

# **DISTRICT PLAN DECISION NOTICE**

## **PLAN CHANGE 23: Heritage Trees and Buildings**

### **Outline**

As a result of information presented at the meeting of 10<sup>th</sup> of April 2007, the Planning and Regulatory Committee (“the Committee”), acting under delegated authority to issue decisions on plan change submissions, has made the following decisions in relation to Plan Change 23 to the City of Waitakere District Plan.

### **1 INTRODUCTION**

This decision notice follows the hearing that relates to **Plan Change 23** to the City of Waitakere District Plan (referred to in this decision notice as the “Plan”). Five submissions and no further submission were received. The analysis, together with the formal decision in Section 5 of this decision notice, are provided in part fulfillment of section 32 of the Resource Management Act 1991.

Plan Change 23 modifies the Plan by listing four additional buildings and one additional tree in the Heritage Appendix of the Citywide Rules. As a result of the hearing and the decision of the Committee, one of the trees that was to be afforded heritage protection will no longer be listed. Full details of the changes are contained in Appendix A. The main effect of the Plan Change is that specific buildings and one tree are now regarded as heritage items, and the Heritage buildings and heritage vegetation rules now apply to those additional items.

### **2 BACKGROUND**

#### **2.1 Proposed Plan Change 23**

Council's Planning and Regulatory Committee approved Proposed Plan Change 23 for notification on 13 December 2005. Subsequently the Proposed Plan change was publicly notified on 22<sup>nd</sup> February 2006 and five submissions were received. A summary of submissions was notified on 14 June 2006. However, no further submissions were received.

The issues raised in submissions related to the following matters:

- Removal of a tree from proposed heritage listing (located 80 Ferry Parade, Herald Island);
- Support for the Proposed Plan Change in its entirety;
- Support for the Proposed Plan Change but Council should consider listing the interiors of buildings and entire sites for heritage protection; and
- That the status quo prevails (i.e. do not list any additional heritage items).

The submissions received were evenly split between support and opposition to the Plan Change.

The Plan Change is site specific, it is applicable only to the following sites around the City as follows:

- 29 Lucinda Place, Glen Eden – legally described as Pt Lot 3 DP 87593;
- 6 Glenview Road, Glen Eden – legally described as Allot 725 SO 538298;
- 7 Crockett Lane, Henderson – legally described as Lot 3 DP 45045;
- 57 Ferry Parade- legally described as Lot 215 DP 31409;
- Italian Cypress tree on Council owned road reserve outside 30 Ferry Parade; and

- Kauri tree at 80 Ferry Parade – legally described as Lot 4 DP 79542 (now deleted from the Heritage Appendix as a result of the hearing).

The Committee considered the submissions at a meeting on 10<sup>th</sup> April 2007.

## 2.2 Matters Considered in Relation to Plan Change 23: Heritage Trees and Buildings

### 2.2.1 Statutory Requirements - Resource Management Act

The Resource Management Act provides a statutory framework for the management of natural and physical resources. The purpose of the Act is ‘to promote the sustainable management of natural and physical resources’.

The RMA defines ‘sustainable management’ as:

*“managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety while –*

- (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (c) *avoiding, remedying or mitigating any adverse effects of activities on the environment.*

Section 6 of the RMA relates to ‘Matters of National Importance’. Matters of national importance include:

- (a) *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:*
- (b) *the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development:*
- (c) *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*

Section 7 relates to ‘Other Matters’. Particular regard must be given to:

- (a) *Kaitiakitanga:*
- (b) *The efficient use and development of natural and physical resources:*
- (c) *The maintenance and enhancement of amenity values:*
- (d) *Intrinsic values of ecosystems:*
- (e) *Recognition and protection of the heritage values of sites, buildings, places or areas:*
- (f) *Maintenance and enhancement of the quality of the environment:*
- (g) *Any finite characteristics of natural and physical resources:*

(h) *The protection of the habitat of trout and salmon*

Section 8 requires that when managing the use, development and protection of natural and physical resources, a territorial authority shall take into account the principles of the Treaty of Waitangi.

Part III of the RMA sets out Duties and Restrictions to, amongst other things, subdivision of land. Section 11 states that no person may subdivide unless the subdivision is expressly allowed by a rule in a district plan or resource consent.

Part IV of the RMA relates to functions powers and duties of Central and Local Government.

Section 31 sets out functions of territorial authorities for giving effect to the RMA in its district including:

- a) *The establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*
- b) *The control of any actual or potential effects of the use development, or protection of land, including for the purpose of the avoidance or mitigation of natural hazards and the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:*
- c) *The control of the subdivision of land:*
- d) *The control of the emission of noise and the mitigation of the effects of noise:*
- e) *The control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:*
- f) *Any other functions specified in this Act.*

## **2.2.2 Statutory Requirements – Auckland Regional Policy Statement**

Section 75(3) of the Resource Management Act 1991 requires that a district plan give effect to a regional policy statement. The Auckland Regional Policy Statement (ARPS) provides a resource management framework for managing environmental effects within the Auckland region.

The objectives collectively seek the efficient use of land whilst maintaining the natural and amenity values of the physical environment. It is considered that the Proposed Plan Change is consistent with these objectives as it will protect local heritage values and amenity.

The Auckland Regional Council has not made any submission in support or opposition to the Proposed Plan Change.

### **Statutory Requirements – District Plan**

The District Plan provides for protection of heritage resources; archaeological sites/waahi tapu; buildings; and trees. The District Plan, in Part 3: The City's Environment identifies a range of places, objects, buildings and other structures, archaeological sites/waahi tapu which the City's residents and iwi value to the degree that they would like to see them passed on to future generations.

Part 5: Objectives, Policies and Methods specifically discusses effects on heritage. Objective 12 aims:

*“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."*

The remaining policies relate to vegetation, demolition or partial demolition of buildings, additions and alterations to buildings, activities on sites containing heritage items and adjacent sites, archaeological sites, earthworks and subdivision. The objectives and policies are supported by rules relating to heritage items in the Citywide Rules Heritage Appendix.

It should be noted that this Proposed Plan Changes does not alter or change any objectives, policies or rules relating to heritage management. It only aims to add a relatively small number of items to the Heritage Appendix. However, the listing of these items means that the existing rules will apply to items that were not previously recognised as being of heritage value.

### **2.2.3 Section 32 Considerations**

Section 32 of the Resource Management Act 1991 requires an evaluation to be undertaken by a local authority before any objective, policy, rule or other method is adopted.

Council's obligations under Section 32 are divided into five parts that comprise the following:

- examining the extent to which each objective is the most appropriate way to achieve the purpose of the Act;
- examining whether, having regard to efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives;
- taking into account the benefits and costs of the policies, rules or other methods;
- taking into account the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods; and
- summarising the evaluation and providing reasons for that evaluation.

The Section 32 analysis done prior to notification of the Proposed Plan Change 23 identified that the proposed plan change was necessary and the most efficient and effective means of achieving the purpose of the Act. The Section 32 analysis has been updated in this report where recommendations are made in response to submissions that amend the Plan Change.

## **2.3 Analysis of Submissions**

A total of five submissions and no further submission were received on Plan Change 23. Given the relatively small number of submissions, each submission is discussed individually below.

### **2.3.1 Submission from Marinus and Debra Timmermans(Submission 23/1)**

The submitter sought that the kauri tree located behind the garage of 80 Ferry Parade not be included in the Heritage Appendix, and the reasons put forward for the deletion were;

- That the tree was already covered by the General Tree Protection Rules.

- That there could be alternative means for recognising the heritage value of the tree.
- The submitter was prepared to have a plaque placed on their site explaining the significance of the tree provided that the tree was removed from the Heritage Appendix.
- The submitter believes that a heritage listing would be an impediment to sale of the property at some stage in the future.

#### Discussion

The submitter was represented by a solicitor, Bernie Allen. Prior to the hearing an agreement had been reached in principle between Council staff, the submitter and another submitter on Herald Island who had originally nominated the tree for listing in the Heritage Appendix. The owner of the tree expressed a desire to keep the tree but did not want it listed as a heritage tree. The subject tree is 13m in height and is the larger specimen of a pair of kauris said to have been planted at the entry to the former school site that was opened in 1954 and closed in 1958 when the causeway was constructed. The school closure was brought about as children were able to travel to Hobsonville primary school with greater ease. A limited discretionary resource consent application would be required to cut down the tree under the general tree protection rules and it was considered that a plaque on site would provide local residents with greater recognition of its heritage status than a District Plan listing.

The Committee felt that a plaque and general tree protection would achieve an appropriate level of recognition for the tree without listing it.

#### **Decision:**

The submission of Marinus and Debra Timmermans is **accepted**.

### **2.3.2 Jan Diprose (submission 23/2), Noel Rugg (submission 23 /4)**

These submitters support the listing of the Old Fire Station at 57 Ferry Parade, the Italian Cypress tree on the road berm outside 30 Ferry Parade and were prepared to accept the compromise position outlined in section 2.3.1 above. An agreement was reached that the tree should be deleted from the heritage appendix provided that a plaque was erected. Jan Diprose indicated that a plaque would be more meaningful for local residents rather than a District Plan listing.

Jan Diprose gave evidence on the history of various buildings on the Island and was also representing the views of Mr Noel Rugg, President of the Herald Island Residents & Ratepayers Association. Jan Diprose explained that prior to the District Plan being notified in 1995, the community was asked to nominate various buildings and trees for heritage listing. Jan Diprose had written to Council requesting that these items should be listed several years ago. Some of the items nominated had come to light as a result of archival research.

The submissions also requested some minor amendments to the descriptions and dates of various listed buildings on Herald Island. Although this request is technically beyond the scope of the Proposed Plan Change, the changes can be made administratively as part of a separate process.

#### Discussion

The Committee commended Jan Diprose on her thorough research in putting together documentation relating to Herald Island. The Committee agreed that the Kauri tree at 80 Ferry Parade could still achieve an appropriate level of protection

through the General Tree Protection Rules. On that basis it would be deleted from its proposed heritage listing. However, Council would pay for a plaque to be erected on site in a suitable location. There was no issue with the other buildings nominated by the Herald Island Residents & Ratepayers Association being listed in the Heritage Appendix of the Citywide Rules.

**Decision:**

The submission of Jan Diprose(submission 23/2) and Noel Rugg (submission 23 /4)**is accepted in part** in so far as the buildings nominated are to be listed but the tree at 80 Ferry Parade is deleted from the Heritage Appendix of the Citywide Rules.

**2.3.3 Submission from New Zealand Historic Places Trust (Submission 23 /3)**

The submitter sought the Proposed Plan Change should be upheld subject to the following amendments:

- The Knoll (William Levy's House) – 28 Lucinda Place consider listing the interior for protection;
- Dwelling at 6 Glenview Road – consider the setting and interior of this dwelling for protection;
- Old Fire station, 57 Ferry Parade – consider listing the interior of this dwelling for protection
- 7 Crockett Lane – consider listing the setting of this dwelling for protection.

Discussion

The New Zealand Historic Places Trust plays a significant role in heritage advocacy, provides authorities to alter historic sites and manages a portfolio of heritage buildings and sites across the country. Those sites that are owned and administered by the Trust are generally open to the public and the interiors and entire sites are offered protection. The Trust also has a schedule of buildings that it lists throughout the country; however, those listings do not carry any statutory weight. A District Plan listing in the Heritage Appendix means that for Category I and II buildings, The Trust must be consulted on proposed changes and alterations under recent amendments to the Building Act 1991. Landowners risk enforcement proceedings being taken against them if works are undertaken without appropriate consents being in place.

Many of the buildings that have local significance in Waitakere City would be similar to character precincts (villas and bungalows) in Auckland and North Shore Cities where the interiors are not generally protected. Furthermore, the majority of buildings listed in the District Plan are domestic houses that require renovation to meet the needs of modern living. It is considered that protecting the interior of buildings is only appropriate for iconic buildings such as Lopdell House, the former Parr homestead and the Sextons House as it would limit the range of people that would otherwise be prepared to buy, renovate and live in heritage houses. It may also send a message to the development community that it is "too hard" to own a heritage house in Waitakere City if current landowners were unable to make personal choices about kitchen and bathroom designs and later interiors or gardens to suit their own personal preferences.

**Decision:** The submission of the Historic Places Trust (23/3) is **accepted in part** in so far as the proposed buildings are listed for protection under the District Plan.

**2.3.4 Submission from Caroline and Gary Bennell (Submission 23/5)**

The submitter sought that the plan change be refused, and the status quo prevails, as native trees are already protected and heritage listings can be perceived negatively by potential purchasers of property.

#### Discussion

The District Plan aims to achieve a balance between adequately protecting natural and physical resources and providing opportunities for people to develop sites. The submitter owns property at 82 Ferry Parade and the tree at number 80 Ferry Parade was recommended for heritage protection by the Herald Island residents & Ratepayers Association. The tree at number 80 Ferry Parade will be deleted from the Heritage Appendix as there are alternative methods for articulating its heritage significance to the Herald Island community other than a District Plan listing. The items that have been selected for heritage listing have largely been as result of the community nominating those items and the buildings and trees meeting certain criteria. The general tree protection rules in the General Natural Area and Heritage Vegetation Alteration Rules both allow for pruning of up to 20% in any one calendar year.

#### Decision:

The submission of Caroline and Gary Bennell (23/5) **is accepted in part** in so far as it relates to the deletion of a heritage tree at 80 Ferry Parade.

### 3 HEARINGS

Two of the submitters (Jan Diprose and the Timmermans) sought to be heard, and both provided evidence to be tabled at the hearing. The Planning and Regulatory Committee then proceeded to deliberate and decide on the submissions.

### 4 CONCLUSION

Plan Change 23 lists four additional heritage buildings and one heritage tree. The Plan Change does not alter the rules, policies or objectives relating to heritage in the District Plan.

The Plan Change is consistent with relevant statutory documents as discussed above. In addition, it is considered that there will be no adverse environmental effects generated as a result of the Plan Change.

The section 32 analysis provided concludes that the heritage protection of the four buildings and one tree as discussed in section 2.3.3 is efficient and effective. The Plan Change is considered necessary to achieve the purpose of the Act and is the most appropriate in terms of effectiveness and efficiency of Council exercising its functions.

### 5 DECISION

1. That pursuant to Clause 10 of the First Schedule to the Resource Management Act 1991, Plan Change 23 –Heritage Buildings and Trees, is adopted as set out in Appendix A to the decision notice.
2. That pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991, the reasons for the Committee's decision are contained within the Plan Change 23 decision notice.
3. The Waitakere City District Plan is hereby amended in the manner set out in Appendix A to the decision notice for Plan Change 31.

**DECISION NOTICE APPROVED FOR RELEASE:**

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**Cr Vanessa Neeson: Chairperson**

**Date:**

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**Philip Brown, Group Manager: Planning and Community Services**

**Date:**

## Appendix A – Waitakere City Council Decision

### CHANGES TO TEXT OF DISTRICT PLAN INCORPORATING PLAN CHANGE 23 AND COUNCILS DECISIONS ON SUBMISSIONS

Amend District Plan by deleting text shown with a ~~strikethrough~~, and adding text shown in **bold**.

Location	Description	Category	Interior	CHI No	Legal Description
Dwelling, 7 Crockett Lane, Henderson	Two-storey kauri dwelling, built late 1890s. Significance attributed to historical, architectural and community values.	Category II	No	15753	Lots 3 & 7 DP 45405
Old Fire Station, 57 Ferry Parade	Old Fire Station – rectangular gabled building and tower, built 1959. Significance attributed to historical and community values	Category II	No	15751	Lot 215 DP 31409
Dwelling, 6 Glenview Road	Victorian villa, weatherboard structure, built in 1898. Significance attributed to historical associations	Category II	No	15750	Allot 725 SP 538298
The Knoll (William Levy's House), 29 Lucinda Place, Glen Eden	Californian bungalow, roughcast exterior, built 1910-1930 period. Significance attributed to heritage of local nurserymen.	Category II	No	15749	Lot 3 DP 87593

HERITAGE VEGETATION

CHI No.	LOCATION	DESCRIPTION
15746	Road reserve outside 30 Ferry Parade	Italian Cypress
<del>15747</del>	<del>80 Ferry Parade</del>	<del>Large Kauri tree</del>

Ref No	CHI No	District Plan Map	Location	Legal Description	Common Name(s)	Botanical Name
116	15746	Herald Island	Road reserve outside 30 Ferry Parade	Lot 83 DP 31409	Italian Cypress	Cupressus Sempervirens
<del>117</del>	<del>15747</del>	<del>Herald Island</del>	<del>80 Ferry Parade</del>	<del>Lot 4 DP 79542</del>	<del>Kauri</del>	<del>Agathis Australis</del>

## **Appendix B - Submitter Schedule For Proposed Plan Change 23**

<b>No.</b>	<b>Name</b>	<b>Address for Service</b>
23/1	Marinus and Debra Timmermans	80 Ferry Parade, Herald Island
23/2	Jan Diprose	49 Ferry Parade, Herald Island
23/3	New Zealand Historic Places Trust	Private Box 105 291, Auckland
23/4	Noel Rugg	82 The Terrace, Herald Island
23/5	Caroline and Gary Bennell	6A Horizon Way, West Harbour