate Community Index – Urban

Proposed plan change: Plan Change 120 & 79

Zoning: N/A
Spatially Identified Qualifying Matters: N/A
Management Layers: N/A

2. Locality Plan

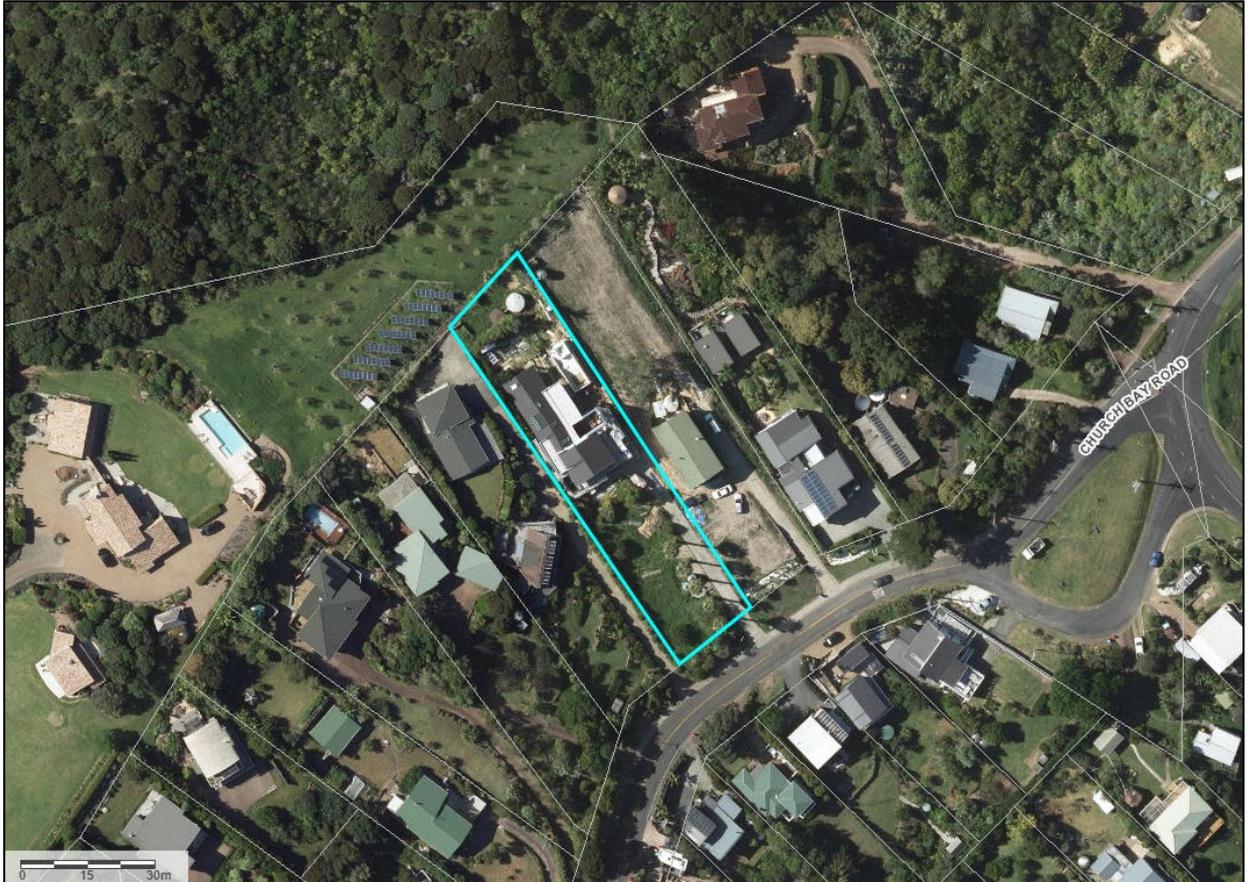


Figure 1: 13 Church Bay Road (highlighted in blue) and local surrounds. Source: Auckland Council GIS

3. The proposal, site and locality description

Wendy Baverstock of Isle Land Planning Limited has provided a description of the proposal and subject site on pages 4-7 of the Assessment of Environmental Effects (AEE) titled: 'Application for Replace Retaining Wall Land Use Consent', dated 26 September 2024.

By way of background, additions and alterations to the subject site were approved under resource consent LUC60410638 granted on 24 January 2023 on a non-notified basis. This generally included the construction of the pool and associated decking, alterations to the façade and internal alterations. To clarify, no infringements to building in relation to boundary were granted.

Building consent BCO10364517 was approved for these works dated 13 April 2023.

A retaining wall was approved and constructed under the building consent on the shared boundary with 9 Church Bay Road over 1m in height in areas. This had not been approved by way of the underlying resource consent. This wall sought to replace a pre-existing wall which was removed in 2023 following the granting of consent LUC60410638, however no information was provided as to the scale of the existing wall and its proximity to the boundary.

I note concerns have been raised about the location of the retaining wall and whether this is contained fully within the subject site or does cross the boundary with 9 Church Bay Road. On 20 June 2024, Jake McKenzie of Barry Satchel noted "*The retaining wall was surveyed and deemed to be located 0.03m-0.1m within the boundary of 11 Church Bay Road. We note only the visible*

timber poles and cladding were surveyed and we are unsure of the location of the pile foundations and if these might extend over the boundary or not", and on 4 September 2025 noted "Cato Bolam have not confirmed that the retaining wall was wholly contained in 13 Church Bay Road and from their cross sections it might appear that the wall and/or foundation for the wall crosses over the site boundary." I note based on the application information the proposal relates solely to 13 Church bay Road, and 9 Church Bay Road does not form part of the subject site. This does not materially affect my recommendation below.

Lodgement of the subject application was received for the retaining wall and a building to boundary infringement relative to the pool balustrade dated 26 September 2024.

Correspondence was received during processing from an interested party at 9 Church Bay Road and a formal assessment was provided by these interested persons on 8 January 2026. Concerns expressed were in relation to the retaining wall location and height, building in relation to boundary and yard concerns. A copy of all correspondence can be found in Appendix A.

As a result of this correspondence which questioned survey levels, a LiDAR survey was conducted by the applicant to establish ground level as per the plan definition in Part 14.

The outcome of the LiDAR survey has altered the extent of retaining wall height and building in relation to boundary infringements, such that these formed additional infringements not previously considered, and has been reflected in the architectural plans. New infringements were also introduced.

I acknowledge there are still discrepancies within in the plans with respect to impervious surfaces calculations given it is not confirmed whether Chapter E10 matters are complied with or not. Currently redevelopment of impervious surfaces (as defined under the Auckland Unitary Plan (Operative in Part)) that form part of the proposal are 48m², hereby complying with the Chapter E10 permitted activity standards. However, were this to increase beyond 50m² as a result of this information it would require an additional reason for resource consent.

As a result of the survey results, the Applicant has subsequently sought to re-consent the previous additions and alterations and new buildings (i.e., swimming pool and retaining wall). Additional infringements have been included since lodgement including increased building to boundary infringements, yard infringements, and for vegetation removals. It has also been determined that building coverage originally approved did not adequately consent for the entire proposal. That consent approved 15.9% building coverage, a 0.9% infringement. However, building coverage is more accurately considered to be 22.9%, based off the latest plans.

To summarise, the proposal includes the following aspects:

- Additions and alterations to the existing dwelling including:
 - Conversion of the ground floor garage, office, and bathroom into a fourth bedroom and expanded and upgraded bathroom.
 - Expansion of two first floor bedrooms to the west and the addition of ensuite bathrooms.
 - The existing first floor laundry, toilet and bathroom areas will be modified to create a new indoor garden area.
 - The first-floor kitchen/living/dining area will be renovated and extended.

- The finishes to the exterior of the additions/alterations which have a mix in terms of modulation and materiality. The finishes use recessive tones in keeping with the existing finishes of the dwelling.
- The Alfresco area includes a new outdoor dining area which has been updated and modernised including outdoor chimney reclad.. All existing decking has been replaced and extended. The existing louvred pergola has been replaced by a retractable louvre system while the chimney was modernised.
- A swimming pool and spa have been installed surrounded by safety fencing and decking.
- A retaining wall has been constructed along the common boundary with 9 Church Bay Road. A 1m high wooden, batted safety balustrade is proposed atop the retaining wall for safety purposes and will be built to building code. Measurements for the height of the combined retaining wall and balustrade building are measured against 2006 LiDAR. The maximum height of the combined retaining wall and wooden balustrade building is 2.479m, reducing to a combined 1.862m along a roughly 64m stretch of the boundary
- The removal of eight mature Pittosporum trees was required to establish the building platform for the development to occur. The Applicant recognises these trees as part of the existing environment and that it would have afforded visual buffering between the subject site and adjacent.
- A landscaping plan has been provided that includes hedging atop the retaining wall inside the balustrades, cascading plants along the ground floor façade adjacent to the eastern boundary and some moveable planters in the corner of the first floor decked area.

Having undertaken multiple site visits, I concur with that description of the proposal and the site and have no further comment.

4. Background

Correspondence received

Throughout the processing of the application, persons at 9 Church Bay Road have expressed interest/concerns relative to the proposal. Notably, the following matters were raised (these have been grouped together for ease):

- Existing ground level starting point.
- Errors occurred on two previous consents on the subject site.
- Bulk and location infringements and subsequent adverse effects on 9 Church Bay Road.
- Mitigation proposed not sufficient.
- Coverage inaccuracies.
- The retaining wall orientation and location in relation to the common boundary.
- The receiving environment being recognised accurately.

As part of the consenting process, a site visit to these persons was conducted on 30 January 2026. Revised plans were shared to these persons on the 30 January 2026, and final plans were provided on 12 February 2026. At the time of writing, these interested persons still have concerns regarding the final plans provided and have requested a determination on the proposal.

Matters raised have been considered below.

Title interests

There are no title interests that are affected by the proposal.

Stormwater Management Area Overlay (SMAF) matters

Under LUC60410638 it was concluded that 45m² of additional impervious area was to be constructed on the subject site which is subject to a Stormwater Management Area Overlay – Flow 1 and 2. The pool and spa area according to the latest plans is 48 m² which still complies with Rule E10.4.1(A2) under Chapter E10 of the AUP-OP.

Noting there is still a question around the accurate level of coverages across the site I do acknowledge anything impervious area over 50m² would trigger a consent requirement under Chapter E10 as a restricted discretionary activity under E10.4.1(A3).

Notwithstanding, whether SMAF would constitute a reason for consent or be a permitted activity, would have no material bearing on the recommendation on notification reached below.

Waiheke Local Board engagement

The Waiheke Local Board were provided a copy of the AEE, Plans and Record of Title for this application as building coverage for the proposal exceeds 20% across the site on 10 February 2026.

On 12 February 2026 the Waiheke Local Board commented:

“they are satisfied of limited notification. They are wondering how it got to this “retrospective” stage, but will leave to the planners.”

Plan Change 120

Plan Change 120 (PC120) to the Auckland Unitary Plan (Operative in Part) was publicly notified by Council on 3 November 2025. I note that this application is not subject to PC120 matters noting that only three regional rules are established under PC120 are not applicable to this application.

Plan Change 79

Proposed Plan Change 79 Decision Version (PC79 DV) was publicly notified by Council on 9 August 2024. I note that this application is not subject to PC79 DV matters noting that there are no regional rules under this plan change that affect this proposal.

5. Reasons for the application

Resource consent is required for the following reasons:

Land use consent (s9) – LUC60438343

Auckland Council District Plan (Hauraki Gulf Islands Section)

District land use (operative plan provisions)

Part 10a – Land Units

- Additions or alterations to an existing building within the Island Residential 2 (Bush Residential) land unit requires resource consent as a **restricted discretionary activity** under rule table 10a.10.5. The proposal includes retrospective resource consent for additions and alterations to the existing dwelling.
- Construction of buildings for use as a residential accessory building (i.e., swimming pool and retaining wall/wooden balustrading) within the Island Residential 2 (Bush Residential) land unit requires resource consent as a **restricted discretionary activity** under rule table 10a.10.5.
 - The proposal includes retrospective resource consent for a filled retaining wall along the eastern boundary that exceeds 1m in height. The maximum height of the combined retaining wall and glass balustrade is 2.479m, reducing to a combined 1.862m.

Note: Existing ground level denoting the base of the retaining wall is based on 2006 LiDAR.

Development Controls

- Any building that exceeds the 2m+45° recession plane along the eastern boundary is a **discretionary activity** under rule 10c.4.3. The proposal seeks retrospective resource consent for:
 - The alfresco area, fireplace, and chimney (AI1, AI2, AI3) infringes the eastern recession plane by a vertical distance of 2.414m over a horizontal distance of 4.480m.
 - The front deck / glass balustrade & Alfresco glass balustrades (BI1, BI2, BI3) infringe the eastern recession plane by a vertical distance of 1.397m over a horizontal distance of 11.720m.
 - The retaining wall balustrades (BI4) infringes the eastern recession plane by a vertical distance of 1.505m over a horizontal distance of 17.200m.
 - The forward part of the retaining wall balustrade (RBI1) infringing the eastern recession plane by a vertical distance of 0.354m over a horizontal distance of 7.692m.
 - The middled part of the retaining wall balustrade (RBI2) infringing the eastern recession plane by a vertical distance of 0.054m over a horizontal distance of 4.301m.
 - The rear part of the retaining wall balustrades (RBI3) infringing the eastern recession plane by a vertical distance of 0.557m over a horizontal distance of 27.673m.

- Any building which infringes control 10c.4.4 Yards are a **discretionary activity** under rule 10c.3.1. The proposed retaining wall and swimming pool decking area fall within the 1.5m side yard along the eastern boundary with the retaining wall running flush with the boundary, being a 1.5m infringement.
- Activities which infringe control 10c.4.5 Building Coverage are a **discretionary activity** under rule 10c.3.1. The proposal seeks retrospective resource consent for building coverage of 22.9% where 15% is allowed within the Island Residential 2 (Bush Residential) land unit, being a 7.9% infringement.

Note: The scale of this infringement has increased since the original consent based on the classification of buildings as per discussions with the Applicant.

- The removal of protected vegetation not provided for as a permitted activity is a **restricted discretionary activity** under rule 10c.5.1.2(1). The proposal includes retrospective resource consent for the removal of eight Pittosporum trees all over 3m in height.

Note: This reason for consent has been included on a precautionary basis as applied for by the applicant based on historical photographs of the site.

The reasons for consent are considered together as a **discretionary activity** overall.

6. Public notification assessment (sections 95A, 95C-95D)

Section 95A specifies the steps the council is to follow to determine whether an application is to be publicly notified. These steps are addressed in the statutory order below.

Step 1: mandatory public notification in certain circumstances

No mandatory notification is required as:

- the applicant has not requested that the application is publicly notified (s95A(3)(a))
- there are no outstanding or refused requests for further information (s95C and s95A(3)(b)), and
- the application does not involve any exchange of recreation reserve land under s15AA of the Reserves Act 1977 (s95A(3)(c)).

Step 2: if not required by step 1, public notification precluded in certain circumstances

The application is not precluded from public notification as:

- the activities are not subject to a rule or national environmental standard (NES) which precludes public notification (s95A(5)(a)); and
- the application does not exclusively involve one or more of the activities specified in s95A(5)(b).

Step 3: if not precluded by step 2, public notification required in certain circumstances

The application is not required to be publicly notified as the activities are not subject to any rule or a NES that requires public notification (s95A(8)(a)).

The following assessment addresses the adverse effects of the activities on the environment, as public notification is required if the activities will have or are likely to have adverse effects on the environment that are more than minor (s95A(8)(b)).

Adverse effects assessment (sections 95A(8)(b) and 95D)

Effects that must be disregarded

Effects on persons who are owners and occupiers of the land in, on or over which the application relates, or of land adjacent to that land

The council is to disregard any effects on owners and occupiers of the land in, on, or over which the activities will occur, and on persons who own or occupy any adjacent land (s95D(a)). The land adjacent to the subject site is listed in the following table:

Table 1

Address

4, 6, 8, 9, 17, 59 Church Bay Road



Figure 3: Adjacent persons (in yellow) in relation to the subject site (blue). Source: Auckland Council GIS

Any effect on a person who has given written approval to the application

No persons have provided written approvals for this application.

Effects that may be disregarded

Permitted baseline

The permitted baseline refers to the effects of permitted activities on the subject site. The permitted baseline may be taken into account and the council has the discretion to disregard those effects where an activity is not fanciful. In this case, the applicant has not sought to adopt a permitted baseline for this proposal, I adopt this approach.

Assessment

Receiving environment

The receiving environment beyond the subject site includes permitted activities under the relevant plans, lawfully established activities (via existing use rights or resource consent), and

any unimplemented resource consents that are likely to be implemented. The effects of any unimplemented consents on the subject site that are likely to be implemented (and which are not being replaced by the current proposal) also form part of this reasonably foreseeable receiving environment. This is the environment within which the adverse effects of this application must be assessed. I note that the receiving environment includes the following aspects relevant to this application:

- The receiving environment is a mix of residential and rural land unit types (see **Figure 4** below). Towards the west, east and south along Church Bay Road are Island Residential 2 (Bush Residential) properties consistent with the subject site. To the north are Rural zoned properties used for horticultural and forestry purposes. These rural zoned properties are Rural 2 (Western Landscape) and Open Space 1 (Ecology and Landscape).



Figure 4: Land unit/ zoning of the surrounding area. Source: Auckland Council GIS

- A significant ridgeline sits approximately 100m to the west of the works area (as depicted in **Figure 4** above). Therefore, properties to the west of the subject site are typically subject to height restrictions with respect to the crest of the ridgeline.
- Considering the context of the neighbourhood character within the receiving environment is that steep slopes dominate the landscape, and houses are constructed generally on steeper slopes orientated toward the road (southeast orientation) and outdoor living spaces are typically facing towards the north and west to take advantage of sunlight.
- I note that on 16 August 2024, resource consent BUN60429262 was granted at 9 Church Bay Road for additions and alterations to the existing dwelling and for the construction of a Visitor Accommodation Unit (VAU) and additions and alterations to the dwelling, as depicted in **Figure 5** below. This consent is partially underway with the additions and alterations under construction as per my most recent site visit on 30 January 2026 (**Figure 6**). Construction of the VAU however has not progressed to date. I have considered this consent likely to be

implemented following approval of building consent BCO10385316 on 24 March 2025, and as such these works do form part of the receiving environment.

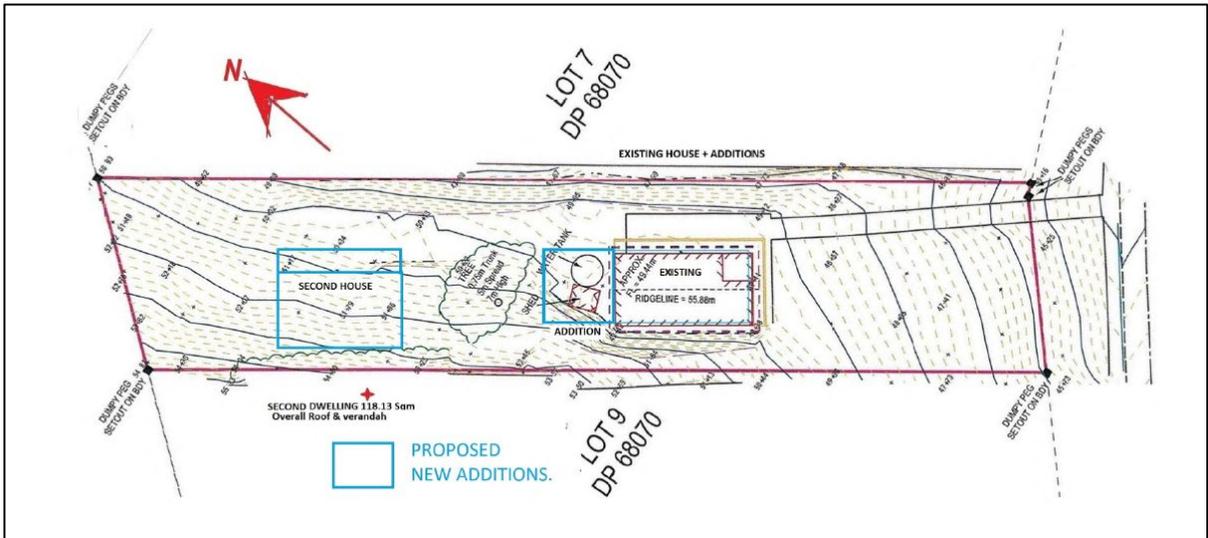


Figure 5: Approved plans for BUN60429262. Source: Plan A01 of BUN60429262



Figure 6: Progress of works undertaken under BUN60429262. Source: Site visit to 9 Church Bay Road 30 January 2026

- There are no other unimplemented resource consents that I'm aware of for the subject site or those adjacent or the purposes of defining the receiving environment that would materially affect this assessment.

Adverse effects

The consultant has provided, in accordance with schedule 4 of the RMA, an assessment of adverse environmental effects in such detail as corresponds with the scale and significance of the effects that the activities may have on the environment. This can be found on pages 11-13 of the lodged AEE, dated 26 September 2024.

I adopt the findings and conclusions of the lodged AEE and consider adverse effects on the environment to be less than minor. Additional matters have been assessed below:

Character and visual amenity effects

From a neighbourhood character perspective, when viewed from the streetscape the built form appears to be of a scale and location that is reasonable within the context of the Island Residential 2 (Bush residential) land unit when viewed from the public realm as afforded by the generous setback from the carriageway and pedestrian pathway in the road reserve (~50m) and relative contour variation (~9m above the road level). The built forms relationship to the road does not generate adverse visual character or visual amenity effects as to dominate the dominant bush clad character of the receiving environment.

I note the overall form, setbacks, height and modulation of the additions are not at odds or inconsistent with the character of the surrounds. Visibility, beyond adjacent land will be limited and the protrusions into the building in relation to boundary (BIRB) recession planes and yard infringements are not considered to be evident, to the degree it will not unduly impact upon the streetscape nor overall character.

The additions and alterations and new buildings are largely subservient in form, noting that the positioning of the addition towards the rear / screening that will be afforded by nature of the existing building bulk. Whilst the bulk does sit at the higher end of that seen within the surrounds, it is not considered out of character nor at odds with the surrounds.

I note that the applicant has offered conditions of consent requiring the finishes to be recessively coloured.

Overall, the proposal results in less than minor adverse character and visual amenity effects on the surrounding environment.

Vegetation effects

I acknowledge that permanent indigenous vegetation loss occurred as a result of the works, being eight protected Pittosporum trees over 3m in height removed along the common boundary with 9 Church Bay Road (see **Figure 6** and **Figure 7** below). It does appear these trees were removed between 2022 and 2024 based on aerial imagery. I note this reason for consent has been included by the applicant by way of s92 responses based on historical imagery of the site at the time the original consent was granted in January 2023 prior to the works being carried out. The Applicant notes that while approximately eight Pittosporums were removed on the subject site which afforded visual buffering along the boundary in-keeping with the anticipated visual characteristics of the Island Residential 2 (Bush Residential) land unit.



Figure 6: View of existing dwelling prior to the additions and alterations showing existing vegetation on the subject site taken March 2022. Pre-existing alfresco area can be seen in the centre of the picture. Source: Figure 2 of the S92 response



Figure 7: View of existing dwelling prior to the additions and alterations showing existing vegetation on the subject site taken March 2022. Source: Figure 3 of the S92 response

Landscape planting, as depicted in **Figure 8** below, will be undertaken to mitigate the loss of vegetation.

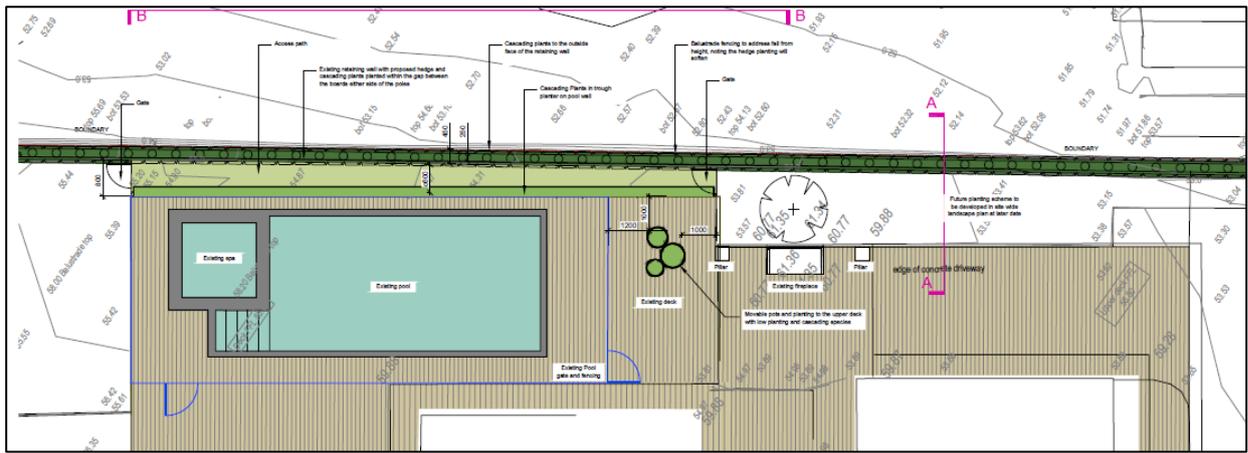


Figure 8: View of existing dwelling prior to the additions and alterations showing existing vegetation on the subject site taken March 2022. Source: Figure 3 of the S92 response

Given the type of trees removed, the number of trees and the proposed mitigation, noting this has been applied for retrospectively in nature, I consider the loss will not detract from the natural character and the landscape, ecological and amenity values of the surrounds. Noting the extent of vegetation retained on site, the openness to the streetscape and the balance maintained between built form to open space, adverse effects are considered mitigated and managed. The qualities of the bush character are considered maintained.

Overall, based on the comments above, I consider the adverse effects of vegetation loss on the environment to be less than minor in nature.

Adverse effects conclusions

Based on the preceding assessment, I conclude that any effects from the proposal on the wider environment are less than minor.

Step 4: public notification in special circumstances

If an application has not been publicly notified as a result of any of the previous steps, then the council is required to determine whether special circumstances exist that warrant it being publicly notified (s95A(9)).

Special circumstances are those that are:

- Exceptional, abnormal or unusual, but something less than extraordinary or unique;
- outside of the common run of applications of this nature; or
- circumstances which make notification desirable, notwithstanding the conclusion that the activities will not have adverse effects on the environment that are more than minor.

In considering special circumstances (having regard to the proposal and the correspondence received) I have specifically turned my mind to public opinion expressed may be a contributing factor. Public interest has been limited. This interest alone is not considered to amount to special circumstances, noting it also lies with neighbouring residents.

Given the above and having turned my mind specifically to the existence of any special circumstances, I do not consider that special circumstances exist that warrant the public notification of the proposal as there is nothing exceptional or unusual about the application, and the proposal has nothing out of the ordinary run of things to suggest that public notification should occur.

Public notification conclusion

Having undertaken the s95A public notification tests, the following conclusions are reached:

- Under step 1, public notification is not mandatory.
- Under step 2, there is no rule or NES that specifically precludes public notification of the activities, and the application is for activities other than those specified in s95A(5)(b).
- Under step 3, public notification is not required as the application is for activities that are not subject to a rule that specifically requires it, and it is considered that the activities will not have adverse effects on the environment that are more than minor.
- Under step 4, there are no special circumstances that warrant the application being publicly notified.

It is therefore recommended that this application be processed without public notification.

7. Limited notification assessment (sections 95B, 95E-95G)

If the application is not publicly notified under s95A, the council must follow the steps set out in s95B to determine whether to limited notify the application. These steps are addressed in the statutory order below.

Step 1: certain affected protected customary rights groups must be notified

There are no protected customary rights groups or customary marine title groups affected by the proposed activities (s95B(2)).

In addition, the council must determine whether the proposed activities are on or adjacent to, or may affect, land that is subject of a statutory acknowledgement under schedule 11, and whether the person to whom the statutory acknowledgement is made is an affected person (s95B(3)).

Within the Auckland region the following statutory acknowledgements are relevant:

- Te Uri o Hau Claims Settlement Act 2002
- Ngāti Manuhiri Claims Settlement Act 2012
- Ngāti Whātua Ōrākei Claims Settlement Act 2012
- Ngāti Whātua o Kaipara Claims Settlement Act 2013
- Te Kawerau ā Maki Claims Settlement Act 2015
- Ngāti Tamaoho Claims Settlement Act 2018
- Ngāi Tai Ki Tāmaki Claims Settlement Act 2018

In this instance, the site is not located within coastal or terrestrial statutory acknowledgement. The works do not propose discharges direct to the coastal environment nor adverse effects on coastal erosion resulting from this proposal. The separation between earthworks and a Cultural Heritage Inventory (CHI) is more than ~450m to a structure located at 59 Ocean View Road to the northwest. As a result, it is considered that Ngāi Tai Ki Tāmaki, and other mana whenua groups, are not adversely affected to a minor or more degree by this proposal.

Step 2: if not required by step 1, limited notification precluded in certain circumstances

The application is not precluded from limited notification as:

- the application is not for one or more activities that are exclusively subject to a rule or NES which preclude limited notification (s95B(6)(a)); and
- the application is not exclusively for a controlled activity, other than a subdivision, that requires consent under a district plan (s95B(6)(b)).

Step 3: if not precluded by step 2, certain other affected persons must be notified

As this application is not for a boundary activity, there are no affected persons related to that type of activity (s95B(7)).

The following assessment addresses whether there are any affected persons that the application is required to be limited notified to (s95B(8)).

In determining whether a person is an affected person:

- a person is affected if adverse effects on that person are minor or more than minor (but not less than minor);
- adverse effects permitted by a rule in a plan or NES (the permitted baseline) may be disregarded; and
- the adverse effects on those persons who have provided their written approval must be disregarded.

Adversely affected persons assessment (sections 95B(8) and 95E)

Adverse effects

I adopt the permitted baseline and receiving environment outlined in the s95A section of this report.

Persons at 9 Church Bay Road are considered to be adversely affected by the proposal as:

- There is the potential for at least minor adverse effects to arise from the proposal on the amenity values of these persons, as a result of the building (both rear additions and retaining wall and balustrade) location, bulk and scale which projects beyond the permitted recession plane controls, located within the yard and exceeding coverage.

- These adverse effects are a combination of adverse visual dominance and undue privacy effects (both actual and perceived) from the constructed building additions and alterations and retaining.
- While planting is proposed in these areas, I do not consider these aspects will mitigate the adverse effects.
- In terms of shading, I do note that little reliance has been placed on comparisons to a 'complying envelope' as represented in the shading plans as this appears to depict 100% building coverage across the site in some diagrams, where 15% is anticipated. As such, I have based my assessment off the actual shading depicted. Given the timing, duration, and extent of shading generated, I do consider shading effects to be less than minor for these persons.

Effects of the proposal are considered noticeable and adverse in nature on these persons and are not considered less than minor. Therefore, these persons are considered adversely affected.

No other persons are considered to be adversely affected by the proposal. This is because:

- The additions and alterations and new buildings are consistent with the expectations for residential development in the neighbourhood and the site will retain a residential character that is consistent with other properties in the area.
- The retrospective vegetation loss is not considered to adversely affect any (identifiable) persons.

Overall, adverse effects on persons at 9 Church Bay Road are considered at least minor and the proposal should be limited notified to these persons.

Step 4: further notification in special circumstances

In addition to the findings of the previous steps, the council is also required to determine whether special circumstances exist in relation to the application that warrants it being notified to any other persons not already determined as eligible for limited notification (excluding persons assessed under section 95E as not being affected persons).

Special circumstances are those that are:

- Exceptional, abnormal or unusual, but something less than extraordinary or unique;
- outside of the common run of applications of this nature; or
- circumstances which make limited notification to any other person desirable, notwithstanding the conclusion that no other person has been considered eligible.

In this instance I have turned my mind specifically to the existence of any special circumstances under s95B(10) and conclude that there is nothing exceptional or unusual about the application, and that the proposal has nothing out of the ordinary run of things to suggest that notification to any other persons should occur.

Limited notification conclusion

Having undertaken the s95B limited notification tests, the following conclusions are reached:

- Under step 1, limited notification is not mandatory.
- Under step 2, there is no rule or NES that specifically precludes limited notification of the activities, and the application is for activities other than that specified in s95B(6)(b).
- Under step 3, limited notification is required as it is considered that the activities will result in adversely affected persons.
- Under step 4, there are no special circumstances that warrant the application being limited notified to any other persons.

It is therefore recommended that this application be processed with limited notification and notice should be served on persons at 9 Church Bay Road, Waiheke Island.

8. Notification recommendation

Limited notification

For the above reasons under section 95A, this application may be processed without public notification.

Under section 95B, limited notification is required as the following persons are adversely affected:

- 9 Church Bay Road, Waiheke Island

There are no protected customary rights groups or marine title groups in the region affected by this proposal.

Accordingly, I recommend that this application is processed limited notified.



Andrew Murtagh
Intermediate Planner
Resource Consents

Date: 16/02/2026

Approved for release

Section 95A recommendation approved for release to the duty commissioner for determination.

A handwritten signature in blue ink, appearing to be 'Caitlin Perkins', with a long horizontal flourish extending to the right.

Caitlin Perkins
Team Leader
Resource Consents

Date: 16/02/2026