



**AGENDA FOR AN ORDINARY MEETING OF THE HEARINGS COMMITTEE TO BE HELD  
IN THE CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,  
ON THURSDAY, 10 JUNE 2004, COMMENCING AT 9.30 AM.**

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**1 APOLOGIES**



**2 URGENT BUSINESS**

Section 46A(7) and (7A) of the Local Government Official Information Act and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the item is a minor matter; and
- (ii) the Chairperson has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting; and
- (iii) the Committee resolves to deal with the item.

No resolution, decision, or recommendation may be made in respect of the item except to refer the item to a subsequent meeting for further discussion.

**NOTE:** Urgent Business need not be dealt with now and may be delayed until later in the meeting.



**3 CONFIRMATION OF MINUTES**

Ordinary - Thursday, 29 April 2004

**RECOMMENDATION**

That the minutes of the Ordinary Meeting of the Hearings Committee held on Thursday, 29 April 2004, as circulated, be taken as read and now be confirmed.



4 **NOTIFIED APPLICATION FOR RESOURCE CONSENT UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991 BY WAITAKERE GARDENS LIMITED TO REMOVE AN ENGLISH OAK (HERITAGE TREE ASSOCIATED WITH MILL COTTAGE) AT 15 SEL PEACOCK DRIVE, HENDERSON**

**HENDERSON WARD**

**RMA 20020555**

**N.B. This report sets out the advice of Consent Services to the Hearings Committee on the environmental issues raised by the application for resource consent. It is not the decision of the Council. The decision will be made after consideration of the application by the Hearings Committee.**

**APPLICATION DETAILS**

Planner:	Chloe Trenouth
Site Address:	15 Sel Peacock Drive, Henderson
Applicant:	Waitakere Gardens
Date Received:	03/04/2002
Resource Consent No:	RMA20020555
Building Consent No:	Not required
Legal Description:	Pt Lot 2 DP 149953
Address for Service:	PO Box 21062, Henderson
Site Area:	2.113 ha
Unit Site Area(s):	N/A
Transition Plan:	
Zoning:	Commercial D
Section:	Henderson
District Plan:	
Human Environment:	Community (Periphery)
Natural Area(s):	General
Landscape Elements:	Heritage Tree ( CHI 345)
Hazards:	None known
Roading Hierarchy:	Local
Further Information Required:	Yes
Date Requested:	22/04/2002; 17/05/2002; 12/08/2002; 03/12/2003; 23/03/2004; 30/03/2004
Date Received:	01/05/2002; 31/05/2002; 26/02/2004; 30/03/2004
Site Visit:	31/03/2004
Any Affected Persons:	Yes - see s94 Report
Approval Given:	No - see s94 Report

## 1.0 INTRODUCTION AND RECOMMENDATION

### 1.1 Nature of the Application

The applicant seeks consent to remove a heritage tree (Ref No. 75) being an English Oak Tree (*Quercus robur*) located within the Waitakere Gardens Retirement Apartments complex at 15 Sel Peacock Drive, Henderson. The tree is identified in the Waitakere City Operative District Plan.

### 1.2 Resource Management Issues Raised

The Resource Management Act 1991 requires that, when considering an application for resource consent, a consent authority shall have regard to the environmental effects of the proposed activity, together with any relevant objectives, policies and rules of the District Plan.

The significant resource management issues associated with this proposal are related to impacts on the City's heritage, vegetation removal, and visual amenity of the surrounding area and.

### 1.3 Planner's Recommendation

The planner who has prepared this report recommends that, subject to any contrary or additional evidence submitted at the Hearing, consent be granted to the application for removal of heritage tree from 15 Sel Peacock Drive, Henderson. It is considered that the environmental effects that may be generated by the activity would be minor or could be adequately avoided, remedied or mitigated by the imposition of conditions, and that the relevant objectives and policies of the District Plan will be satisfied.

## 2.0 LOCATION PLAN



Fig 1 - Human Environment  
(Community Periphery)



Fig 2 - Natural Area (General)

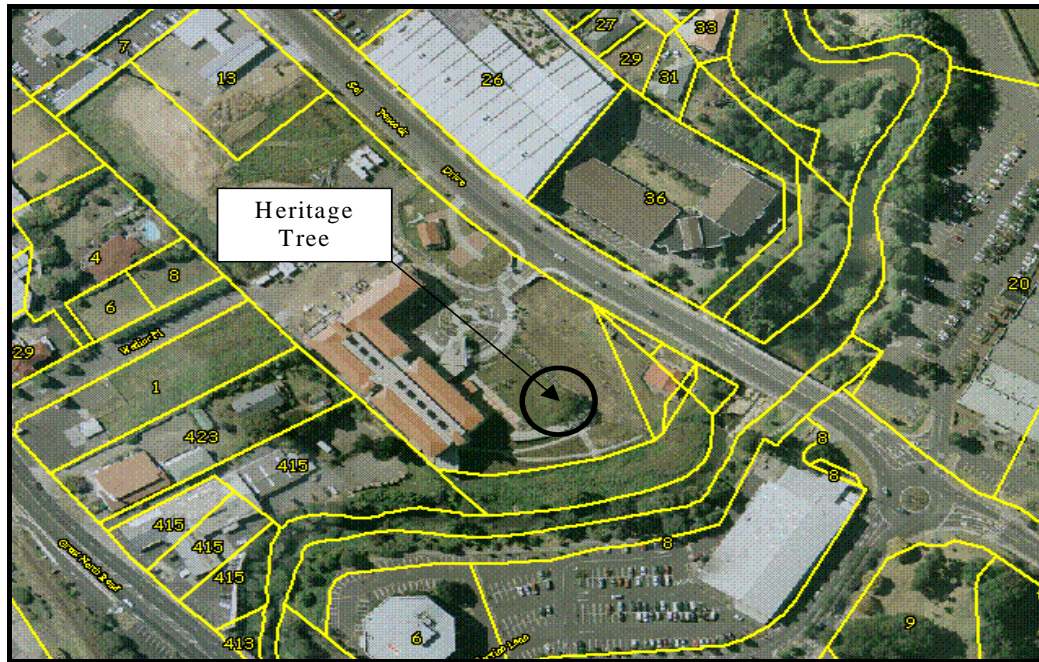


Fig 3 - Location of Tree

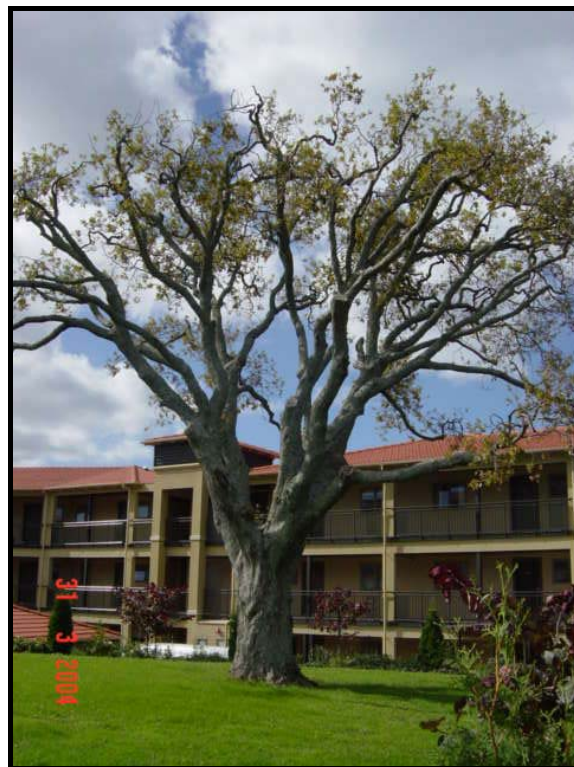


Fig 4 - English Oak Tree at 15 Sel Peacock Drive, Henderson

### 3.0 PROPOSAL

The applicant seeks consent to remove an English Oak (*Quercus robur*) 11-12 metres in height due to its declining health and potential hazardous nature. Removal of the Oak would impact on the heritage values of the City, amenity values and neighbourhood character.

The proposed works comprise the removal of the tree and replanting of mitigation planting.

#### 4.0 REASONS FOR THE APPLICATION

Removal of the Oak tree is not considered to meet the criteria for permitted removal, as the Council's Arborist (Andrew Richards) determined that the tree is not dead or suffering from an untreatable or dangerously infectious disease. In addition, the tree is not currently creating a hazardous situation to persons or damage to property. A full application is therefore required to determine the impacts of removing the heritage tree.

Consent is required under the following provisions of the District Plan for the following reasons:

#### 4.1 Operative District Plan

The subject site is located in the Community (Periphery) Environment and General Natural Area under the Operative District Plan.

- The removal of a heritage tree is a non-complying activity as it is not provided for in the District Plan (City Wide Rules - Heritage, Rule 3.3 Destruction, Trimming, Felling and Modification of Heritage Vegetation).
- The removal of an Oak exceeding 6 metres in height is a limited discretionary activity (General Natural Area, Rule 2.3 Vegetation Alteration).

4.2 Overall, the application is considered to be a non-complying activity. The proposal complies with all other development controls under the District Plan.

No other consents are required in respect of this application.

#### 5.0 THE SITE AND NEIGHBOURHOOD DESCRIPTION

The site is located on the western side of Sel Peacock Drive, on the edge of the Henderson Town Centre adjacent to the Opanuku Stream. This site rises sharply from the Opanuku Stream and Esplanade area, to the main site area before rising gently to the north. The site was the original site of Mill Cottage, built in the 1850's to provide accommodation for workers at the nearby timber mill. The heritage value of this site is associated with the earliest period of development of Henderson district.

Recently the site has been developed with Retirement Apartments, contained within five blocks of building 3-6 storeys high. The area surrounding the apartments has been landscaped, with a variety of juvenile tree species. An English Oak (*Quercus robur*) with a height of 11-12 metres is located within the southern part of the site as illustrated in the Locality Diagram (Figs 3 & 4). The Oak is listed as a heritage tree associated with the Mill Cottage within the Operative District Plan, the age of the tree is unknown.

Located on the edge of the Town Centre, surrounding development is generally commercial in nature with Pak n Save and the Henderson West Wave Recreation Centre to the south; the Gull Service Station and Henderson Police Station to the North, and the recently vacated Mitre 10 store across the road. Development along the western boundary fronts onto Great North Road, and includes car sales, apartments and light commercial uses.

#### 6.0 ISSUES IDENTIFIED THROUGH THE SUBMISSION PROCESS

A1-A37

The application was publicly notified on 8 April 2004, and the period for submissions closed on 11 May 2004. Notice of this application was served on all identified affected persons on 13 April 2004. One submission was received, which supported the application. Attached at pages A1 to A35 is a copy of the submission that was received. A map showing the location of the affected persons is attached at pages A36 A37

## 6.1 Submissions

The submission in support of the application is as follows:

- Max Peers (Representative for Waitakere Gardens Resident Committee & the Safety Committee Spokesperson), A228 Waitakere Gardens, 15 Sel Peacock Drive, Henderson.

Supports the removal of the tree for safety reasons. The decline in the health of tree creates a potential hazard to residents of the Waitakere Gardens Apartments. A letter from the West Auckland Historical Society (Mill Cottage) is provided in support of this submission.

## 7.0 STATUTORY REQUIREMENTS

### 7.1 Non-Complying Activities

A42-A44

The relevant policies and criteria which apply under the District Plan and the Resource Management Act 1991 are set out in more detail as attached at pages A42 to A44. This should be referred to as the legal framework within which the application should be addressed.

As noted, the proposal requires consideration as a non-complying activity under the provisions of the Resource Management Act 1991. Section 104D of the Resource Management Act 1991 sets a threshold test which all resource consent applications for non-complying activities must first pass before a consent authority has jurisdiction to grant consent, having regard to the matters specified in Section 104. In short, the proposal must be able to establish and operate without generating more than minor adverse effects on the environment, or must not be contrary to the relevant objectives and policies of the Operative District Plan. Council may disregard an adverse effect of an activity on the environment if the Operative Plan permits an activity with that effect.

The matters to be considered when assessing an application for resource consent are set out in Section 104 of the Resource Management Act 1991. Amongst other things, these matters require consideration of any actual and potential effects on the environment arising from the proposal, together with an assessment as to whether the application is consistent with relevant objectives, policies and rules of the District Plan. All considerations are subject to the provisions of Part II of the Resource Management Act 1991, which sets out the purpose and principles that guide this legislation.

However it should be noted that for council to grant consent to a non-complying activity application there should generally be some exceptional or unusual element to the proposal. If such unusual circumstances do not exist, then the proposal would effectively compromise the integrity of the District Plan and public confidence in the consistent administration of the plan may be undermined. It is considered that the proposal would be unique because visibility and access to the heritage tree has been reduced by the surrounding development, and it is no longer visibly connected to the relocated Mill Cottage. Therefore the heritage value of the tree has lost significance. In addition, the decline in the health of the tree creates a potential hazardous situation to residents of Waitakere Gardens.

Council also has discretion to consider any precedent issues that may arise for a non-complying activity. According to the Court of Appeal decision in *Dye v Rodney District Council*, an adverse precedent effect can arise where the grant of a non-complying consent would influence the approach taken by Council to similar consent applications. Such a precedent effect does not arise here because the tree has been assessed on a site specific basis, considering the decline in health and the current heritage value provided by the Oak.

The District Plan has been prepared with an “effects based” emphasis, in keeping with the Resource Management Act 1991. As such, consideration of the application in relation to each of the assessment criteria relating to the various infringements would ensure that all the relevant matters contained in Section 104 of the Resource Management Act 1991 would have been addressed. In addition, a brief summary is presented below of the main effects on the environment generated by the application.

## **8.0 EVALUATION IN ACCORDANCE WITH SECTION 104 OF THE RESOURCE MANAGEMENT ACT 1991**

In order to make a decision in terms of Section 104B of the Act it is necessary to undertake an analysis and assessment to determine whether the purpose and principles of the Act are being met (Part II) having regard to the matters set out in Sections 104, 104A - 104D as relevant, the Fourth Schedule and any other statutory considerations.

Section 104(1) of the Act requires that Council have regard to any actual or potential effects on the environment, any relevant objectives, policies, rules or other provisions of a plan or proposed plan and any relevant regional policy statement and regional plan or proposed plan, and any other matters the consent authority considers relevant and reasonably necessary to determine the application.

When considering an application Council must not have regard to any effect on a person who has given their written approval to the application (Section 104 (3)(b)) and may disregard an adverse effect of an activity on the environment if the Operative Plan permits an activity with that effect (Section 104(2)).

### **8.1 Assessment of Environmental Effects (104(1)(a)): Actual and Potential Effects on the Environment.**

#### **8.1.1 Heritage**

The tree is identified within the Operative District Plan as a listed heritage tree associated with the Mill Cottage. Located on the original site of the Mill Cottage, the tree is directly linked to the historical heritage of this building and the early development of Henderson. No evidence within Council records is available to ascertain the age of the tree or what significance it has in association with the Mill Cottage. It can therefore only be assumed that the trees' location within the original site of the Mill Cottage provided the association contributing to its heritage status.

The Mill Cottage, has been relocated from the original site to a reserve adjoining the site and fronting Sel Peacock Drive. The cottage was originally built in the 1850's to provide accommodation for workers at the nearby timber mill. During the 1870's the house was utilised as a school. The cultural significance of the former Henderson's Mill Cottage, and therefore associated Oak, is attributed to its locally significant historic values. The house is associated with the earliest period of the development of Henderson district, where the Henderson Mill was a major player in the western districts timber industry. The house has been moved from its original hilltop location, approximately 40 metres east fronting onto Sel Peacock Drive, the location of the tree has not been altered. Removal of the tree would therefore impact on the significance of the site, as the original location of the Mill Cottage.

Council records indicate that the 'Old Henderson Mill House and Oak Tree in the grounds of the Opanuku Stream' was added to the register of objects and places of historic interest within the Henderson Borough Operative District Scheme (1977) on 5 September 1979 as Plan Change No. 29. However, there are no Council records indicating when the tree was planted or how it is associated with the Mill Cottage.

A letter in support of submitter one was provided by the West Auckland Historical Society, which is based at Mill Cottage. No specific reference was made to the historical heritage or significance of the tree. This letter supports the removal of the tree as it is dying. No other submissions were received from interested parties within the City, and no further references made to the heritage value of the Oak. It is therefore considered that the heritage value of the tree is not significant to residents of the City.

The heritage value of the Mill Cottage has been retained by its relocation, and removal of the Oak is not considered to adversely affect the heritage value of the site.

### 8.1.2 Amenity Values - Health and Safety, Landscapes, Local Areas and Neighbourhood Character

- **Visual Amenity & Neighbourhood Character**

A49-A52

The Oak is not visible from Sel Peacock Drive or from Great North Road as it is generally surrounded by buildings of 3-6 storeys in height. The Oak is visually prominent from the south, along the edge of the Opanuku Stream and from the Pak n Save Car Park on Alderman Drive, site photographs are attached at pages A49 to A52. The declining quality of the tree is adversely affecting visual amenity, with its crown being sparse, smaller leaves and discolouring, there is also a high percentage of dead wood present within its crown.

Planting within the site has been undertaken to mitigate development, where palms within the courtyard area have reached a height of approximately 10 metres, and can be viewed as the site is approached along Sel Peacock Drive from the North. Other vegetation planted within the southern part of the site, kauri, oaks, etc. have not reached any significant height yet. In addition, existing vegetation along the Opanuku Stream provides some vegetative screening of the Waitakere Gardens Development as viewed from the south. Therefore the removal of the Oak would have no more than minor adverse effects on visual amenity and neighbourhood character.

- **Health & Safety**

Removal of the tree is proposed as a result of the deteriorating health and structure of the tree, presenting a potential hazard to residents of Waitakere Gardens. An independent arborists report by Nigel Clunie submitted by the applicant indicated that without remedial works the tree's health would decline within 5-10 years.

Reports submitted by the applicant from qualified arborists over the past two years, indicate that the health of the tree has continued to deteriorate irrespective of remedial works attempted by the applicant to retain the tree. A report submitted by ArborSolutions Limited (September 2002) stated that:

*“Extensive, and long term, crown dieback is evident, and there are numerous sites of previous limb and branch failures. Progressive decay columns, bark cracking and slime flux exudation are present throughout the structure of the tree. There is extensive decay in the root plate also.”*

A Tree Hazard Evaluation presented by the September 2002 report indicates a hazard rating of 10/12 requiring immediate action. The report states that:

*“due to the extreme degree of crown dieback that is certainly in evidence, it is likely that there would be a corresponding degree of root dieback. Such a loss of anchorage can lead to a tree toppling.”*

The applicant's arborist determined that it was inadvisable at the time to remove any live growth to balance the weighting of the tree, given the poor state of its health and lack of vigour. The report also recognises that the tree is located within an area of the landscape specifically provided for the outdoor recreation of residents. The report states that 'the tree is unsafe in its location; it is in an advanced state of declining health and has a history of multiple branch and scaffold failure<sup>1</sup>; the trees' decline is irreversible, and the remedial works would have no positive effects on the tree's health or stability'.

Submitter 1 is concerned about the safety of residents, indicating that bits constantly drop from the tree and those residents are concerned it will one day blow over.

Council's Arborist (Andrew Richards) confirms that the current form, crown and limb structure of the tree is poor and declining, identifying the crown as being hazardous. Although Mr Andrews had indicated that remedial works could be undertaken, this would involve cordoning off the area to protect residents from the potential hazard if the structure of the tree fails. Mr Andrews indicated that:

*"Although there is no evidence to suggest to what degree the decay extends into the stem and roots of the tree there is sufficient evidence to determine that the degree of decay on main branches is such that potential for failure of one or more of these is high."*

Therefore, as a result of decay on the 'main scaffold branches' Mr Richards determines that the structural integrity of the Oak cannot be guaranteed.

### 8.1.3 Native Vegetation, Vegetation and Fauna Habitat

The application including all supporting documentation has been reviewed by the Council's Arborist, Andrew Richards to determine any actual and potential effects on the environment caused by the removal of the tree. Mr Richard's full report is summarised below.

At the time of the original application (2002), the Council's Arborist (Andrew Richards) requested that further investigation be undertaken to determine the extent of decay and determine the status of the tree. Mr Richards undertook exploratory work and determined that:

*"The poor status of the tree is assumed to be as a result of many years of inappropriate use of the ground surrounding and below the tree, which over time has compounded to a point where the tree no longer has the ability to defend itself (against fungal and insect attacks) and sustain good health"*

Work was undertaken to remove soil layers from the base of the tree to enable the original soils and levels to be exposed. The process would allow soils a better ability to 'breathe' and the soils moisture content to be better stabilised. However, after a year of monitoring by the applicant, the trees health has not visibly improved. Therefore the applicant wished to progress with the removal of the tree.

Mr Richards indicates that options are available to assist the tree in survival, that these measures may take some time for the tree to respond and demonstrate visible signs of improvement. Mr Richards also recognises that remedial work would never return the Oak to its prime but allow it to survive to exist.

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<sup>1</sup> Scaffold branches are the larger branches carrying the crown of the tree.

The Oak is located within one of the only outdoor spaces provided for residents of the complex. To protect and retain the tree, the area surrounding the tree would need to be cordoned off to reduce any risk of the tree harming persons. This area is currently not being utilised by residents due to the potential hazard of the tree affecting on-site amenity. Removal of the tree would therefore have positive effects on the amenity of the site for residents of Waitakere Gardens.

Significant planting of natives has been undertaken throughout the site to mitigate potential adverse effects of the Waitakere Gardens Development. Although many of these trees are still young, once they begin to reach maturity vegetative cover will be greatly improved.

The Oak tree is individual mature specimen notable due to its association with the Mill Cottage. Therefore removal of the tree would impact on the historical significance of the site. However, there remain a number of larger specimen trees within the landscape that provide for linkages and natural character.

Mr Richards recommended conditions of consent related to the removal of the tree and subsequent replanting in the nearby reserve. If consent were granted, those recommendations would be included as conditions of consent.

#### **8.1.4 Summary**

It is considered that the actual and potential adverse effects of the proposed activity are no more than minor because the visual connection between the heritage tree and Mill Cottage, and with Henderson has been greatly reduced by surrounding development. The Oak is no longer in good condition, with declining health that could be potentially hazardous to residents if appropriate maintenance and care of the tree is not undertaken. As the tree would never return to its prime and would only survive with remedial measures the tree provide little visual amenity. Removal of the tree would avoid a potential hazard and the heritage value of the Oak can be adequately mitigated through appropriate conditions of consent such as replanting and recognition of the historical significance of the site.

### **8.2 Any Relevant Provisions of the District Plan 104(1)(b)(iv):**

#### **8.2.1 District Plan Policies and Objectives**

It is considered that the proposed development would be consistent with the objectives and policies of the District Plan.

A42-A44

A copy of the relevant Objectives and Policies related to this development are attached at pages A42 to A44. The applicant proposes to remove a heritage tree from the subject site. Council records indicate that the tree is protected as a heritage tree in associated with the Mill Cottage. There is no specific information regarding the heritage value of the tree within Council records, such as when the tree was planted or by whom.

- Objective 10 and Policy 10.13 seek to manage effects that contribute to wellbeing of residents, where activities avoid or mitigate adverse effects of natural hazards on the health and safety of people and communities.

Development around the base of the Oak tree has compromised the structure and health potentially creating a hazardous situation to residents. Although mitigation measures could be undertaken by the applicant to reduce any potential hazard of limbs falling from the tree or the tree toppling, this would require cordoning off the area surrounding the tree to keep people out. The area in which the Oak is located is provided as outdoor space for residents, and restricting access to this area to stabilise the tree would greatly reduce on-site amenity. Removal of the tree is considered appropriate in this instance as the quality of the tree would never be improved and it would remain a potential hazard. Retention of the tree is therefore considered to adversely affect the health and safety of residents, while removal would contribute to the wellbeing of residents.

- Objective 11 and Policy 11.2 seek to achieve a quality of settlement and associated activities within each of the City's Human Environments which is sympathetic to, and protects and enhances, the dominant natural and physical (including building) features which contribute to the amenity value and the neighbourhood character of an area.

Significant development has occurred within the surrounding site and the relocation of the Mill Cottage reducing the visual prominence of the Oak and visual link with the Mill Cottage. The Oak is no longer visible from Sel Peacock Drive and its contribution to neighbourhood character has been significantly diminished. Therefore removal of the tree would have little impact on neighbourhood character of the area.

- Objective 12 and Policies 12.1 and 12.5-12.8 seek to manage the effects of activities on the City's valued heritage in a way that:
  - maintains its variety and complexity;
  - recognises and protects its national, regional and local significance;
  - protects the links between particular heritage objects and the surrounding context;
  - integrates that heritage with people's everyday lives; where possible and appropriate.

It is recognised that there is a need to protect and preserve Waitakere City's heritage items to aid in linking the current City to its past. Recognition that the Mill Cottage is an important part of the City's heritage has been retained by the relocation and protection of the cottage. While the Oak contributes to the heritage value of this site, being the original site of the Mill Cottage, there is no longer a visual linkage between the two as a result of surrounding development. Given the poor health and decline of the tree, and the potential hazard that could arise, it is considered appropriate for a replacement English Oak to be replanted in the same location to retain an example of the natural heritage of the site. The ongoing retention of the Mill Cottage will continue to maintain the heritage value of the site.

It is therefore considered the proposal would be consistent with the Objectives and Policies of the Operative Plan. The Operative Plan is "effects-based" in its approach to natural and physical resources and it has been demonstrated in the previous environmental assessment of effects that subject to conditions any adverse effects arising from the proposal would be insignificant or no more than minor.

## 8.2.2 Rules and Assessment Criteria

A45-A47

The District Plan Assessment Criteria have been developed to address the issues covered in the objectives and policies and are a useful guide in assessing the effect of an activity. A copy of the relevant Assessment Criteria related to this development are attached to pages A45 to A47. The proposed activity is assessed in relation to each of the relevant criteria as follows:

### Heritage

Information submitted as part of the application determines that the condition of the heritage tree is poor, providing expert advice the Oak may potentially be hazardous to residents of Waitakere Gardens. As discussed previously in Section 8.1 of this report, measures were undertaken to retain the health and significance of the tree to limited success. There is little evidence available to determine the significance of the Oaks heritage value to the City, and no submissions received seeking the retention of the tree. Given that the Mill Cottage has been relocated, the Oak identifies the original site retaining some historical linkage. Therefore in addition to undertaking replanting on the original site of the Oak, it is also considered appropriate to locate a commemorative plaque recognising the original site of the Mill Cottage and associated Oak Tree. The proposal to remove the tree is therefore considered to be in accordance with assessment criteria 3(a)-(c).

## Vegetation Alteration

An exotic tree exceeding 6 metres in height warrants protection under the Operative District Plan, regardless of heritage value. As discussed previously in paragraph 8.1.2 above, removal of the Oak would have limited adverse effect on amenity values and neighbourhood character as the tree is largely screened by surrounding development and is not visual prominent. The declining quality of the Oak further reduces its contribution to amenity values, as it has a reduced crown, significant dead wood and smaller discoloured leaves.

Removal of the Oak is not considered to threaten the natural ecosystem, as it is an individual mature specimen tree and a number of juvenile trees have been planted throughout the site. Removal of the tree is considered appropriate as the structure of the tree is not guaranteed and therefore the safety and integrity of existing development, and residents can not be assured. Sufficient space is available for the replanting of an English Oak (*Quercus robur*) within the same location, to restore the historical significance of the site. A condition requiring replanting to be undertaken will therefore be imposed on this consent. The proposal is considered to be in accordance with assessment criteria 2(a)-(k).

### 8.3 Monitoring

The performance of the activities under this consent will be subject to Council's standard monitoring procedures. These procedures include scheduled inspections to ascertain compliance with conditions of consent, together with periodic inspections as and when required to establish whether conditions are being complied with on an ongoing basis. In particular, attention is likely to be directed toward the implementation of conditions relating to replanting of an English Oak (*Quercus robur*) within the same location.

### 8.4 Lapsing of Consent

A standard five-year period in which to give effect to a consent is not considered appropriate in relation to vegetation because a five year period would allow a substantial change in the size and status of the vegetation due to natural growth, to the point where it should more appropriately be reassessed. It is recommended that this period be restricted to two years in this instance. This would provide sufficient time to carry out the proposal without a significant change in the vegetation necessitating reassessment.

## PART II OF THE RESOURCE MANAGEMENT ACT 1991

It is considered that the proposal would be consistent with Sections 5, 6, 7 and 8 of the Resource Management Act 1991.

The purpose and principles of the Resource Management Act 1991 have primacy over all other considerations that are set out in section 104 of the legislation. In summary, sections 5, 6 and 7 require that resources must be sustainably managed in such a way that any adverse effects on the environment can be avoided, remedied or mitigated. Furthermore, the Resource Management Act 1991 requires that amenity values and the quality of the environment are to be maintained and enhanced.

It is considered the proposal would allow for the removal of a tree without detracting from the visual amenity or heritage of Henderson. Further, the trees' removal would prevent a potentially hazardous situation to residents wishing to utilise the outdoor garden area.

It is therefore considered that the granting of this application would not be contrary to the purpose of the Act. The proposal will enable people and communities to provide for their economic, social and cultural well-being and their health and safety without significantly compromising the needs of future generations or the life supporting capacity of natural resources such as air, water and soils. Through the imposition of appropriate conditions of consent, it is considered that the proposed activity can sufficiently avoid, remedy or mitigate any adverse effects on the environment.

## 9.0 EVALUATION IN ACCORDANCE WITH SECTION 104D OF THE RESOURCE MANAGEMENT ACT 1991

The threshold test in Section 104D of the Resource Management Act 1991 states that a consent authority must not grant consent to a non-complying activity unless it is satisfied that the adverse effects on the environment will be minor (104D(a)) or the activity will not be contrary to the objectives and policies of a plan or proposed plan (104D(b)).

It is considered that the threshold test for a non-complying activity has been met as the proposal satisfies Section 104D, in that subject to appropriate conditions of consent requiring mitigation the adverse effects on the environment of the proposal will be no more than minor and the proposal is not contrary to the relevant objectives and policies of the District Plan. Jurisdiction to grant consent has therefore been established.

### CONCLUSION

The applicant seeks consent to remove a heritage tree being an English Oak (*Quercus robur*) 11-12 metres in height. Removal of the Oak would potentially impact on the heritage values of the City, amenity values and neighbourhood character.

The tree is located in the Community Periphery Environment and General Natural Area in the Operative District Plan.

- Given the poor state of health of the Oak tree and the isolated location, screened from public view by surrounding buildings, it has a reduced historical link to the City. Removal of the tree would therefore have minimal adverse effect on local heritage.
- The declining health of the Oak and resultant risk of branch failure creates a potential hazard to residents of Waitakere Gardens. Retention of the tree is therefore considered to have significant adverse effect on the amenity, and the health and safety of residents.
- Planting of a replacement English Oak (*Quercus robur*) would appropriately recognise the historical significance of the site, and would in time mitigate any potential adverse effects on visual amenity from the removal of a mature specimen.

For these reasons it is considered that the proposal **meets** the criteria for granting consent as the potential adverse environmental effects are **no more than minor** and **can** adequately be mitigated through the imposition of appropriate conditions of consent. It is considered that the removal of a heritage tree at 15 Sel Peacock Drive, Henderson **will not** lead to a decline in the heritage values of the area in which it is currently located.

For the reasons above the proposal is also considered to be consistent with the objectives and policies of the District Plan which seek to protect quality and character within the City's intensively settled residential areas and maintain neighbourhood character and amenity by managing activities in a manner that avoids clearance of or damage to trees and vegetation.

Removal of the Oak tree would result in minor adverse effects on heritage values, and would improve amenity and health and safety of residents, and is not considered to be contrary to objectives and policies of the Operative District Plan.

It is considered that the issues raised by the submitter(s) **can** be adequately addressed through the removal of the tree.

Subject to any additional and/or contrary evidence being presented at the hearing, it is concluded that the application **merits consent** in accordance with Section 104 of the Resource Management Act 1991.

### **RECOMMENDATIONS**

That pursuant to Sections 104,104B, 104D, 108 and 113 of the Resource Management Act 1991, and subject to additional or contrary information being presented at the hearing, consent be granted to the application by Waitakere Gardens Limited to remove a heritage tree being an English Oak (*Quercus robur*) at 15 Sel Peacock Drive, Henderson being Pt Lot 2 DP 149953 for the following reasons:

- (i) Removal of the Oak would not detract from the heritage value of the Mill Cottage as the tree is now separated from the cottage by existing development on the site, where the linkage between the cottage and the tree is now marginal.
- (ii) The removal of the Oak would not significantly impact on the visual amenity that contributes to local identity and sense of place, as the tree is only visible from the car parking area on the Pak n Save site. Surrounding development generally screens the tree from public view.
- (iii) Provision of a plaque and replacement planting of an English Oak (*Quercus robur*) at the location of the Oak would recognise the original site of the Mill Cottage and Oak tree, and maintain some linkage with the historical significance of the site.
- (iv) The declining health of the tree would potentially be hazardous to the safety of residents on the site, and impacts on the amenity of the communal garden area.
- (v) The proposal is generally consistent with the Objectives and Policies of the Proposed District Plan and Part II of the Resource Management Act 1991.

Consent shall be subject to the following conditions:

1. Pursuant to Section 125 of the Resource Management Act 1991, this consent shall lapse after a period of two years after the commencement of the consent.
2. Following the removal of the English Oak (*Quercus robur*), a replacement English Oak (*Quercus robur*) of PB grade 150 or equivalent shall be planted at the location of the existing Oak. All planting shall be completed within the first planting season (1 May to 7 September) following removal.
3. Replacement planting shall be of a good quality nursery stock and maintained to the satisfaction of Council for a period of three years from the date of planting. Should the replacement tree die within this period it shall be replaced and maintained for a further two planting seasons.
4. Replacement planting shall be allowed to reach a mature height exceeding 6 metres and removal would require the approval of the Manager, Resource Consents.
5. A commemorative plaque shall be provided at the location of the Oak tree recognising the original location of the Mill Cottage and associated tree, to the satisfaction of the Manager Resource Consents.

Report prepared by: Chloe Trenouth, Planner.

