



**Isle Land  
Planning**

Applicant  
**Keith Flamank and Steve Bernstein**

**13 Church Bay Road  
Waiheke Island**

Application for  
**Replace Retaining Wall  
Land Use Consent**



Isle Land Reference **100/4338A**  
Prepared **September 2024**

# RESOURCE CONSENT APPLICATION

## 1.0 THE APPLICANT AND PROPERTY DETAILS

**To:** Auckland Council

**Site Address:** 13 Church Bay Road,  
Waiheke Island, Ak. 1081

**Applicant's Name:** Steven Bernstein

**Address for Service:** Isle Land Ltd  
P O Box 230  
Ostend  
Waiheke Island 1843

**Legal Description:** Lot 9 DP 68070, RT – NA23C/436

**Site Area:** 2023m<sup>2</sup>

**Plans:** Auckland Council District Plan Hauraki Gulf Islands Section (**ODP**)  
Auckland Unitary Plan Operative in Part (**AUP**)

**Land Unit/  
Zone:** ODP: Island Residential 2 (bush residential)  
AUP: Hauraki Gulf Islands (urban)

**Designations/  
Limitations:** ODP: Local Road  
Significant Ridgeline Area [*not affected*]  
AUP: Overlay: High Use Aquifer Management Areas - Waiheke  
Control: Macroinvertebrate Community Index – Rural/Urban  
Control: Stormwater Management Area Flow 1 Matiatia, Flow 2, Blackpool

**Strategic Management Area:** West Waiheke (ODP)

**Locality Plan:** See Figure 1

## 1.1 Summary of application

On 24 January 2023, Council granted a land use resource consent (Ref: LUC60410683 – **Appendix 3A/3B**) to the applicant for additions/alterations to the existing dwelling on their established residential property at 13 Church Bay Road, Oneroa, Waiheke Island. Amongst other modifications, the approved additions/alterations included adding an aboveground pool and spa to the eastern side of the dwelling (see the approved plans - **Appendix 3B**). The consent (see **Appendix 3A**) approved (i) additions/alterations to an existing building in the Island Residential 2 land unit, and (ii) a small infringement of the ODP building coverage development control.

During the construction works, an existing retaining wall, downslope of the dwelling, along the site's eastern boundary adjacent to the dwelling, was replaced with a new timber retaining wall which was not included in the previous application. The retaining wall extends to the ground level on the subject site and is not considered a building under ODP definitions. Only minor earthworks were required on the subject site to replace the existing wall and no generally protected vegetation on the subject site was affected. However, reassessment of compliance with the ODP 'building in relation to boundary' development control reveals that the southern end of the glass balustrade along the eastern side of the new pool and its deck will infringe the eastern boundary recession plane. This infringement was not approved as part of the current resource consent.

Consequently, a retrospective district land use consent is sought under RMA<sup>1</sup> section 9(3) and the ODP for the additional development control infringement.

The proposed development is illustrated on the plans submitted with the application (refer to **Appendix 2**) prepared by Litehouse Ltd. and titled '*Bernstein and Flamank Home Alterations. 13 Church Bay Road, Waiheke Island.*' Drawings include the following:

Name	Rev	Date	Name
02	B	28/02/2024	Site Plan
11	-	28/02/2024	HIRB Sections

The proposal is described in detail in Section 3 of this report.

## 1.2 Summary of reasons for consent:

### ODP.

- To infringe (retrospectively) the 'building in relation to boundary' development control,

## 1.3 Other consents required / comments

- I attach an assessment of environmental effects that corresponds with the scale and significance of the effects that the proposed activity may have on the environment.
- It should be noted that the existing outdoor chimney has been legally established under the resource consent approved in 2004, a copy of which is contained in Appendix 4. The existing chimney is existing with the exception of an upgrade of the exterior finishing due to the age of the structure.

---

<sup>1</sup> Resource Management Act 1991

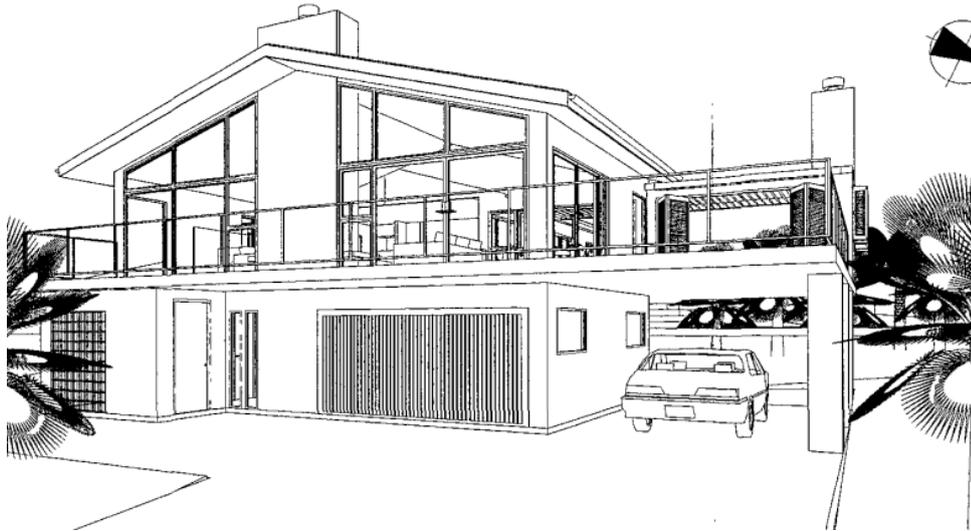


Figure 1 – approved plan set showing chimney

**1.4 List of other information attached:**

List of Appendices:

- Appendix 1:** Record of Title
- Appendix 2:** Proposed Development Plans
- Appendix 3A:** Council’s Decision Report and Consent Conditions (LUC60410683 – January 2023)
- Appendix 3B:** Approved Plans (LUC60410683 – January 2023)
- Appendix 4:** Approved Plans (RLUC20048076 – reference only)

A handwritten signature in black ink, consisting of stylized, overlapping loops.

---

Signature of Applicant or duly authorised agent

**Date: 26 September 2024**

## 2.0 SITE DESCRIPTION

### 2.1 Site Location

The location of the site is shown in figure 1b as follows –



Figure 1b – Location Plan: 13 Church Bay Road, Waiheke Island. Source: Council GeoMaps (~2017).



Figure 1c –close up of the site. Source: Google Earth (Feb. 2024)

## 2.2 Site Description

The subject site is legally described as Lot 9 DP 68070 and is held in Record of Title, RT – NA23C/436. A copy of the RT is contained in **Appendix 1**. The RT gives the site area as 2023m<sup>2</sup> (*more or less*).

The Stormwater Report provided in support of the original application (for LUC60410683) includes the following site description:

*The site is approximately rectangular in shape and is accessed off Church Bay Road via an existing concrete driveway at the south-east corner of the property. The property is bordered by similar residential properties with Church Bay Road to the south-east of the property.*

*The site is developed with a dwelling to the central north-west of the property. The existing topography can be described as gentle to moderate sloping from the northwest to the south-east corner of the subject site. The site shows gentle sloping of approximately 10 degrees with steeper slopes at the north-western boundary. Majority of the site is well vegetated with grassed lawn and a few mature trees.*

*Auckland Council GeoMaps (GeoMaps) indicates the site is not impacted by any 100-year floodplain and there are no overland flow paths traversing through the property. There is no public stormwater network for connection to service the subject site.*

## 2.3 Neighbourhood Characteristics

The subject site forms part of the western periphery of the residential development spanning the isthmus between Oneroa village (by Oneroa Bay) on Waiheke Island's northern shore and Blackpool Beach village (by Huruhi Bay) on the southern shore. The site, along with other properties on the surrounding foothills leading down towards Blackpool Beach, is zoned Island Residential 2 (bush residential) under the ODP where development is generally limited to reasonably conventionally designed residential dwellings sometimes set within sites dominated by remnant or regenerating bush. Interspersed with several areas zoned for public use ('open space' areas, notably including Alison Park to the east, and Te Huruhi Bay Reserve to the south-east, of the subject site), the ODP zoning generally grades to Island Residential 1 (traditional residential) on the flatter areas closer to Oneroa and Blackpool beach shorelines. The AUP rural-urban-boundary passes along the northern boundary of the residential properties aligned with the subject site along the north of Church Bay Road in this area. Land further to the west of the site is zoned Rural 2 (western landscapes) and is characterised by very large sized lots, open rural pasture and productive land, areas of remnant and regenerating bush, and various occasional often large dwellings or other more production-related buildings such as wineries, restaurants and function facilities. The site and immediate surrounds occupy the top of the catchment of several small streams which drain south-eastward from Church Bay Road to discharge into Huruhi Bay at Blackpool Beach. Information available from AC GeoMaps identifies a floodplain risk for lower parts of the streams, particularly where these traverse flatter land closer to the shore, but these identified areas are well separated from the subject site.

## 3.0 THE PROPOSAL

On 24 January 2023, Council granted a land use resource consent (Ref: LUC60410683, see **Appendix 3A** for the Decision Report and Consent Conditions and **Appendix 3B** for the approved plans) to the applicant for additions/alterations to the existing dwelling on their established residential property at 13 Church Bay Road, Oneroa, Waiheke Island (and installation of a new wastewater management system and upgrades to the stormwater management system). The approved additions/alterations included modifying various existing rooms to add a fourth bedroom, extending two existing bedrooms, creating an indoor garden area, extending the kitchen/dining/living room, replacing existing decks and adding new areas, renovating an outdoor dining area, and adding an aboveground pool and spa to the eastern side of the dwelling (see the approved plans - **Appendix 3B**). The consent (see **Appendix 3A**) approved (i) additions/alterations to an existing building in the Island Residential 2 land unit, and (ii) a small infringement of the building coverage development control under the ODP.

During the construction works, an existing retaining wall, downslope of the dwelling, along the site’s eastern boundary adjacent to the dwelling, was replaced with a new timber retaining wall which was not included in the previous application. The retaining wall extends to the ground level on the subject site and is not considered a building under ODP definitions. It is noted that in places, the ground level on the adjacent site has been altered during earthworks on this property and the original ground level has been referenced on the plan set supplied. The retaining structure has recently been stained black to ensure it maintains a recessive finish, as per the images contained in figure 2 as follows:



Figure 2 – View of existing wall.

Only minor earthworks were required on the subject site to replace the existing wall and no generally protected vegetation on the subject site was affected. However, reassessment of compliance with the ODP ‘building in relation to boundary’ development control reveals that the southern end of the glass balustrade along the eastern side of the new pool and its deck will infringe the eastern boundary recession plane. This infringement was not approved as part of the current resource consent.

Consequently, a retrospective district land use consent is sought under RMA section 9(3) and the ODP for the additional development control infringement.

The proposed development is illustrated on the plans submitted with the application (refer to **Appendix 2**) prepared by Litehouse Ltd. and titled ‘Bernstein and Flamank Home Alterations. 13 Church Bay Road, Waiheke Island.’ Drawings include the following:

Name	Rev	Date	Name
02	B	28/02/2024	Site Plan

11	-	28/02/2024	HIRB Sections
----	---	------------	---------------

#### 4.0 PLAN RULES ASSESSMENT

The following plan rules assessment was carried out in September 2024.

#### 4.1 Auckland Council District Plan Hauraki Gulf Islands Section (ODP)

Rule	Compliance	Non-compliance
<b>Part 10a– Land Units</b>		
Zoning of site is Island Residential 2 – Bush Residential. Activity Table 10a.10.5 applies.	One ‘dwelling’ activity per site and residential accessory buildings are permitted activities. Proposed: no change to the existing approved single dwelling on the site (ref <b>Appx 2</b> ). Complies <b>Permitted activity</b>	
	The construction and relocation of buildings requires a consent. Proposed (retrospectively): the retaining wall is not a ‘building’ since it will not extend above the existing ground level on the subject site and is therefore a ‘retaining wall under 1m in height’ which are specifically excluded from the ODP definition of a building (ODP Part 14). <b>Not applicable</b>	
<b>Part 10c – Development Controls</b>		
10c.4 – Bulk and Location and colour of Buildings		
10c.4.1 – Height	Allowed 8.0 metres. Proposed: Complies (ref <b>Appx 2</b> ). <b>Permitted activity</b>	
10c.4.2 – Height restrictions Claris and Okiwi	N/A	
10c.4.3 – Building in Relation to Boundary	Boundary recession planes: South (2m + 35°), North (2m + 55°), West/East (2m + 45°). Proposed: a southern portion of the glass balustrade along the eastern side of the pool and its elevated deck infringes the eastern boundary recession plane by up to 0.458m vertical (‘y’) reducing to 0.0m over a 7.686m horizontal (‘x’) northward distance. (ref <b>Appx 2</b> ). Infringes.	<b>Discretionary activity</b>
10c.4.4 – Yards	Side and rear yard – 1.5 metres; Front yard – 4.0 metres, Proposed: complies (ref <b>Appx 2</b> – site plan, planning notes). <b>Permitted activity</b>	
10c.4.5 – Building Coverage	Allowed: 15% of 2023m <sup>2</sup> = 303.45m <sup>2</sup> Proposed: total 319m <sup>2</sup> (15.77%) - ref <b>Appx 2</b> - site plan, planning notes. Exceeds by 15.5m <sup>2</sup> or 0.7%. Infringement already approved by LUC60410683 ( <b>Appx 3A/3B</b> ). <b>Not applicable</b>	
10c.4.6 – Building Footprint	N/A	

10c.4.7 - Ridgeline Control	Allowed: buildings below the ridgeline or protected screening vegetation. Buildings protruding above the ridgeline by up to 4m are a restricted discretionary activity, those protruding over 4m are a discretionary activity.  Proposed: complies (ref <b>Appx 2</b> – site plan, planning notes).  <b>Permitted activity</b>	
10c.4.8 Colour of building materials in settlement areas	N/A	
10c.4.9 Impervious surface area	Allowed: on sites <2000m <sup>2</sup> , and impervious area slopes greater than 14° (1:4): 20%, otherwise 30% applies.  Proposed: complies (ref <b>Appx 2</b> – site plan, planning notes).  <b>Permitted activity</b>	
10c.5 – Controls for Conservation and Amenity		
10c.5.1 Vegetation protection	Allowed: removal and pruning of 300m <sup>2</sup> of indigenous vegetation <3m high.  N/A: no generally protected vegetation on the subject site were affected.	
10c.5.2 Indigenous vegetation protection on legal road	N/A: the proposal did not affect the road reserve.	
10c.5.5 – Earthworks	Allowed: 400m <sup>2</sup> on slopes ≤1:6 (~9.5°), 50m <sup>2</sup> on slopes >1:6 Development area slopes are <i>generally moderately sloping (14° to 23°)</i> (ref <b>Appx 5</b> ). Therefore, 50m <sup>2</sup> is permitted.  Proposed: earthworks on the subject site required to replace the ~6m long retaining wall were minor and less than the most restrictive 50m <sup>2</sup> area permitted. Complies.  <b>Permitted activity</b>	
10c.5.6 – Coastal, wetland and water body protection yards	Allowed: Buildings and earthworks outside of the 30m coastal protection yard, and 20m wetland/waterbody protection yard.  The site is roughly 800m from MHWS at Blackpool Beach. There are no indicative overland flow paths (AC Geo Maps) within 20m of the proposed works area, and the nearest ‘river or permanent stream’ identified by Geo Maps is ~240m south of the site. Complies.  <b>Permitted activity</b>	
10c.5.7 – Building Restriction Yard	N/A	

Table 1 – ODP Rules Assessment

## 4.2 Auckland Unitary Plan Operative in Part (AUP)

### 4.2.1 High Use Aquifer Overlay (Chapter D1 – regional plan)

The AUP ‘High-Use Aquifer Management Area Overlay - Waiheke Aquifer’ classification applies across all of Waiheke Island. The retaining wall will not affect the aquifer.

### 4.2.2 Wastewater (Chapter E5 – regional plan)

The additional retaining wall follows a northern part of the site’s eastern boundary adjacent to the applicant’s dwelling. The approved wastewater treatment and disposal system (see LUC60410683 - **Appendix 3A/3B**) locates the treatment plant and disposal fields offset from the site boundaries and

within the southern part of the site between the dwelling and the road frontage where it will not be affected by the new wall.

#### 4.2.3 Stormwater (Chapters E8, E10 – regional plan)

The approved upgrades to the previously existing stormwater management system on the subject site (see LUC60410683 - **Appendix 3A/3B**) involved addition of a third water storage tank located well to the north of the dwelling, maintaining an existing stormwater pipe running within the eastern side yard between the tank overflow pipe and a discharge by the driveway, but extending this to a new riprap outfall at the site's southern road frontage. The new retaining wall will not affect this system (other than ensuring continued stability of part of the site containing stormwater infrastructure). The retaining wall itself adds negligible additional impermeable area to the site.

#### 4.2.4 Land disturbance (Chapter E11 – regional plan)

The minimal earthworks required to replace the existing retaining wall are a **permitted activity** under Rule E11.4.1(A6) 'general earthworks not otherwise listed in this table' of 'Up to 2,500m<sup>2</sup> where land has a slope equal to or greater than 10 degrees.' Note that the site is not within the 'Sediment Control Protection Area'.

For the Hauraki Gulf Island Zone Chapter E12 refers (rule E12.4.1(A15)) to the operative district plan (ODP) for district activity status (assessed in 4.1 above).

## 5.0 REASONS FOR THE APPLICATION

### 5.1 ODP

#### Part 10c (development controls)

- Rule 10c.3.1 requires a **discretionary activity** resource consent for activities which infringe Rule 10c.4.3 (building in relation to boundary) development control requirements. Proposed: a southern portion of the glass balustrade along the eastern side of the pool and its elevated deck infringes the eastern boundary recession plane by up to 0.458m vertical ('y') reducing to 0.0m over an 7.686m horizontal ('x') northward distance. Infringes.

The application is for a **Discretionary Activity**.

An assessment of these matters is incorporated within the following sections.

## 6.0 NOTIFICATION ASSESSMENT

### 6.1 Public notification (section 95A)

Section 95A makes public notification either mandatory or precluded in certain circumstances.

Notification is not mandatory (s.95A(2) & (3) – step 1) as:

- the applicant has not requested public notification,
- there are no outstanding or refused requests for further information, and
- the application does not involve any exchange of recreation reserve land.

Public notification is precluded (s.95A(4) & (5) – step 2) as:

- While ODP Rule 10c.3.2 precludes public or limited notification (unless special circumstances apply) of any relevant restricted discretionary resource consent applications, no plan rule or national environmental standard (**NES**) precludes notification of the applications for the discretionary activity required, and
- However, the application is exclusively for a discretionary activity which is a boundary activity (s.87AAB).

Public notification is therefore precluded by Step 2, Step 3 (s.95A (7) & (8)) is therefore bypassed,

along with section 95D assessment of whether adverse effects on the environment are more than minor, because this is only triggered by s.95A(8)(b) in step 3.

Public notification in special circumstances is not required (s.95A(9) – step 4) as:

- The application seeks retrospective consent for a minor additional infringement from that recently approved for additions/alterations to the applicant's existing dwelling. The additional works related to this involved installation of a replacement retaining wall (up to ground level) along the eastern boundary of the site adjacent to the dwelling (**Appendix 2**). As assessed further in section 7.5 of this application report, any adverse effects of the additional recession plane infringement by a portion of a glass balustrade are negligible (*de minimis*).
- The ODP and AUP provide for the proposed (retrospectively) activities as permitted and discretionary activities.
- Consequently, I consider that the activity cannot be described as out of the ordinary and giving rise to special circumstances.

## 6.2 Limited notification (section 95B)

If not precluded by s.95A, limited notification is either required or precluded in certain circumstances.

Notification of certain groups and persons is not required (s.95B(2) to (4) – step 1) as:

- No protected customary rights groups or customary marine title groups are affected as the site is located inland from the coastal marine area,
- No land areas on the island which have received statutory acknowledgement will be affected, and
- Ngai Tai ki Tamaki have received statutory acknowledgement for the waters surrounding Waiheke Island but the application seeks retrospective approval of a minor additional development control infringement and only concerns the installation of a replacement retaining wall which will not cause adverse effects on the coastal receiving waters of Huruhi Bay.

Limited notification is not precluded (s.95B(5) & (6) – step 2) as:

- As noted in section 6.1 above, an ODP rules precludes public or limited notification of restricted discretionary activity applications, but no rule or NES provisions precludes limited notification of the discretionary activity resource consents applied for, and
- The application is not exclusively for a controlled activity.

Certain other persons are not affected (s.95B(7) to (9) – step 3) as:

- the application is exclusively for a boundary activity (s.87AAB(1)), and for the reasons set out in the s.95E assessment included in section 6.5 further below, no persons are considered to be affected (s.95B(7))

Limited notification in special circumstances is not required (s.95B(10) – step 4) as:

- for the reasons given in section 6.1 above, no special circumstances exist in relation to the application that warrant it being notified.

## 6.3 Adversely affected persons (section 95E)

When determining whether or not limited notification is required (s.95B) a consent authority must decide if there are any affected persons where *the activity's adverse effects on the person are minor or more than minor (but are not less than minor)* – (s.95E(1)).

The adverse effects on any person have not been disregarded (s.95E(2)) as:

- No rule or NES permits the proposed activity,
- The application is not for a controlled activity or restricted discretionary activity, and
- As noted in section 6.2 above, no parties who have received statutory acknowledgement are considered to be adversely affected.

No persons are '*not an affected person*' (s.95E(3)) through giving and not withdrawing their written

approval as no written approvals have been sought or obtained for the proposed activity.

Section 6.6 (below) includes a general assessment of the level of effect of the proposal upon potentially affected persons (s.95E(1) & s.95B(8)).

#### **6.4 Permitted Baseline**

Under Part 10c (development controls) of the ODP it is noted that the various controls allow for development as a permitted activity where it falls within a defined permitted envelope and does not exceed the relevant requirements.

The *'receiving environment'* comprises: the existing environment and associated effects from lawfully established activities; effects from any consents on the subject site (not impacted by the proposal) that are likely to be implemented; the existing environment as modified by any resource consents granted and likely to be implemented; and the environment as likely to be modified by activities permitted in the plan. The character of the site and its surrounds has been described in sections 2.2 and 2.3 above. No approved but yet to be implemented resource consents of relevance to this application are known of with the exception of the recently approved resource consent at 9 Church Bay Road (approved on 16 August 2024).

These characteristics form part of the existing environment from which the adverse effects of the proposal must be assessed.

#### **6.5 Assessment of Effects**

##### **6.5.1 Vegetation-related effects**

As previously noted, (see sections 3 and 4.1 above) no generally protected vegetation on the subject site were affected by the replacement of the existing retaining wall. Installation of the retaining wall has had no effect on the existing vegetation-related values of the subject site and the character and amenity values of the landscape have been maintained.

##### **6.5.2 Geotechnical effects**

The design of the replacement retaining wall is in accordance with appropriate engineering standards and its installation maintains its' ability to suitably stabilise land on the subject site above it. The earthworks required to replace the wall were minor and suitable erosion and sediment control measures were applied. The replacement wall maintains its' stabilising influence upon the subject site despite the neighbouring land area being lowered by up to 1m. No landform modification on the subject site was involved. Any minor soil disturbance upslope of the new wall was rehabilitated, and the works were completed. The character and visual amenity values of the surrounding neighbourhood have been maintained.

Overall, the 'proposal' is considered to cause less than minor adverse effects on landform, stability, erosion and sedimentation on the subject site and within the surrounding environment (and maintains site stability in the light of adjacent excavations).

##### **6.5.3 Stormwater and Wastewater effects**

As previously noted in sections 4.2.2 and 4.2.3 above, the approved wastewater and stormwater management systems have not been affected.

##### **6.5.4 Landscape and amenity effects**

The retrospectively 'proposed' further residential development of the subject site (installation of a replacement retaining wall, and the identified recession plane infringement):

- Will maintain general consistency of the additions/alterations to the applicant's dwelling with the outcome for the Island Residential 2 (bush residential) land unit sought by the ODP

because (a) it will continue to involve further residential development of a modified site area of low ecological value, (b) Does not affect any indigenous vegetation on the subject site, and (c) the replacement retaining wall will not affect the scale, location, form and appearance of the already approved residential building/s on the site.

- The additions/alterations will continue to comply with almost all of the relevant development controls and, as assessed further in section 7.5 further below, is considered to remain consistent with the intent of the additional identified 'building in relation to boundary' control infringement. Overall, the proposal will maintain the character and amenity values of the neighbourhood.
- The subject site rises above Church Bay Road, which runs along the southern boundary, the dwelling is located in the northern half of the site set back from the road, and this topography along with landscape planting on the front of the site means that the existing dwelling and modifications (including the additional retaining wall) will not be readily discernible when viewed from the street. The 'proposal' will therefore not affect the local streetscape.
- For similar reasons, the adjacent properties to the south (4, 6 and 8 Church Bay Road) have limited visibility of the applicant's dwelling. In addition, the dwellings on these sites are located well below the contour on which the applicant's dwelling is positioned, and generally oriented to look southward towards the open views over Huruhi Bay (away from the subject site).
- The dwelling on the adjacent property to the immediate north (59 Church Bay Road) is located on an elevated knoll and set back above and to the west of the subject site. The area of this site in proximity to the subject site is unoccupied with the exception of a bank of solar panels. The owners/occupants of this site will not be affected by the replacement of the retaining wall.
- Owners/occupants of the dwelling to the immediate west of the subject site (17 Church Bay Road) will not be adversely affected because the replacement retaining wall, and the relevant infringing balustrade area will not be visible due to being on the opposite of the applicant's dwelling from this property.
- Owners/occupants of the dwelling to the immediate east of the subject site (9 Church Bay Road) will not be adversely affected to a more than minor level because the applicant's retaining wall has been replaced in response to the modifications made to this neighbouring property. In addition, their dwelling is below the applicant's dwelling and is offset a little to the southeast well downhill of the replaced retaining wall.

Overall, any potential adverse effects associated with dominance, character, streetscape and amenity from the proposal are considered to be less than minor (none/negligible).

#### 6.5.5 Privacy and noise effects

Privacy and noise will not be affected by the replacement retaining wall (also see section 6.5.4 above).

#### 6.5.6 Archaeological and Heritage

There are no known cultural features on anywhere near the subject site, and the minor earthworks involved are complete. However, it is noted that any cultural heritage features uncovered by excavations are protected under the Heritage New Zealand Pouhere Taonga Act 2014 and by the AUP and ODP accidental discovery rules.

#### 6.5.7 Cumulative Effects

Installation of a replacement retaining wall will not result in adverse cumulative effects. The replacement wall is a minor built element which is required to ensure continued stability of the

subject site and of the continued approved residential occupation and use of the Island Residential 2 site, as generally anticipated and provided for by the ODP.

**6.7 CONCLUSION – ADVERSE ENVIRONMENTAL EFFECTS (S.95D) AND ADVERSELY AFFECTED PERSONS (S.95E)**

Based on the assessment provided in sections 6.5 above, it is considered that any adverse effects of the 'proposal' upon the environment will be less than minor (negligible).

Pursuant to section 95E and based on the assessment provided in sections 6.5 above, it is considered that no persons will be adversely affected by the 'proposal' to a minor or more than minor degree.

**6.8 SECTION 95 RECOMMENDATION**

That, pursuant to sections 95A and 95B of the Resource Management Act 1991, this application be processed without public or limited notification because:

- The adverse effects of the activity on the environment will be less than minor,
- No persons are considered to be adversely affected, and
- No special circumstances exist in relation to the application that warrant it being notified.

## **7.0 ASSESSMENT (SECTION 104)**

### **7.1 Statutory Matters**

Matters to be considered by the Council when assessing an application for resource consent under s104 of the Act include (subject to Part 2) any actual and potential effects on the environment and any relevant objectives, policies, rules or other provisions of a Plan or Proposed Plan.

S104B provides sets out the options available to a consent authority when considering a resource consent application for a discretionary activity. Section 104B states that:

*After considering an application for a resource consent for a discretionary activity or non-complying activity a consent authority -*

- (a) may grant or refuse the application; and*
- (b) If it grants the application, may impose conditions under section 108.*

### **7.2 Part 2 of the RMA**

Section 5 of Part 2 identifies the purpose of the RMA as being the sustainable management of natural and physical resources. This means managing the use of natural and physical resources in a way that enables people and communities to provide for their social, cultural and economic well-being while sustaining those resources for future generations, protecting the life supporting capacity of ecosystems, and avoiding, remedying or mitigating adverse effects on the environment.

As discussed in section 6.5 above, the potential adverse effects of the 'proposal' are considered to be less than minor (negligible) and therefore will not be contrary to section 5.

Section 6 of the Act sets out a number of matters of national importance, including the preservation and protection of outstanding natural features, landscapes, the natural character of the coastal environment, wetlands lakes and rivers, and historic heritage from inappropriate subdivision, use, and development. For the reasons outlined in the assessment above, it is considered that the 'proposal' is consistent with the matters at section 6(a) to (h). In particular, the coastal environment will not be adversely affected due to the setback of the site from the coast, the minor nature of the additional works involved, compatibility of the overall additions/alterations with the character of the existing dwelling and with the surrounding residential environment, and because negligible adverse environmental effects are expected. The 'proposal' will not adversely impact on the natural landscape, character, or amenity values of the site and surrounding area.

Section 7 identifies a number of "other matters" to be given particular regard by Council in the consideration of any assessment for resource consent and includes the efficient use of natural and physical resources, and the maintenance and enhancement of amenity values. Due regard has been given to the matters within Section 7 of the RMA and the proposal will not result in any adverse effects on these matters.

Section 8 requires Council to take into account the principles of the Treaty of Waitangi. The proposal is not considered to impact upon these principles.

The proposal is therefore considered to be consistent with the provisions of Part 2 of the Act and would promote the sustainable management of natural and physical resources.

### **7.3 Section 104(1)(a) – Actual and Potential Effects on the Environment (positive effects)**

The assessment of effects in section 6.6 above concludes that any adverse effects on the environment of the relevant activities will be less than minor (negligible). In addition, it is considered that the following positive effects will result:

- Replacement of the retaining wall provides for continued stability of the subject site as is necessary to sustain safe residential occupation and use of the residentially zoned property, and allows the site owners to better provide for their social and economic wellbeing,

## 7.4 Section 104(1)(b) (v) & (vi) – Relevant Policy Statement and Plan Provisions (Objectives & Policies)

### 7.4.1 AUP: Regional Policy Statement

Chapter B of the AUP provides Auckland’s Regional Policy Statement (RPS) and sets out the strategic RMA framework for nine identified issues of significance, and resultant priorities for response and outcomes sought. The issues of regional significance (B1.4) are: urban growth and form; infrastructure, transport and energy; built heritage and character; natural heritage (landscapes, natural features, volcanic viewshafts and trees); issues of significance to Mana Whenua; natural resources; the coastal environment; the rural environment; and environmental risk.

Objectives and policies relevant to these issues are provided along with advice on the range of regulatory and non-regulatory methods that could be used during implementation. The regulatory requirements of the RPS are directly given effect to within the regional and district plan chapters of the unitary plan, and through development of Bylaws or other legislative responses. Non-regulatory responses include developing non-statutory plans and strategies advocacy and education, monitoring and funding.

### 7.4.2 ODP Part 2: Resource Management Overview

Part 2 of the ODP contains a series of issues and objectives and these provide a broad basis on which the more detailed Strategic Management Areas and land unit objectives, policies and rule have been established. The Part 2 provisions include the sustainable management of natural and physical resources on the islands, protection of the natural environment, protection of the coastal environment, protection of significant vegetation, minimising effects on water systems, consideration of the effects on the community and the effects on Iwi.

### 7.4.3 ODP: Part 3 - Waiheke Strategic Management Area

The subject site is located within the Waiheke Strategic Management Area. Section 3.3 of the operative district plan (ODP) summarises the distinctly different planning characteristics of the generally more urbanised western part of Waiheke Island (with its various village centres separated by strips of, and interspersed amongst, areas of rural-residential development, regenerating bush and landscape amenity, and rural production), compared to the generally more rural, undeveloped and remote, open working landscape of eastern Waiheke with its large scale agricultural and horticultural activities, natural features and areas of remnant or recovering native bush.

Part 3 of the ODP includes an adopted ‘village and rural communities strategy’ called Essentially Waiheke. The strategy was underpinned by five main principles: environmental protection; economic development and employment; strong communities; protect and enhance Waiheke’s character; and location. The strategy was revised in 2016. Although not incorporated into the operative plan, the revised strategy largely retained the previous main principles as the following five ‘pillars’: natural island environment; sense of community; sense of place; Waiheke character; and deep sense of history.

Part 3 of the ODP includes the following objectives and policies for the Waiheke Strategic Management Area:

#### **3.3.4 Objective**

*To provide for the economic, social and cultural wellbeing of the Waiheke community while ensuring the protection of the historic heritage, landscape character, the natural features, ecosystems and visual amenity of the island.*

#### **• Policies**

- 1. By providing for 'village' style activities and development to occur in western Waiheke, while ensuring that the existing pattern of development, including viticulture and wine making, and the visual amenity of the area is maintained.*

2. *By providing for larger scale, rural activities to occur in eastern Waiheke, while ensuring that such development does not detract from the natural landscape and natural features of the island.*
3. *By ensuring that 'village' style activities and development on western Waiheke do not spread into or occur within eastern Waiheke so that the distinct character of each end of the island is maintained.*
4. *By protecting the landscape character of the island, including its elements and patterns, particularly outstanding natural landscapes, coastal and rural landscapes and landscapes with regenerating bush.*
5. *By protecting and, where appropriate, enhancing natural features and associated processes, such as wetland systems, indigenous vegetation, wildlife habitats and coastal and other ecosystems.*
6. *By facilitating the use of land for public open space, conservation, recreation and community purposes.*
7. *By providing for the establishment of energy and telecommunications network services and transport linkages on the island.*
8. *By recognising and providing for the relationship between Ngati Paoa, their ancestral lands and water, sites, waahi tapu and other taonga.*
9. *By protecting the historic heritage of the island.*

#### 7.4.4 ODP Part 10a: Island Residential 2 (bush residential)

The relevant objectives and policies in Island Residential 2 – Bush Residential are outlined as follows-

##### **10a.10.3.1 Objective**

*To provide for residential development and limit non-residential activities to a scale, location, intensity and appearance which is complementary to the bush clad character of the natural environment.*

##### **Policies**

1. *By controlling the intensity of development and the bulk, scale and location of buildings to ensure that they are compatible with the natural and physical environment.*
2. *By assessing the design and appearance of buildings to ensure that they are integrated with the natural environment.*
3. *By restricting the type and intensity of non-residential activities to those which are compatible in visual amenity terms and in other generated effects (eg traffic, noise, hours of operation) with surrounding residential uses and the natural environment.*

##### **10a.10.3.2 Objective**

*To ensure that development of sites retains indigenous vegetation cover.*

##### **Policies**

1. *By requiring the maximum amount of indigenous vegetation to be retained.*
2. *By ensuring that any development is located on portions of the site that are of lower ecological value.*

#### 7.4.5 ODP Part 10c: Development Controls

##### **10c.2 Objectives**

1. *To recognise and provide for a broad and flexible range of development while protecting the amenity values of neighbouring properties and the character of the surrounding environment.*
2. *To ensure that buildings and activities which do not comply with the development controls are reasonably consistent with the intent of the controls that they modify (as set out in the explanation accompanying the relevant development controls).*
3. *To provide for a broad and flexible range of development, while sustainably managing the effects of land use on the natural environment.*

#### 7.4.6 Comments on Objectives and Policies

Noting that those proposed activities which meet the relevant permitted activity requirements are automatically considered to be aligned with the relevant plan provisions, the proposal is considered to be consistent with the relevant objectives and policies for the reasons outlined in previous sections (see section 6.5 above) and as follows:

- The proposal is considered to be consistent with the objectives and policies of the regional policy statement parts of the AUP because the subject site does not contain any identified areas of particular natural resource, natural heritage or historic heritage significance, and the retaining wall replacement supports continued residential use of the residentially zoned subject site without compromising the social, cultural or environmental values of the surrounding environment.
- The 'proposal' is considered to be consistent with Part 2 of the ODP because, for the reasons outlined in section 6.5 above, it is considered to have less than minor (negligible) adverse effects on the environment.
- The 'proposal' is considered to be consistent with Part 3 of the ODP and the objectives and policies for the Waiheke Strategic Management Area because it is limited to replacement of a low retaining wall (as required to maintain stability of development on the subject site) which will cause negligible adverse environmental effects, will maintain the character and amenity of the Oneroa neighbourhood, and is consistent with the objectives for the land unit. It will therefore help to maintain the economic, social and cultural wellbeing of the Waiheke community without causing adverse effects upon the historic heritage, landscape character, the natural features, ecosystems and visual amenity of the island.
- For similar reasons, the 'proposal' is considered to be consistent with the main principles of Essentially Waiheke.
- The 'proposal' is considered to be consistent with Part 10a of the ODP and the objectives and policies for the Island Residential 2 land unit because it helps to stabilise the occupied and developed area of the subject site which is of low ecological value, and does not affect any indigenous vegetation on the site.
- The 'proposal' is considered to be consistent with Part 10c of the ODP because it will contribute to sustainable management of the natural environment and will not adversely affect the amenity of neighbouring properties or the character of the surrounding environment to a more than minor (negligible) extent and is consistent with the development controls it seeks to modify (as assessed further in section 7.5 below).

On this basis, it is considered that the proposal is consistent with the above relevant objectives and policies in the ODP and AUP.

### 7.5 **S104(1)(b)(vi) - Relevant Plan Provisions (Rules and Assessment Criteria)**

#### 7.5.1 ODP Part 10c: Building in relation to Boundary as a Discretionary Activity

*The building in relation to boundary rule is imposed principally to ensure that a reasonable degree of sunlight is admitted to adjacent sites. The admission of light to living and working areas is desirable for public health and people's sense of wellbeing. It also maintains an ability to use sunlight as a renewable energy source through solar receptacles and enables the creation of sunny outdoor spaces and provides a means for passive solar heating of buildings. The building in relation to boundary rule is also imposed to control the visual dominance of buildings, and to retain privacy on adjacent sites.*

- Rule 10c.3.1 requires a **discretionary activity** resource consent for activities which infringe Rule 10c.4.3 (building in relation to boundary) development control requirements. Proposed: a southern portion of the glass balustrade along the eastern side of the pool and its elevated deck infringes the eastern boundary recession plane by up to 0.458m vertical ('y') reducing to 0.0m over an 7.686m horizontal ('x') northward distance. Infringes.

The applicant's 'proposal' is considered to comply with the relevant assessment criteria contained in section 10c.3.1 of the ODP for reasons already outlined in section 6.5 and below:

- Allowing the proposal will be consistent with the objectives in Clause 10c.2 because: it will not compromise the amenity values of neighbouring properties and the character of the surrounding environment; it remains reasonably consistent with the intent of the various development controls it seeks to modify (as explained below); and is consistent with the sustainable management of the effects of land use on the natural environment.
- The proposed control modification will not result in any adverse effects on amenity values of neighbouring properties, the character of the surrounding environment or the natural environment which cannot be avoided, remedied or mitigated.
- The 'proposal' is considered to be reasonably consistent with the intent of the 'building in relation to boundary' development control for the following reasons:
  - The infringement is limited to a triangular upper portion of the glass balustrade along the eastern side of the pool and its elevated southern deck.
  - The infringement is minor and any additional shading effect it might potentially cause above that of the complying bulk of the remainder of the approved dwelling would be negligible,
  - The infringing glass balustrade is permeable to light and causes insignificant shading effects,
  - Overall, any shading effects related to the infringement are *de minimis*.
  - The infringement, and the replaced retaining wall, do not cause visual dominance effects and will not affect privacy on adjacent sites.
- The application only seeks to modify one additional development control and will not result in adverse cumulative effects.

Based on the foregoing assessment the proposal is considered to meet the ODP discretionary activity assessment criteria for modifying the 'building in relation to boundary' development control.

## **7.6 Section 104(1)(b)(iv) – New Zealand Coastal Policy Statements**

### **7.6.1 Hauraki Gulf Marine Park Act 2000 (HGMPA)**

The proposal is considered to be consistent with the intent of the Hauraki Gulf Marine Park Act 2000 (HGMPA). Section 7 HGMPA identifies that *the interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance*.

HGMPA Section 8 sets out six management objectives requiring the protection and where appropriate the enhancement of aspects of the Gulf that relate to; its life supporting capacity; the natural, historic and physical resources with which tangata whenua have a special relationship, the cultural and historic associations of people and communities with those resources, and the contribution those resources make to social and economic wellbeing, recreation and enjoyment.

S10 HGMPA establishes that *for the coastal environment of the Hauraki Gulf, sections 7 and 8 must be treated as a New Zealand coastal policy statement issued under the Resource Management Act 1991*.

For the previously given reasons (see sections 6.5, 7.3 and 7.4.6 above) the applicant's proposal is considered to be consistent with the relevant objective and policy framework, to cause less than minor adverse effects on the environment, and to result in various positive effects. The proposal is therefore considered to be consistent with clauses in Sections 7 and 8 of the HGMPA. Overall, the proposal is considered to maintain the life supporting capacity of the Gulf and contribute to the social and economic wellbeing of people and communities without compromising the Gulf's natural, historic and physical resources.

## 8.0 SECTION 104B DETERMINATION

As a discretionary activity, the RMA states that the Council may grant or refuse the application and, if granted, impose conditions under section 108 of the Act.

Having reviewed the applicant's 'proposal' it is considered that the construction of a replacement retaining wall and a recession plane infringement related to the dwelling on the subject site:

- will have less than minor adverse effects on the environment,
- will have minor or less than minor adverse effects on any potentially affected persons,
- will be consistent with the relevant objectives and policies of the ODP and the AUP,
- will be consistent with sections 7 & 8 the HGMPA and with Part 2 of the RMA.

## 9.0 SECTION 104 RECOMMENDATION

That for the reasons stated in the above assessment (and subject to conditions), it is recommended that this application be granted consent.

### AUTHOR



---

Signature of Applicant or duly authorised agent

**Wendy Baverstock**

**Planning Consultant**

**Isle Land Ltd**

**DATE: 26 September 2024**