

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



## Restricted discretionary activity

**Application number:** LUC60378963 (s9 land use consent)  
**Applicant:** The Kilns Limited  
**Site address:** 36 Sandspit Road, Warkworth  
**Legal description:** Pt Lot 51 DP 703 and Lot 1 DP 39534  
**Proposal:**

To undertake 120m<sup>3</sup> earthworks over an area of 240m<sup>2</sup> for exploratory investigation within the riparian yard, Outstanding Natural Landscapes Overlay and Historical Heritage Overlay.

Resource consent is required for the following reasons:

## Land use consent (s9) – LUC60378963

### Auckland Unitary Plan (Operative in part)

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

##### *Land Disturbance - District*

- The proposal involves use and development under rule E12.4.1 that fails to meet the following standard and is a **restricted discretionary activity** under rule C.1.9(2):
  - To undertake 20m<sup>3</sup> of earthworks for two trenches (T04 and T05 including two auger holes) over an area of 40m<sup>2</sup> within the 20m riparian yard, which exceeds the maximum allowed 5m<sup>2</sup> and 5m<sup>3</sup> of land disturbance within riparian yards required under E12.6.2(1)(b).
- To undertake four test pits (retrospective) and 70m<sup>3</sup> of earthworks for seven trenches (T03 to T09, including seven auger holes) over an area of 140m<sup>2</sup> within the land subject to the Outstanding Natural Landscapes Overlay, as the earthworks are greater than 50m<sup>2</sup> in an Outstanding Natural Landscape Overlay, is a **restricted discretionary activity** under rules E12.4.2(A30).
- To undertake four test pits (retrospective) and 90m<sup>3</sup> of earthworks for nine trenches (T03 to T9, T11 and T12) and ten auger holes over an area of 180m<sup>2</sup> within the land subject to the Historic Heritage Overlay, as the earthworks are greater than 50m<sup>2</sup> and 5m<sup>3</sup> in a Historic Heritage Area Overlay, is a **restricted discretionary activity** under rules E12.4.2(A30) and E12.4.2(A32) respectively.

### *Historical Heritage Overlay*

- The proposal involves archaeological investigation ((nine trenches T03 to T09, T11 and T12) within the Historical Heritage Overlay that is not provided for as a permitted activity, which is a restricted discretionary activity under D17.4.2(A25).

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

## Decision

I have read the application, supporting documents, and the report and recommendations on the application for resource consent. 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 consent is **GRANTED**.

## Reasons

The reasons for this decision are:

1. The application is for restricted discretionary resource consent, and as such under s104C only those matters over which council has restricted its discretion have been considered. Those matters are set out under rules E12.8.1(1), E12.8.1(2)(a)(b) and D17.8.1(1) of the Auckland Unitary Plan Operative in Part (AUP OP).
2. 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. Key measures to avoid damage or destruction of any heritage features are offered as conditions of consent to ensure potential adverse effects to the historic heritage values on the site are avoided and mitigated.
  - b. The overall landscape qualities of the site will remain unchanged at the completion of all soil sampling and investigation and all trenches will be backfilled and re-grassed where necessary.
  - c. Due to the limited depth and size of the proposed trenches (2m wide by 10m long), any potential adverse effects on ecological values and site stability will be negligible.
  - d. In terms of positive effects, the proposed development will enable geotechnical, archaeological and contamination investigation of the site. This will enable efficient and appropriate use of the land without undermining the potential special features on the site.
  - e. 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 and/or within the relevant matters of discretion.
3. 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:

Future Urban Zone objectives and policies: H18.2 and H18.3.

The provision of the Future Urban Zone is applied to land located on the periphery of existing urban areas within the rural urban boundary. The Future Urban zone is a transitional zone which provides for the land to be used for rural activities until it is able to be developed for urban activities, via the structure plan and plan change process.

In this instance, the proposed land disturbance will make no change to the existing land use and character of the site. The proposed activity will not compromise future urban development.

Land-disturbance – District objectives and policies: E12.2 and E12.3

The provision of the land disturbance – district is to protect the safety of people and avoid, remedies and mitigate adverse effects on the environment.

The proposal is considered to be consistent with the district land disturbance objectives and policies as works will be undertaken in accordance with the best practice land management techniques. Earthworks have been designed in a manner that ensures the stability and safety of the surrounding land.

Historic Heritage Overlay objectives and policies: D17.2 and D17.3

The application is consistent with the objectives and policies of the historic heritage overlay as the activity will avoid adverse effects on the cultural heritage resources. The proposal does not modify the scheduled extent of place that would result in loss or damage to the heritage values of the site.

4. 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 relevant matters.
5. In the context of this restricted discretionary activity application for land use, where the relevant objectives and policies and other relevant provisions in 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 will have no more than minor adverse effects to the wider environment and less than minor adverse effects to the owners/occupiers of the immediate properties is consistent with the relevant objectives and policies of the Auckland Unitary Plan Operative in Part and meets the sustainable management purpose of the RMA.

## Conditions

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

1. This consent shall be carried out in accordance with the documents and drawings and all supporting additional information submitted with the application, detailed below, and all referenced by the council as resource consent number LUC60378963.
  - Application Form and Assessment of Environmental Effects prepared by the Planning Collective, dated May 2021.

Report title and reference	Author	Rev	Dated
Land Use Consent; KIL 138-20	The Planning Collective	-	31/05/2021
Archaeological Investigation Strategy	Plan. Heritage. Ltd	Final	May 2021
Preliminary Site Investigation; REP-1568/PSI/APR21/REV2	Geosciences Limited	-	28/05/2021
Heritage Impact Assessment & Archaeological Assessment	Plan. Heritage. Ltd	Final	May 2021
Re: Technical Report for Geophysical Survey – 36 Sandspit Road, Warkworth	Scan Tec Ltd		10/06/2021

Drawing title and reference	Author	Rev	Dated
Proposed Soil Sample Locations; J1568	Geosciences Limited	-	21/05/2021
Plan of topographical survey of Pt Lot 51 DP 703, Lot 1 DP 39534 and Lot 1 DP 66360; Job: 8577; Sheet 1 of 2	Buckton Consulting Surveyors Ltd	B	21/04/2021
Plan of topographical survey of Pt Lot 51 DP 703, Lot 1 DP 39534 and Lot 1 DP 66360; Job: 8577; Sheet 2 of 2	Buckton Consulting Surveyors Ltd	A	13/04/2021

Other additional information	Author	Rev	Dated
Email: FW: Resource consent application for 36 Sandspit Road - LUC60378963	Alexandra Low	-	10/06/2021
Email: Fwd: FW: FW: Geophysical investigation	Alexandra Low	-	10/06/2021
Email: RE: LUC60378963 - 36 Sandspit Road, Warkworth	Alexandra Low	-	22/06/2021
Email: RE: LUC60378963 - 36 Sandspit Road, Warkworth	Alexandra Low	-	09/07/2021
Email: RE: LUC60378963 - 36 Sandspit Road, Warkworth	Alexandra Low	-	26/07/2021
Email: LUC60378963 s92 response - The Kilns Limited	Alexandra Low	-	05/08/2021

Letter: Response to RFI: LUC60378963 - 36 Sandspit Road, Warkworth- The Kilns Limited	Alexandra Low	-	05/08/2021
Email: LUC60378963 36 Sandspit Road	Alexandra Low	-	07/10/2021
Email: RE: LUC60378963 - 36 Sandspit Road, Warkworth- The Kilns Limited	Alexandra Low	-	28/10/2021
Letter: RE: LUC60378963 - 36 Sandspit Road, Warkworth- The Kilns Limited	Alexandra Low	-	24/09/2021
Email: RE: LUC60378963 - 36 Sandspit Road Warkworth	Alexandra Low	-	01/11/2021
Email: LUC60378963 - 36 Sandspit Road - Consent conditions	Alexandra Low	-	12/11/2021
Email: RE: LUC60378963 - 36 Sandspit Road - Consent conditions	Alexandra Low	-	18/11/2021
Email: RE: LUC60378963 - 36 Sandspit Road - Consent conditions	Alexandra Low	-	19/11/2021

2. Under section 125 of the RMA, this consent lapses five years after the date it is granted unless:
  - The consent is given effect to; or
  - The council extends the period after which the consent/s lapse/s.
3. The consent holder shall pay the council an initial consent compliance monitoring charge of \$1,026 (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, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge. Only after all conditions of the resource consent(s) have been met, will the council issue a letter confirming compliance on request of the consent holder.*

**Design and Pre-Works Phase**

4. The Consent Holder shall engage a suitably qualified and experienced heritage specialist or team of specialists (referred to in these conditions as ‘the nominated heritage specialist(s)’) to supervise all heritage related works, to ensure that the activities authorised under this consent are carried out in accordance with these

conditions. The name and qualifications of this specialist(s) shall be provided to the Council prior to any works commencing on the site.

#### **Historic Heritage Management Plan (HHMP)**

5. At Least 10 working days prior to the commencement of any activity authorised by this consent, the Consent Holder shall provide a Historic Heritage Management Plan (HHMP), prepared by the nominated heritage specialist(s), to be certified by the Council.
6. No pre- or post-1900 archaeological deposits / historic heritage sites or places shall be damaged, or destroyed by any activity authorised by this consent, in accordance with the HHMP certified in condition 5 above and Historic heritage.
7. The Consent Holder may make changes or updates (either following a request from the council or on its own volition) to the HHMP at any time prior to, or after the commencement of the works, on the historic heritage place authorised by this consent.
8. Any subsequent update of the HHMP shall be submitted to the Council for re-certification. Works relating to the activity subject to change shall not be carried out until the amended HHMP has been re-certified following the procedures set out in conditions 5 and 6.
9. The Consent Holder shall meet the costs of the production, certification, monitoring, and any review of the HHMP.

#### **During the Exploratory Historic Heritage Investigation**

10. The nominated heritage specialist(s) shall record and log any historic heritage discovery and on-going compliance with the conditions of this consent. This log forms part of the Historic Heritage Archive and shall be provided to the Council according to the reporting schedule in the certified HHMP, or upon request.
11. Ground reinstatement after land disturbance authorised by this consent will occur as soon as practical once all necessary testing, soil sampling or recording has taken place, in agreement with the Council.

#### **Hazardous Activities and Industrial List (HAIL) Soil Sampling**

12. Hazardous Activities and Industrial List (HAIL) soil sampling locations must be certified by the Council before the HAIL soil sampling commences.

#### **Post the Exploratory Historic Heritage Investigation**

13. At the completion of the works authorised under this consent, the consent holder shall submit a report to the Council that includes the log required by Condition 10 and certifies that all works that have been completed in accordance with the requirements of this consent. The report shall be prepared by the nominated heritage specialist(s).
14. Electronic copies of all historic heritage reports relating to historic heritage investigations (evaluation, excavation and monitoring etc.), including any interim reports, shall be submitted to the Council according to the reporting schedule in the certified HHMP.

## **Accidental Discovery Protocol**

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

### **Advice Note:**

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

## **Supervision of Geotechnical Works**

16. The land disturbances associated with trenches T11 and T12 as illustrated on the plan titled '*Proposed Soil Sample Locations*', ref: J1568, prepared by Geosciences Limited, dated 21/05/2021 shall be supervised by a suitably qualified engineering professional experienced in geotechnical engineering. Certification from a suitably qualified engineering professional responsible for supervising the works shall be provided to the Council within ten (10) working days following completion. The written certification shall be in the form of a geotechnical completion report, producer statement or any other form acceptable to Council.

## **Earthworks**

17. All earthworks shall be managed to ensure that they do not lead to any uncontrolled instability or collapse affecting either the site or adversely affecting any neighbouring properties. If such collapse or instability does occur, it shall immediately be rectified.

### **Sediment/erosion control in accordance with plan to be provided**

18. Prior to the commencement of earthworks activity, all required erosion and sediment control measures on the subject site shall be constructed and carried out in accordance with the Technical Publication TP90 of the legacy Auckland Regional Council or Auckland Council publication GD05.

### **General sediment control conditions.**

19. All earthworks shall be managed to ensure that no debris, soil, silt, sediment or sediment-laden water is discharged beyond the subject site to either land, stormwater drainage systems, watercourses or receiving waters. If a discharge occurs, works shall cease immediately, and the discharge shall be mitigated and/or rectified to the satisfaction of the Council.

## **Advice notes**

1. *There shall be no obstruction of access to public footpaths, berms, private properties, public services/utilities, or public reserves resulting from the earthworks activity. All materials and equipment shall be stored within the subject site's boundaries.*
2. *There shall be no damage to public roads, footpaths, berms, kerbs, drains, reserves or other public asset because of the earthwork's activity. If such damage does occur, the Orewa Team Leader monitoring is to be notified within 24 hours of its discovery. The costs of rectifying such damage and restoring the asset to its original condition will be met by the consent holder.*
3. *Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.*
4. *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.*
5. *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).*
6. *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).*
7. *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: Chelsea Gosden

Title: Team Leader, Resource Consents

Signed:



Date: 8 December 2021

## Resource Consent Notice of Works Starting

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"/>
<b>Resource consent number:</b>			<b>Associated building consent:</b>	
<b>Expected start date of work:</b>			<b>Expected duration of work:</b>	

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.