

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



## Non-complying activity

**Application numbers:** BUN60318181, LUC60318182, CST60308879

**Applicant:** Silent Lucidity Trust

**Site address:** 1 Cherrie Road, Beachlands

**Legal description:** Lot 23 DP 19523, Lot 24 DP 19523

### Proposal:

To construct a permanent rock masonry seawall approximately 60m in length at the base of a cliff following a recent large cliff failure, and for reclamation of approximately 65m<sup>2</sup> of the coastal marine area. This involves reshaping the existing talus material to create a suitable platform for the wall, 140m<sup>3</sup> of cut earthworks to establish a foundation for the seawall, and 100m<sup>3</sup> of fill behind the wall to level out the land. The existing 32m rock 'wall' which was undertaken as emergency works in August 2017 will be replaced as part of the works.

The resource consents required are:

### Auckland Unitary Plan (Operative in Part) (AUP (OP)):

- Table E11.4.3 (A28)- **Restricted discretionary activity** for earthworks exceeding 5m<sup>2</sup> in the Significant Ecological Areas Overlay.
- Table E11.4.3 (A30)- **Restricted discretionary activity** for earthworks exceeding 5m<sup>3</sup> in the Significant Ecological Areas Overlay.
- Table E36.4.1 (A9)- **Restricted discretionary activity** for all other buildings and structures on land in the coastal storm inundation 1 per cent annual exceedance probability (AEP) area.
- Table E36.4.1 (A22)- **Discretionary activity** for hard protection structures not otherwise provided for.
- Table F2.19.1 (A1)- **Non-complying activity** for reclamation or drainage not otherwise provided for.
- Table F2.9.10 (A142)- **Discretionary activity** for hard protection structures.

### Auckland Regional Plan: Coastal (ACRP:C):

- Rule 10.5.9- **Discretionary activity** for the occupation by any activity specified as a discretionary activity by another rule in the plan.
- Rule 11.5.5- **Discretionary activity** for any activity which is not a permitted, controlled or restricted discretionary activity, and is not prohibited.

- Rule 12.5.18- **Discretionary activity** for the erection or placement of any structure, which is not provided for in any other rule contained in chapter 12 and is not located in Coastal Protection Areas 1.
- Rule 13.5.3- **Non-complying activity** for any reclamation or drainage that is not provided for as a restricted discretionary, discretionary or prohibited activity in any other rule contained in chapter 13, or which is not otherwise restricted by Rule 13.5.4.

Overall the proposal is deemed to be a non-complying activity.

## 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 sufficient 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, 104B, 104D and Part 2 of the RMA, the application is **GRANTED**.

## 1. Reasons

The reasons for this decision are:

1. In accordance with an assessment under s104(1)(a) of the RMA the actual and potential effects from the proposal will be acceptable as:
  - In terms of ecology, the shifted talus material would have displaced or killed invertebrates adapted to the area, and the proposal will retain material which will alter the habitat for invertebrates. Council's coastal specialist considers it possible that new invertebrates will colonise the area, and given that the affected area is not seen to be of high ecological value, any adverse effects on ecological values will be less than minor.
  - The proposal will partly reduce access along the foreshore area, however the foreshore is only accessible from Sunkist Bay reserve (and via a walkway from the end of Cherrie Road ) at low tide which involves climbing over a rocky shore platform, or via the private access from the subject site or similar access on other nearby sites. Given the limited access to the foreshore currently, it is considered that any adverse effects on public access are less than minor.
  - Access to the subject site for construction will be via the foreshore and accessed from Sunkist Bay Reserve and there will likely be short-term adverse effects during the construction period. A condition of consent will require that a Construction Management Plan is provided, which will address, among other things, sediment control, spill procedures and management of public access. It is therefore considered that adverse effects arising during the construction process can be managed and will be no more than minor.
  - The proposal will add built elements to the coastal environment and will have some effects on natural character and amenity. Pohutukawa trees are characteristic of the Beachlands coastline and add to overall amenity values; the proposal will retain and protect the fallen Pohutukawa tree, thereby helping to maintain coastal amenity values. Given the highly modified nature of the adjoining coastline, and the recessive colours of

the seawall, it is not considered that the proposal will have more than minor adverse effects on amenity values or the natural landscape, when viewed from the sea or the beach. The seawall is oriented towards the sea and is located well away from surrounding dwellings and properties. As such it will not be visually obtrusive to neighbouring properties.

- The Council's coastal specialist considers that the interaction of coastal processes with the proposed seawall is unlikely to have more than minor adverse effects on coastal landforms.
  - Although the applicant has not proposed any particular measures as part of this application to address stability at the top of the cliff, the proposed seawall will help to slow the rate of cliff regression and will provide some protection to the property. Overall, although there are adverse effects associated with the proposal, they are considered to be no more than minor, and the adverse effects of doing nothing are considered to be greater.
  - Written approval has been obtained from the owner of the adjoining property, 1 Hawke Crescent, and effects on this party have been disregarded.
  - An arborist report was provided with the application and concluded that the tree has retained enough viable root zone area and live canopy to survive in its new location. Council's Senior Arboriculture and Eco Specialist has reviewed that report and has undertaken a site visit, and confirmed that the proposal to build the masonry wall seaward of the displaced pohutukawa tree will be beneficial, both in the short-term and long-term.
  - Conditions of consent can ensure that the proposed works do not adversely affect the health of the Pohutukawa tree.
  - Under the RMA, esplanade reserves can be created through reclamations. In this instance, the provision of esplanade reserve is not considered to be of great benefit in providing for public access and recreational use, particularly given the existing limited physical access to the foreshore. It is also relevant to note that the applicant proposes only to build a seawall to protect their property, and that the purpose of the proposal is not to claim ownership of any new land seen to be created by the proposed filling behind the seawall.
  - The proposal involves works on Crown land (recreation reserve being Lot 40 Deeds Plan 619), administered by the Department of Conservation (DOC). While an application for a concession under the Reserves Act is currently still being processed, a condition of consent will require that no works can be undertaken on Crown land until a concession under the Conservation Act (approved by way of delegation to Auckland Council) has been granted.
2. In terms of positive effects:
- The seawall will protect the fallen Pohutukawa tree and retain some amenity values, as well as protecting the cliff toe from further erosion and slowing the rate of cliff regression, thereby protecting the physical integrity of the subject site and providing for the wellbeing, health and safety of the applicant. These positive effects are considered to outweigh the potential adverse effects on the environment.

3. In accordance with an assessment under s104(1)(b) of the RMA the proposal is considered to be generally consistent with the objectives and policies of the relevant statutory documents including the NZCPS and the HGMPA. In respect of the NZCPS in particular the proposal is found to be consistent with Objectives 1-6. It is also concluded that the proposal is on balance consistent with the purposes of relevant NZCPS policies including Policy 1, 2, 3, 6 and 10 noting in respect to Policy 10 that while land above MHWS may technically be available for the proposed seawall (as it could potentially be constructed above MHWS) the functional benefits of the seawall are best achieved by locating it as proposed and there are no reasonable alternatives to the proposal (particularly where the retention of the fallen pohutukawa tree is seen as a key outcome) . The proposal is however of local, not significant regional or national benefit, thus is not consistent with Policy 10 (1) (d). However, overall and on balance, the proposal is found to be consistent with the key objectives and policies of the relevant statutory documents.
4. The proposal passes the first test under s104D of the RMA for non-complying activities as adverse effects of the proposal are considered to be no more than minor, therefore the application can be considered based on its merits.
5. In accordance with an assessment under s104(1)(c) of the RMA no other matters are considered relevant.
6. This proposal is considered to achieve sustainable management purpose of the RMA under Part 2 as it is protecting both a natural and physical resource (i.e. the cliff and Pohutukawa trees, and the dwelling and occupants therein) from erosion and coastal instability. It will also enable the applicant to provide for their health, safety and wellbeing by protecting the ongoing residential use of the site, without adversely affecting the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations.
7. Overall, it is considered that the proposal can be appropriately consented.

## 2. Conditions

Under section 108 of the RMA, these consents are subject to the following conditions:

### General conditions

1. The proposed activities shall be carried out in accordance with the plans and all information submitted with the application, detailed below, and all referenced by the council as consent number CST60308879.
  - Application Form, and Assessment of Environmental Effects prepared by Davis Coastal Consultants, dated September 2017.

Report title and reference	Author	Dated
Geotechnical Cliff Assessment; 1 Cherrie Road, Beachlands	Engeo	06/04/17
Arboricultural Report	Tree Management Solutions	07/11/17

Plan title and reference	Author	Sheet No.	Dated
Existing Context Plan	Davis Coastal Consultants Ltd	02	20/09/17
Existing Layout Plan (Prior Emergency Works) (Rev A)	Davis Coastal Consultants Ltd	03	15/02/18
Existing Sections (Prior Emergency Works)	Davis Coastal Consultants Ltd	04	20/09/17
Emergency Works Plan	Davis Coastal Consultants Ltd	05	20/09/17
Emergency Works Sections and Detail	Davis Coastal Consultants Ltd	06	20/09/17
Proposed Layout Plan (Rev C)	Davis Coastal Consultants Ltd	07	19/03/18
Proposed Wall Sections 1 of 2 (Rev B)	Davis Coastal Consultants Ltd	08	21/03/18
Proposed Wall Sections 2 of 2	Davis Coastal Consultants Ltd	09	20/09/17
Typical Seawall Section (Rev A)	Davis Coastal Consultants Ltd	10	21/03/18
Proposed Stormwater and Crevice Details	Davis Coastal Consultants Ltd	11	20/09/17
Proposed Earthworks Plan (Rev A)	Davis Coastal Consultants Ltd	12	19/03/18
Pre-Slip Topographical Survey	Davis Coastal Consultants Ltd	SK01	22/02/18

Other additional information	Author	Dated
Letter headed, "Ref: Site Visit and Assessment Summary: 1 Cherrie Road, Beachlands"	Jonathan Billington of Ngai Tai ki Tamaki Tribal Trust	30/10/17
Email headed, "RE: CST60308879 s92 1 Cherrie Road Beachlands" addressed to Nick Endeacott (Auckland Council) and Craig Davis (consultant)	Sam Scott-Kelly of Davis Coastal Consultants Ltd	24/11/17
Letter headed, "Seawall- 1 Cherrie Road, Beachlands CST60308879- Section 92 Response"	Sam Scott-Kelly of Davis Coastal Consultants Ltd	08/11/17
Email headed, "RE: BUN60312372 – 1 Hawke Crescent, Beachlands" addressed to Ashishika Sharma (Auckland Council)	Sam Scott-Kelly of Davis Coastal Consultants Ltd	23/02/18
Email headed, "RE: 1 Cherrie Road – Updated Earthworks Plan" addressed to Danielle Ter Huurne (Auckland Council)	Sam Scott-Kelly of Davis Coastal Consultants Ltd	21/03/18

- The consent holder shall pay the council an initial consent compliance monitoring charge of \$960 (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. 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 have been met, will the council issue a letter confirming compliance on request of the consent holder.*

## Pre-Development Conditions

3. No works shall be undertaken on Lot 40 Deeds Plan 619 until the consent holder has provided written evidence to the Team Leader Compliance Monitoring South that a concession under Part IIIB of the Conservation Act 1987 has been granted .

4. Prior to the start of any works within the coastal marine area, a finalised Construction Management Plan (CMP) shall be submitted to and approved by the Team Leader Compliance Monitoring South.

The purpose of the CMP is to ensure that all works are undertaken in a manner which avoids, remedies or mitigates potential adverse effects during construction works. The construction management plan shall specify, but not necessarily be limited to, the following matters:

- a) Construction timetable;
- b) Construction methodology, including:
  - i. Details of any temporary structures in the coastal marine area (CMA) (e.g. silt fences)
  - ii. Methods to remedy any disturbance resulting from works.
- c) Site management, including details of:
  - i. Site access, including methods to clearly identify and delineate all entry and exit points to the common marine and coastal area.
  - ii. Bunding or containment of fuels and lubricants to prevent the discharge of contaminants;
  - iii. Method to manage the effects of vehicle movement within the CMA.
  - iv. Maintenance of machinery and plants to minimise the potential for leakage of fuel or lubricants;
  - v. A spill contingency plan in the event that there is any discharge of contaminants to the common marine and coastal area;
  - vi. Methods to ensure compliance with noise standards, including underwater noise and vibration management;
  - vii. Restrictions and methods necessary to maintain public health and safety, including means for restricting and notifying the public of any restrictions on public access to and along the coastal marine area;
  - viii. Management of public access to and along the coastal marine area while the activities are being carried out;
  - ix. Methods to minimise disturbance of the foreshore and/or seabed, including minimising siltation and discolouration, and avoiding disturbance of the Significant Ecological Area-M2;
  - x. Removal of all spoils from the CMA.
- d) Site reinstatement upon completion of activities.

5. The Construction Management Plan (CMP) must be certified by the Team Leader Compliance Monitoring South prior to commencement of works on site. All works shall comply with the approved Construction Management Plan at all times. All personnel working on the site shall be made aware of the requirements contained in the CMP. A copy of the approved CMP shall be held on-site at all times while any activity associated with construction is occurring.

6. In accordance with the Geotech report prepared by ENGEO Limited dated 6/4/17; the proposed toe wall along with the associated works shall be designed by a chartered professional engineer to ensure the structural strength and integrity of the seawall following a detailed slope stability assessment. A building consent for the seawall shall be obtained prior to construction commencing.
7. Prior to the commencement of works, the Consent Holder shall hold a pre-start meeting that:
  - Is located on the subject site;
  - Is scheduled not less than 5 days before the anticipated commencement of earthworks;
  - Includes the consent holder's arborist;
  - Includes representation from the contractors who will undertake the works.

The following information shall be made available at the pre-start meeting:

- Resource consent conditions;
- Certified Construction Management Plan;
- Approved plans for the seawall design (Condition 6).

The conditions of consent will be discussed at this meeting and explained to all contractors, sub-contractors and supervisory staff.

**Advice Note:**

*To arrange the meeting, please contact Council's Southern Monitoring Compliance team ([monitoring@aucklandcouncil.govt.nz](mailto:monitoring@aucklandcouncil.govt.nz)).*

8. The Team Leader Compliance Monitoring South shall be notified at least 10 working days prior to any activities commencing on the subject site.

**Development in Progress Conditions**

9. The construction of the seawall and the placement and compaction of any fill material shall be supervised by a suitably qualified engineering professional.
10. The works 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. In the event that such collapse or instability does occur, it shall immediately be rectified at the consent holder's expense.
11. If any archaeological or cultural heritage sites are exposed during construction works, the following procedures shall apply:
  - If it becomes apparent that an archaeological or traditional site has been exposed, works shall cease immediately.
  - The site supervisor shall immediately secure the area in a way that ensures that any artefacts or remains are untouched.
  - The site supervisor shall notify tangata whenua, Heritage New Zealand, the Department of Conservation, and Auckland Council, that an archaeological or traditional site has been exposed and so appropriate action can be taken. This includes such persons being given a

reasonable time as determined by the Council to record and recover archaeological features discovered before work may recommence on the site.

### **Specific conditions- land use consent LUC60318182**

12. Works shall be undertaken in accordance with the recommendations of the Arboricultural Report prepared by Tree 3- Tree Management Solutions, dated 7th November 2017. A suitably qualified and experienced arborist shall provide adequate supervision of any excavations or other works in the root zone area of any trees to ensure any adverse effects on tree health or stability are avoided.
13. Under section 125 of the RMA, this consent lapses five years after the date it is granted unless:
  - a) The consent is given effect to; or
  - b) The council extends the period after which the consent lapses.

### **Specific conditions- coastal permit CST60308879**

#### **Post-Development Conditions**

14. The right to occupy the common marine and coastal area is not an exclusive right, and the consent holder shall at all times permit all persons to use the authorised structures for the purpose of providing public access to and along the coastal marine area.
15. The seawall structure authorised by this consent shall be maintained in a structurally sound condition for the duration of the consent at the consent holder's expense.
16. The consent holder shall, within one week following the completion of the works, remove all machinery and materials from the Coastal Marine Area, to the satisfaction of the Team Leader Compliance Monitoring South.
17. The Team Leader Compliance Monitoring South shall be notified, in writing, of the expected date of the completion of construction activity, ten working days prior to the expected completion date.
18. Certification from a suitably qualified and experienced engineering professional responsible for supervising the works shall be provided to the Team Leader Southern Monitoring Compliance within ten working days following completion. Written certification shall be in the form of an engineering/geotechnical completion report, or any other form of certification acceptable to the Council.
19. Within twenty working days of the completion of construction activity, the consent holder shall supply the Team Leader Compliance Monitoring South with a complete set of 'as-built' plans. The 'as-built' plans shall include a location plan, a plan which shows the area of occupation, structure dimensions and levels (top and bottom) of the seawall and a typical cross-section.
20. Within twenty working days of the completion of construction activity, the consent holder shall supply a copy of the 'as-built' plans to the New Zealand Hydrographic Authority (Land Information New Zealand, Private Box 5501, Wellington 6011 or customersupport@linz.govt.nz).



21. As soon as reasonably practicable following the completion of the consented works (but within no more than 6 months), the consent holder shall supply an “as-built” plan showing the location and levels (top and bottom) of the seawall in relation to property boundaries to the Team Leader Compliance Monitoring South for the Council’s records.

#### Duration of consent

22. Coastal permit CST60308879 shall expire on 12th April 2053 (35 years) unless it has lapsed, been surrendered or been cancelled at an earlier date pursuant to the Resource Management Act 1991.

### **3. Advice notes**

1. *Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.*
2. *For the purpose of compliance with the conditions of consent, “the council” refers to the council’s monitoring inspector unless otherwise specified. Please contact [monitoring@aucklandcouncil.govt.nz](mailto:monitoring@aucklandcouncil.govt.nz) to identify your allocated officer.*
3. *For more information on the resource consent process with Auckland Council see the council’s website [www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz). General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment’s website: [www.mfe.govt.nz](http://www.mfe.govt.nz).*
4. *If you disagree with any of the above conditions, or disagree with the additional charges relating to the processing of the application, you have a right of objection pursuant to sections 357A or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of notification of the decision.*
5. *The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.*

*The consent holder is advised that the seawall, whilst being able to slow the regression of the cliff by protecting the toe of the cliff, will not remedy instability issues at the top of the cliff. The consent holder is advised to obtain geotechnical advice to address this issue.*

**Barry Kaye**



**Duty Commissioner**

11 April 2018