

Proposed Plan Change No.41: Scheduling of trees in the Heritage Appendix

Auckland Council District Plan (Waitakere Section)

Notification Report

Pursuant to Section 74 of the Resource Management Act 1991

December 2011

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1.0 Executive Summary

The purpose of Proposed Plan Change 41 (**the plan change**) is to schedule a further 240 heritage vegetation items containing significant trees/groups of trees in the Heritage Appendix of the Auckland Council District Plan (Waitakere Section) (**the District Plan**). This will give these items the level of protection afforded by Rule 3 of the District Plan's Heritage Rules.

2.0 Background

Under section 152(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (**the Simplifying Act**), on 1 January 2012 an existing rule or part of a rule in an operative or proposed district plan that prohibits or restricts the felling, damaging, or removal of any tree, or group of trees, in an urban environment is automatically revoked.

On 1 October 2009 the Simplifying Act came into force, thereby resulting in section 152 being duly incorporated into the Resource Management Act 1991 (**the RMA**). As a consequence, section 76 (4A) and (4B) of the RMA reflect the provisions detailed under section 152 of the Simplifying Act, and limits tree protection methods beyond January 1st 2012 as being rules which do not:

“prohibit or restrict the felling, trimming, damaging, or removal of any tree or group of trees in an urban environment unless the tree or group of trees is—

(a) specifically identified in the plan; or

(b) located within an area in the district that—

(i) is a reserve (within the meaning of [section 2\(1\)](#) of the Reserves Act 1977); or

(ii) is subject to a conservation management plan or conservation management strategy prepared in accordance with the [Conservation Act 1987](#) or the [Reserves Act 1977](#)” (Section 76 (4)(a))

The definition of urban environment in sub-section 4B of the RMA “means an allotment no greater than 4000 m² –

(a) that is connected to a reticulated water supply system and a reticulated sewerage system; and

(b) on which is a building used for industrial or commercial purposes, or a dwellinghouse.”

In May 2011 the Environment Court issued Decision NZENVC129 on a declaration application asking whether certain tree protection rules in the North Shore and Waitakere District Plans fell within the scope of section 152(3) of the Simplifying Act (now Section 76 (4A)(a) of the RMA).

In relation to the Waitakere District Plan (now the Auckland Council District Plan (Waitakere Section)), the Court accepted all of the tree protection rules put forward by the former Waitakere City Council (**WCC**) as coming within the scope of section 152(3) of the Simplifying Act given that they related to a tree, or group of trees specifically identified in the District Plan. As a consequence, the Court determined that the following tree protection rules in the District Plan would continue to have legal effect after 1 January 2012:

- (i) Managed Natural Area Rule 2 Vegetation Alteration of the Natural Area Rules...relat[ing] to land within the Bush Living Environment in the urban environment shown on the Waitakere District Plan Maps; and
- (ii) Riparian Margins/Coastal Edges Natural Area Rule 2 Vegetation Alteration of the Natural Area Rules... relat[ing] to land in the urban environment shown on the Waitakere District Plan Maps.

To fully understand the implications of the decision on all other tree rules contained within the Auckland Council District Plans, Council's legal advisors were instructed to apply the findings of the declaration to determine which tree rules would still be valid (or otherwise) from 1 January 2012. The resulting legal analysis was subsequently forwarded onto Council's Regional Development and Operations Committee (**the Committee**) for review.

On 20 October 2011, the Committee approved the retention of Auckland Council District Plan (Waitakere Section) tree protection rules in the Managed, Riparian Margins/Coastal Edges, Protected, Coastal and Restoration Natural Areas after 1 January 2012, along with General Natural Area tree protection provisions applicable in the Bush Living and Waitakere Ranges Environments (as contained within the Auckland Metropolitan Urban Limits and the boundaries of the Waitakere Ranges Local Board area).

3.0 Explanation of Plan Change

3.1 Purpose of the Plan Change

From 1 January 2012, the general tree protection provisions in the District Plan will be revoked and a large number of trees within an urban environment will no longer be protected. The revocation will affect the general tree protection provisions detailed under Rule 2 of the District Plan's General Natural Area Rules, with the only exception being the retention of tree protection provisions in the General Natural Area covered by the 'Bush Living Environment' and 'Waitakere Ranges Environment' zones (as contained within the Auckland Metropolitan Urban Limits and the boundaries of the Waitakere Ranges Local Board area).

3.2 Summary of the Plan Change Provisions

The primary purpose of this Plan Change is to schedule additional significant trees/groups of trees under the District Plan's Heritage Appendix as a large number of trees within the urban environment will no longer be protected from 1 January 2012. Following the nomination and assessment process undertaken in 2011, a further 240 heritage vegetation items containing significant trees/groups of trees are proposed for scheduling under the District Plan's Heritage Appendix. As a consequence of this Plan Change, a small number of other changes to the District Plan are proposed.

The changes to the District Plan are summarised below:

- Adding 240 heritage vegetation items containing significant trees/groups of trees to the District Plan's Heritage Appendix.

- Mapping all proposed additions to the District Plan's Heritage Appendix on the District Plan's Human Environment Maps, in accordance with the methodology used to map existing heritage vegetation items.
- Replacing the RNZIH STEM in Appendix D of the District Plan's Policy Section with a revised STEM used to assess nominated tree(s) for scheduling under the plan change (appended as **Appendix A** to this report).

3.3 Methodology

As the general tree protection provisions detailed under Rule 2 of the District Plan's General Natural Area Rules will be revoked, and urban trees must be specifically identified in the District Plan in order to be protected, the most efficient and effective way of protecting significant trees is to add them to the existing schedule.

In response, to the changes to the RMA, the Governing Body of Auckland Council resolved in December 2010 -

“(c) That as an interim measure, Auckland Council uses a staged approach to prepare a plan change (using information recently updated by previous councils) which adds nominated trees to existing schedules.

(d) That existing schedules can then be updated as time permits, as soon as possible, via appropriate plan changes; this would build on previous work from councils”.

Nominations

From November 2009 to February 2010, the former WCC sought nominations from the public on trees it considered were suitable for adding to the Heritage Appendix in the District Plan.

A subsequent nomination period was held in March 2011 which enabled the Local Boards and members of the public (through the Local Boards) to nominate trees for consideration under the Plan Change.

The first nomination period initiated by the former WCC generated 276 nominations, while the subsequent Local Board nomination period generated 391 nominations for trees or groups of trees on both private and public land.

Use of Existing Heritage Appendix

The District Plan's Heritage Appendix currently comprises of 116 heritage vegetation items containing significant trees/groups of trees. As the Appendix specifically identifies trees/groups of trees, this protection mechanism will continue to protect those trees listed in the Appendix after 1 January 2012. The existing Heritage Appendix is therefore considered the most appropriate mechanism to protect Waitakere's significant trees.

Use of Standard Tree Evaluation Method

Appendix D of the District Plan's Policy Section sets out the criteria for including significant trees/groups of trees in the Heritage Appendix:

“...trees will be included on the Heritage Appendix if they are nominated by the community or the Council and meet a threshold of 125 using the Royal New Zealand Institute of Horticulture (RNZIH) Standard Tree Evaluation Method (STEM), as modified by the Council as a method of assessing arboricultural (scientific), amenity, and notable criteria.”

This provision was incorporated into the proposed District Plan (dated December 1998) by the former WCC, and was subsequently made operative in March 2003, which also coincided with the proposed District Plan being made operative. It is noted that the STEM referred to in Appendix D of the District Plan's Policy Section was inadvertently excluded from the proposed and operative versions of the District Plan, with Plan Change 23 (made operative in June 2007) being the most recent District Plan Change to utilise the current Council version of STEM. This version is generally consistent with the one used to assess nominated trees under the plan change, with the only difference being the inclusion of 'local' and 'stature' categories within the STEM notable criteria (as recommended in the associated STEM publication produced by Ron Flook (1996)). This minor amendment was triggered by the need to ensure that the STEM assessment of nominated trees under the plan change was consistent with STEMs detailed in other District Plans administered by former Councils within the Auckland Region. Given that the scheduling of significant trees/groups of trees is also subject to concurrent plan changes being processed by other Operative Plan Teams within Auckland Council, it was necessary to adopt a standardised STEM for use by Council/Consultant Arborists across the various teams. As a result, the STEM recommended for use in the associated publication has been adopted in terms of assessing nominated trees for scheduling, with the allocation of points rather than percentages being adopted when assessing the merits of a tree under STEM.

Given that the STEM used to assess nominated trees under Proposed Plan Change 41 is generally consistent with the current STEM version referred to in the District Plan, it is deemed appropriate to insert this latest version into the District Plan, which presently contains no STEM for reference purposes.

STEM Assessments

Council Arborists have undertaken STEM assessments of trees/groups of trees in the urban environment where tree protection rules are to be revoked from January 1 2012, and have consequently been nominated for scheduling within the District Plan's Heritage Appendix.

Furthermore, Council Arborists, in consultation with the Council Planner, have carried out STEM assessments for nominated trees on public land and private land outside the urban environment where the following scenarios were deemed to apply after reviewing the relevant nomination and associated photos of the tree(s):

- (1) Insufficient protection provided by General tree protection controls in the District Plan i.e. the removal of nominated trees could be undertaken as a Permitted Activity; or
- (2) Insufficient recognition provided by General tree protection controls in the District Plan i.e. a nominated tree/group of trees which are considered to have significant natural heritage values;

Subsequent to the Environment Court issuing Decision NZENVC129 in May 2011, it should be noted that Scenario (2) was also applied to nominations received for tree(s) which would continue to remain protected after 1 January 2012. Under this decision, the Court determined that within the urban environment, the tree protection rules for the Riparian Margins/Coastal Edges Natural Area and the Managed Natural Area within the Bush Living

Environment would continue to have legal effect after 1 January 2012 due to coming within the scope of section 152(3) of the Simplifying Act.

The adoption of the above scenarios in terms of assessing nominated trees on public/private land both outside and within areas of the urban environment where tree protection rules would be retained after January 1 2012 is consistent with the policy direction detailed in Appendix D of the District Plan's Policy Section pertaining to the scheduling significant trees/groups of trees within the District Plan's Heritage Appendix:

“General tree protection controls offer a degree of protection to trees considered to have amenity value, so the trees protected in the District Plan Heritage Appendix are those having particular heritage value and for which the general tree protection controls would not provide sufficient recognition and protection.”

As a result of implementing this District Plan policy direction through the application of the above scenarios, the majority of nominations received during the Local Board nomination period for tree(s)/groups of trees on public/private land both outside and within areas of the urban environment were assessed as having heritage values which were not significant enough to warrant further recognition and protection through the scheduling process.

Regarding Scenario (2) above, the following STEM criteria thresholds were adopted to assist Council Arborists to determine which nominated trees would be worthy of assessment in terms of representing significant cultural and/or natural heritage values:

- (a) Trees which may receive some form of recognition under the STEM Notable Evaluation section; or
- (b) (i) Trees which may have either a 'very good' or 'specimen' form for its species under the STEM 'Form' Condition Evaluation sub-category; and
 - (ii) a 'significant' or 'major' role under the STEM 'Role' Amenity Evaluation sub-category.

The adoption of the above STEM criteria thresholds is based on the STEM publication produced by Ron Flook who described the 'Role' Amenity Evaluation sub-category as relating to *“...how a particular scene or place would look like without a tree”* and pertaining to trees which make a significant *“...visual and amenity contribution...”* to a local area. Where nominated trees/group of trees were considered to possibly have either a 'significant' or 'major' role, this would normally coincide with the trees also potentially having either a 'very good' or 'specimen' form.

In contrast, where the form of the tree may only be classified as 'good', Council Arborists were also afforded the opportunity to assess nominated tree/group of trees which may be viewed as a locally notable feature due to comprising of special interest values i.e. where the tree(s) have a sculptural or unusual shape resulting from uncommon height, spread or trunk dimensions.

Alternatively, where a nominated tree/group of trees were deemed unlikely to meet the STEM criteria thresholds detailed under point (b) and did not represent a locally notable feature, they may have still been assessed where either the nominator or Council's Arborist/Planner had indicated the potential historical significance of a nominated tree(s).

In addition to trees nominated upon private land within the urban environment, where either Scenarios (1) or (2) were deemed applicable to privately owned trees outside the urban environment after reviewing the contents of the relevant nomination form and associated photos for the nominated tree(s), a letter was sent to the landowner informing them that a Council Arborist would be assessing the nominated trees.

Nominated tree(s) assessed upon private land within the urban environment which exceeded the STEM threshold of 125 (as detailed under Appendix D of the District Plan's Policy Section) have been proposed for scheduling within the District Plan's Heritage Appendix under the plan change.

For nominated tree(s) assessed under Scenario (1), the same threshold has been applied, while nominated tree(s) assessed under Scenario (2) have been proposed for scheduling where the STEM threshold of 125 has been exceeded and the STEM thresholds detailed under point (b) have been obtained. Where a nominated tree(s) was assessed on the basis of its potential historical significance, the tree(s) have only been included for scheduling where they achieved some form of recognition under the STEM 'Historic' Notable Evaluation sub-category from either Council's Arborist or Consultant Tree Historian, upon completing an assessment of the tree(s) historic significance (where applicable).

The historical assessments involved a report on the historical nature each tree/group of trees, and scores were assigned in the age, association and commemoration categories within the Notable section of the STEM assessment. 74 trees were sent to the historians for assessment, with 65 of the trees found to have some form of historical value ranging from local to international significance. 57 out of the 65 trees also passed the STEM threshold of 125, and have consequently been proposed for scheduling in the District Plan's Heritage Appendix.

It should be noted that an English Oak Tree at 176 Metcalfe Road, Ranui (located outside the urban environment) was sent for historic assessment to determine whether it would receive any recognition points under the STEM 'Historic' Notable Evaluation sub-category. Upon completing the associated historic assessment, Council's Consultant Tree Historian did not allocate any points under the STEM 'Historic' Notable Evaluation sub-category, with Council's Arborist initially assessing the tree to be less than 100 years old. Subsequent to Council's Arborist completing his STEM assessment of the English Oak tree, a separate arboricultural assessment has been discovered for the tree (dated 27 April 2010) which estimates its age to be 110 years. Council's Arborist has reviewed the arboricultural assessment (produced by a suitably qualified and experienced Arborist recognised by Council) and concurs with the age estimate of 110 years provided for the English Oak tree. As a result, the STEM assessment has been amended to reflect this age, with recognition points being allocated under the STEM 'Historic' Notable Evaluation sub-category due to the tree exceeding 100 years in age.

In addition, a Rimu Tree at 222 Scenic Drive, Waiatarua (located outside the urban environment) was not sent for historic assessment due to the absence of any potential historical associations on the nomination form. Notwithstanding this, the Rimu tree has still been included for scheduling due to Council's Arborist assessing the tree as being at least 100 years old, thereby warranting the allocation of recognition points under the STEM 'Historic' Notable Evaluation sub-category for its age.

As a means of ensuring that Council's Arborists were applying the STEM approach in a consistent manner when assessing nominated tree(s), STEM assessments for trees/groups of trees which came within six points of the 125 STEM threshold were randomly selected for

re-assessment by another Council Arborist. Upon reviewing the STEM re-assessments, it was generally found that Council's Arborists were applying the STEM approach in a consistent manner due to there being little difference between the scores received under both the initial and peer-reviewed STEM assessments.

The STEM assessments, historical assessments, photographs and aerial photographs of the trees/groups of trees proposed to be scheduled are appended as **Appendix B** to this report.

Overall, these trees are considered to have significant historical, scientific, botanical or amenity values and meet the threshold for scheduled trees in the District Plan. As a result, it is recommended that the District Plan's Heritage Appendix be amended to accommodate these additional trees.

3.4 Items Proposed to be Scheduled

The proposed schedule of Heritage Vegetation items to be inserted into the District Plan's Heritage Appendix is appended as **Appendix C** to this report, while the Human Environment Maps from the District Plan indicating the location of Heritage Vegetation items proposed for scheduling is appended as **Appendix D** to this report.

4.0 Statutory considerations

4.1 Part II of the Act

The Part II of the RMA sets out the purpose and principles that must be considered by this Plan Change. The purpose of the RMA is set out in Part II, section 5, as:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, **sustainable management** means 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 wellbeing 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.*

In addition to the purpose of the RMA, sections 6, 7, and 8 set out other matters that must be considered, particularly during the resource consent and plan making processes. Section 6 sets out matters of national importance that must be recognised and provided for by persons exercising functions and powers under the Act. With regards to planning for trees in the urban environment the following section 6 matters are the most relevant:

- (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:*
- (e) *the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
- (f) *the protection of historic heritage from inappropriate subdivision, use, and development.*

Section 7 sets out other matters that all persons exercising functions and powers under the Act must have particular regard to. With regards to planning for trees in the urban environment the following section 7 matters are the most relevant:

- (a) *kaitiakitanga:*
- (aa) *the ethic of stewardship:*
- (b) *the efficient use and development of natural and physical resources:*
- (c) *the maintenance and enhancement of amenity values:*
- (d) *intrinsic values of ecosystems:*
- (f) *maintenance and enhancement of the quality of the environment.*

Section 8 requires the Council to take into account the principles of the Treaty of Waitangi.

A full assessment of the Plan Change against the matters in Sections 5, 6, 7 and 8 is provided in section 7.1 of this report.

4.2 Section 31 of the Act

Section 31 sets out the Council's functions for the purpose of giving effect to the RMA. The Council's functions include:

"31(1)(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"

"31(1)(b)The control of any actual or potential effects of the use, development or protection of land including for the purpose of:

- (iii) the maintenance of indigenous biodiversity"*

Section 31 of the RMA states that a function of Council is to control any actual or potential effects of the use, development, or protection of land and associated natural and physical resources of the district. In particular, section 31(1)(b)(iii) states that effects must to be controlled for "the maintenance of indigenous biodiversity". Although a number of exotic trees are proposed to be scheduled, a large number of the proposed trees are native trees/groups of trees. As a means for carrying out these functions, the District Plan provides for the technique of scheduling notable and historic trees in the Heritage Appendix.

The control of the actual or potential effects in this context is achieved through the requirement for a resource consent to prune a scheduled tree's foliage (in accordance with modern arboricultural practice) by more than 20% in one calendar year, undertake works within its dripline, or seek its removal as a Non-Complying Activity under the District Plan.

This enables the Council to be satisfied that actual and potential effects on significant trees can be controlled. As the plan change seeks to schedule 240 heritage vegetation items containing significant trees/groups of trees, it is considered that increasing the number of significant trees in the District Plan will ensure that it contains a representative sample of the significant and important trees in Waitakere.

It is therefore considered that the plan change assists the Council in carrying out its functions set out in section 31 of the RMA.

4.3 Sections 72, 74, 75 and 76 of the Act

Section 72 states as follows:

“The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act”.

The purpose of this Plan Change assists Council in carrying out its functions and to achieve the purposes of the RMA by protecting notable and historic trees that will lose their protection in January 2012.

Section 74(1) of the RMA states as follows:

“A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part 2, a direction given under section 25A(2), its duty under section 32, and any regulations”.

The notification of this Plan Change is prepared in accordance with Council’s statutory functions under section 31, the provisions of Part 2 and its duty under section 32.

Section 75(2) of the RMA states:

“A district plan must give effect to—

- (a) any national policy statement; and*
- (b) any New Zealand coastal policy statement; and*
- (c) any regional policy statement.”*

The plan change, which proposes to add 240 heritage vegetation items containing significant trees/groups of trees to the District Plan’s Heritage Appendix, must give effect to the Auckland Regional Policy Statement. A full assessment of the proposed Plan Change against the relevant provisions of the Auckland Regional Policy Statement is undertaken in section 7.2 of this report.

No assessment has been undertaken against a National Policy Statement or the New Zealand Coastal Policy Statement as there are no provisions within these documents that relate to urban trees.

The following provisions of section 76 are also relevant:

(1) “A territorial authority may, for the purpose of –

- (a) Carrying out its functions under this Act; and*
- (b) Achieving the objectives and policies of the plan, including rules in a district plan.*

...

(2) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities, including, in particular, any adverse effect”.

A full assessment of environmental effects of the plan change is provided in section 7.3 of this report.

4.4 Section 32 of the Act

In achieving the purpose of the Act, the Council must carry out an evaluation under section 32 of the RMA before publically notifying a district plan or a plan change. Section 32(3), (3A) and (4) state as follows:

(3) *“An evaluation must examine-*

(a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and

(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

(3A) This subsection applies to a rule that imposes a greater prohibition or restriction on an activity to which a national environmental standard applies than any prohibition or restriction in the standard. The evaluation of such a rule must examine whether the prohibition or restriction it imposes is justified in the circumstances of the region or district.

(4) *For the purposes of the examination referred to in subsections (3) and (3A), an evaluation must take into account-*

(a) the benefits and costs of policies, rules, or other methods; and

(b) 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.”

The section 32 matters are assessed in the section 8 of this report.

5.0 Consultation Undertaken

In preparation for these changes to the RMA, the Governing Body of Auckland Council resolved in December 2010 -

“(c) That as an interim measure, Auckland Council uses a staged approach to prepare a plan change (using information recently updated by previous councils) which adds nominated trees to existing schedules.

(d) That existing schedules can then be updated as time permits, as soon as possible, via appropriate plan changes; this would build on previous work from councils.

(e) That Local Boards be asked to nominate, by 31 March 2011, appropriate trees for consideration which are not currently among the 3690 scheduled trees; this would build on work from previous councils.

f) That Auckland Council carries out a more comprehensive review as part of the Unitary Plan preparation process. This could be largely done within existing staff resources.

g) That officers be asked to engage with the list of organisations (as identified in the Tree Council’s letter to the Mayor dated 17 November 2010) as a reference group.”

5.1 Local Boards

In response to resolution (e) from the Governing Body, council officers presented to all the Local Boards (excluding Waiheke and Great Barrier because these Islands are not classified

as urban under the RMA Streamlining Act) on the current schedule of notable trees, and the tree nomination process. Additionally, the Local Boards were invited to contribute further nominations from their areas.

A subsequent nomination period was held in March 2011 which enabled the Local Boards and members of the public (through the Local Boards) to nominate trees for consideration under the Plan Change. This resulted in 391 nominations being received, with almost all of the nominations being made by members of the public (through the Local Board).

An update was presented to the Local Boards in October 2011 advising them of the number of heritage vegetation items proposed to be added to the District Plan's Heritage Appendix.

Prior to the notification of this Plan Change, Local Boards will be provided with the plan change notification material and a memo to inform them of the dates for notification and how they can submit on the plan change if they wish to do so.

5.2 Interested Parties

In response to resolution (f) from the Governing Body, council officers met with the Tree Council and other associated organisations (eg. Landscaping NZ, Auckland University of Technology, Environmental Defence Society) on 1 February 2011. At this meeting, the Tree Council and members of these organisations were provided with various Council reports and have been kept updated on the process to date. They have also been involved in work being undertaken on developing policy and rules for the Unitary Plan.

5.3 Iwi

Letters were sent to all the Iwi authorities that have interests in the Waitakere area, those being Te Kawerau a Maki and Ngati Whatua. The letters provided an explanation of the proposed Plan Change, the forthcoming notification process and welcomed additional nominations from the Iwi authorities, which will be considered at the submission stage. The letters also offered a presentation to the Iwi authorities and provided contact details if the Iwi authorities requested a presentation or had any questions or queries.

5.4 Affected Owners

Letters were sent to all owners of the trees to be assessed prior to the arborists assessment being undertaken. The letters provided information about why their tree was being assessed, information about the subsequent plan change and submission process. The letters contained a list of frequently asked questions and provided contact details if the owners/occupiers wanted to be on site when the assessment was undertaken or had questions or queries.

6.0 Existing Heritage Provisions of the District Plan

This section of the report provides an overview of the existing approach to the protection of heritage tree(s) in the District Plan. The trees/groups of trees to be added to the District Plan's Heritage Appendix have been considered against these provisions. Additionally the effectiveness of these provisions are assessed in the following Section 32 assessment.

Rule 3 of the District Plan's Heritage Rules (appended as **Attachment 3** to this report) governs the Destruction, Trimming, Felling & Modification of Heritage Trees, and is titled accordingly.

The key objectives and policies specific to protecting Heritage Vegetation items in the District Plan's Heritage Appendix are as follows:

Objective 12

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 heritage with people's everyday lives where possible and appropriate.**

Policy 12.1

Activities should be carried out in a way that avoids or minimises adverse effects on the City's valued natural heritage, including the extent and range of species. Particular regard shall be had for protecting native vegetation and fauna habitat, and rare or threatened fauna species.

Explanation

Because a considerable number of the City's natural features have been lost in the City's lowlands, and modified in Waitakere Ranges and coastal areas, the remaining native vegetation and fauna habitat is highly valued. It contributes to the sense of identity of many residents, and is a strong part of the memories of many older residents. What remains in the urban and lowland areas is especially significant in terms of heritage values, although the ecological values of some remnant vegetation areas have been compromised. Exotic trees and vegetation are also highly valued, especially in the urban area. This policy emphasises the importance of these features from a heritage perspective.

Policy 12.6

Activities should be carried out in a way that avoids the clearance of any listed heritage vegetation, provided that any such vegetation may be cleared where:

- **the vegetation is a threat to the health and safety of residents;**
- **the vegetation has been certified as carrying a disease contagious to other vegetation, and/or is dying.**

Explanation

This policy is concerned with the protection of heritage vegetation from clearance. However, it recognises that there may be circumstances where a tree presents a danger to life or property. In this situation, the felling of the tree will be considered.

Policy 12.7

Activities within the dripline of any listed heritage tree should avoid any adverse effect on the health of the tree including:

- **altering the soil levels or water table by addition to or excavation or compaction of soils;**
- **damage to root systems;**
- **damage to the tree from fires or storage of materials;**
- **release of toxic substances;**
- **introducing environmentally damaging plants.**

Explanation

This policy is concerned with the protection of heritage trees from activities that may cause damage to or death to the tree. The dripline of a tree usually signifies the outward spread of the tree's root system. Therefore, the limitation of activities within the dripline provides protection to both the root system and those parts of the tree above ground.

The above provisions acknowledge that heritage trees serve important environmental, heritage, botanical and amenity functions.

7.0 Statutory Evaluation

7.1 Assessment Against Part II of the RMA

The purpose the RMA is to promote the sustainable management of natural and physical resources. The main purpose of the plan change is to provide for the sustainable management of significant urban trees in Waitakere. A further 240 heritage vegetation items containing significant trees/groups of trees are proposed for inclusion in the District Plan's Heritage Appendix to ensure their continued protection after January 2012.

Including the additional trees in the Heritage Appendix is considered to provide for the protection of these significant trees so that they meet the reasonably foreseeable needs of future generations and safeguard the life supporting capacity of the environment in urban Waitakere. Additionally, scheduling these trees/groups of trees avoids adverse effects of their potential removal from January 2012 if they were not scheduled.

In addition scheduling these trees/groups of trees is considered to be in accordance with Sections 6, 7 and 8 of the RMA. In consideration of the matters of national importance within Section 6, the Plan Change gives effect to the relevant matters in Section 6(b), (c), (e) and (f). This is because scheduling the trees/groups of trees will provide for their protection from inappropriate subdivision, landuse and development, and will provide for the protection of significant indigenous vegetation. Additionally, the 65 trees that have been assessed as having historic heritage attributes will also be protected from inappropriate subdivision, use and development. Furthermore protecting these trees provides for the relationship of Maori and their cultural and traditions with their taonga.

Section 7 of the RMA sets out other matters which regard must be given to. In the context of the Plan Change, the matters set out in Section 7 (a), (aa), (b), (c), (d) and (f) are considered the most relevant. Particular regard has been given to the principal of kaitiakitanga and it is

considered that protecting these additional significant trees/groups of trees aligns with this ethic of stewardship. Scheduling these trees/groups of trees is also considered to provide for the efficient use of these resources, the maintenance and enhancement of urban amenity values and the quality of the urban environment. It is further considered that protecting these trees/groups of trees contributes to the intrinsic value of ecosystems within Waitakere. The protected trees/group of trees will provide protected habitat areas throughout urban Waitakere, which is already fragmented and susceptible to cumulative biodiversity loss.

Section 8 requires the Council to take into account the principles of the Treaty of Waitangi. Letters were sent to ten Iwi authorities that have interests in the Waitakere area. The letters provided an explanation of the proposed Plan Change, the forthcoming notification process and welcomed additional nominations from the Iwi authorities in order to provide for the protection of their taonga.

Based on the assessment above it is considered that the proposed Plan Change supports the purpose and principals within Part II of the RMA.

7.2 Assessment against the Auckland Regional Policy Statement

The Auckland Regional Policy Statement (**ARPS**) addresses the protection of heritage resources and public access to these resources. An assessment against the relevant objectives and policies of the ARPS is provided below.

Objective 6.3.1 of the RPS is:

To preserve or protect a diverse and representative range of the Auckland Region's heritage resources.

Method 6.4.2.1 states:

Regional and district plans shall include provisions which preserve or protect (as appropriate) heritage resources identified in Appendix B [Significant Natural Heritage Areas] of the RPS and the values of those identified as significant using criteria in Policies 6.4.7-1 and 2, and 6.4.13-1 and 6.4.16.

The proposed plan change seeks to schedule 240 heritage vegetation items containing trees/groups of trees which are considered to represent significant natural heritage values. The trees proposed to be scheduled consist of a diverse and representative range of native and exotic species. This is considered to be consistent with objective 6.3.1 the ARPS.

A number of the trees/groups of trees to be scheduled are situated within Titirangi-Laingholm, and consequently adjoin the Waitakere Ranges, which is listed and mapped as a significant natural heritage area in the ARPS (illustrated on ARPS Map 3-Sheet 2-Central). A number of these trees have been assessed by the arborists as being over 100 years old, and received some of the highest STEM scores of the assessments undertaken.

Based on the assessment above, the plan change is considered to give effect to the provisions of the ARPS.

7.3 Assessment against the Waitakere Ranges Heritage Area Act 2008

7.3.1 Purpose

The purpose of the Waitakere Ranges Heritage Area Act 2008 (**WRHAA**) is:

to –

3(1)(a) recognise the national, regional, and local significance of the Waitakere Ranges Heritage Area; and

3(1)(b) promote the protection and enhancement of its heritage features for present and future generations.

(section 3 Waitakere Ranges Heritage Area Act 2008)

7.3.2 Relevant objectives

8(a) To protect, restore and enhance the area and its heritage features

8(b) To ensure that impacts on the area as a whole are considered when decisions are made affecting any part of it.

8(d) To recognise and avoid adverse potential, or adverse cumulative effects of activities on the area's environment (including its amenity) or its heritage features

8(g) To maintain the quality and diversity of landscapes in the area by

(i) protecting landscapes of local, regional or national significance...

7.3.3 Relevant heritage features

7(2)(a) its terrestrial and aquatic ecosystems of prominent indigenous character that—

(i) include large continuous areas of primary and regenerating lowland and coastal rainforest, wetland and dune systems with intact ecological sequences:

(ii) have intrinsic value:

(iii) provide a diversity of habitats for indigenous flora and fauna:

(iv) collect, store, and produce high quality water:

(v) provide opportunities for ecological restoration:

(vi) are of cultural, scientific, or educational interest:

(vii) have landscape qualities of regional and national significance:

(viii) have natural scenic beauty:

7(2)(b) the different classes of natural landforms and landscapes within the area that contrast and connect with each other, and which collectively give the area its distinctive character:

7(2)(i) the subservience of the built environment to the area's natural and rural landscape, which is reflected in—

(ii) the distinctive harmony, pleasantness, and coherence of the low density residential and urban areas that are located in regenerating (and increasingly dominant) forest settings...

7.3.4 Assessment of Waitakere Ranges Heritage Area Purpose and Objectives

As mentioned under Section 7.2 above, a number of the tree(s) to be scheduled are situated within Titirangi-Laingholm, and consequently adjoin the Waitakere Ranges, which is shown as a significant natural heritage area on ARPS Map 3-Sheet 2-Central.

Under the WRHAA, Titirangi-Laingholm comes within the Waitakere Ranges Heritage Area, and is therefore subject to the provisions in the Act.

The heritage features and objectives provide a context to resource management in the Titirangi-Laingholm area. This area is characterised by a system of ridges, gullies and steep slopes descending to the Manukau harbour coastline, modified by residential development but with significant areas of remaining native vegetation, giving the area a unique character in which built environment is subservient to the natural landscape. The tree(s) proposed for scheduling are an integral part of Titirangi-Laingholm's natural landscape and assist in screening built development from public views along adjoining road reserves.

Furthermore, the trees/group of trees proposed for scheduling in the Titirangi-Laingholm area consist of a diverse range of native species which contribute to the local, regional and national significance of the Waitakere Ranges indigenous flora and fauna.

Based on the assessment above, the plan change is considered to be consistent with the purpose and objectives of the WRHAA.

7.3 Assessment of Environmental Effects

According to Section 76(2) of the RMA, in making a rule, Council shall have regard to the actual and potential effects on the environment. This Plan Change does not introduce any new district plan rules, but utilises existing objectives and policies to schedule additional trees/groups of trees in the District Plan's Heritage Appendix. These additional trees/groups of trees will be subject to Rule 3 of the Heritage Rules, which requires a resource consent to prune a scheduled tree's foliage (in accordance with modern arboricultural practice) by more than 20% in one calendar year, undertake works within its dripline, or seek its removal as a Non-Complying Activity under the District Plan.

Although scheduling these trees/groups of trees may restrict the development potential on some of these sites, the purpose of the plan change is to avoid adverse environmental effects from the removal of these significant trees. It is considered that the adverse effects of not scheduling these trees (which are considered to have significant natural heritage values historic value) are greater than the potential effects on people wishing to develop their land.

It is considered that the proposed trees/groups of trees are assessed as having significant value, and protecting them meets the purpose and principals within Part II of the RMA.

8.0 Assessment against Section 32 of the Act

Under Section 32 of the RMA, any proposed plan change must be accompanied by an evaluation that assesses the following:

- The extent to which each objective is the most appropriate way to achieve the purpose of the RMA.

- Whether the proposed policies and methods are the most appropriate way in which to achieve the objectives in terms of their efficiency and effectiveness.

The Section 32 evaluation must take into account:

- The benefits and costs of the policies, rules or other methods.
- The risk of acting or not acting if there is uncertain or insufficient information.

The section 32 evaluation for this Plan Change is undertaken in the following two sections of this report.

8.1 The extent to which each objective is the most appropriate way to achieve the purpose of the Act

For this Plan Change, no new objectives are proposed, as the plan change uses the existing objective and policy framework for heritage vegetation items.

Objective 12

To manage the effects of activities on the City’s valued heritage in a way that:

....

- **recognises and protects its national, regional and local significance;**

....

It is considered there are two options for assessing if the objectives are the most appropriate way to achieve the purposes of the RMA:

- A. To use the existing objectives
- B. Develop alternative objectives

Option	Are the objectives the most appropriate way of achieving the purpose of the RMA?
Option A – Status Quo	<ul style="list-style-type: none"> • The existing objectives have been effective in protecting the existing heritage resources scheduled in the District Plan • The community is familiar with the existing heritage provisions in the District Plan • Previous Section 32 analysis (for development of district plan and subsequent plan changes) have proven the appropriateness of the current objectives • The existing objectives assist to achieve the purpose of the RMA set out in Section 5 and are in accordance with the relevant matters of national importance in Section 6 and the relevant other matters in Section 7 of the RMA. This is discussed further below.
Option B – Develop New Objectives	<ul style="list-style-type: none"> • Time and costs to re-examine the objectives and policies. • Undermines public confidence in the existing heritage provisions by questioning whether these are effective. • Practical difficulties arising from administering the new and old objectives and the need to re-examine all existing heritage items to ensure they still warrant protection under the new objectives.

The purpose of the Act is to promote the sustainable management of natural and physical resources. The trees subject to this plan change have been subjected to robust STEM assessments. The trees/groups of trees are therefore considered to represent natural heritage values which have local, regional and/or national significance. The policies for achieving this objective of recognising and protecting these values supports their scheduling

in the District Plan. It is considered that recognising and protecting these significant trees/groups of trees by scheduling them in the District Plan's Heritage Appendix, promotes sustainable management for the following reasons:

- It enables people and communities to provide for their social, economic and cultural well-being by protecting valuable natural heritage resources.
- Scheduling the trees triggers the need for resource consent for work and activities that have the potential to adversely affect the tree/s and surrounding environment.
- There are benefits which arise from sustaining natural heritage resources such as increasing the attractiveness and amenity of the area in which they are located, which helps provide for the wellbeing of people and communities.
- Scheduling the trees provides for the maintenance and enhancement of amenity values and the quality of the urban environment.
- Scheduling the trees meets the reasonably foreseeable needs of future generations by sustaining a significant natural heritage resource.

Overall, it is concluded that the use of the existing objective would be most the appropriate way to achieve the purpose of the RMA.

8.2 Whether the policies, rules, or other methods are the most appropriate for achieving the objectives.

On the basis that the existing objective is the most appropriate way to achieve the purpose of the RMA, the associated existing policies, rules and methods are also required by section 32 to be assessed to determine if they are the most appropriate to achieve the purpose and principals of the RMA. This assessment must –

- Have regard to their efficiency and effectiveness.
- Take into account the benefits and costs of policies, rules, or other methods.
- Take 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.

In undertaking this analysis, “benefits” and “costs” are required to be considered. These benefits and costs can relate to economic, social or environmental benefits and costs. For example, in the case of “environmental” parameters, environmental benefits are positive environmental outcomes and environmental costs are adverse effects. Benefits and costs can be quantifiable or non-quantifiable. Benefits and costs of district plan provisions can be assigned to particular groups (e.g. private costs, public benefits) or shared. The evaluation of Section 32 matters must also examine the “efficiency” and effectiveness” of the methods of implementing the proposed plan change (i.e. how well the policies, rules and other methods work). Efficiency means the ease in which a mechanism can be implemented. Effectiveness means the ability of the mechanism to achieve the desired outcomes. The weighting of these factors is important in decision making during the section 32 process.

In order to evaluate whether the proposal to add 240 heritage vegetation items containing significant trees/groups of trees to the District Plan's Heritage Appendix is the most appropriate method to achieve the purpose and principals of the RMA, five options have been examined below:

- A. Do Nothing - do not afford protection to these additional items
- B. Schedule – using the existing District Plan provisions- *the preferred method*
- C. Other non-regulatory methods
- D. Other regulatory methods
- E. Financial Incentives

Option	Benefits	Costs	Efficiency and Effectiveness
Option A – Do Nothing	<ul style="list-style-type: none"> • No need to undertake a plan change. • No additional controls and associated costs on owners and occupiers of buildings. • No resource consent requirements for modification or removal beyond existing district plan requirements within the District Plan’s Heritage Appendix. • Certainty to owners as to compliance only being required with existing items within the Heritage Appendix. 	<ul style="list-style-type: none"> • These significant trees/groups of trees will not be afforded protection. • The trees/groups of trees have been evaluated against a robust STEM assessment. The assessments conclude that the trees/groups are of such significance that if they were to be destroyed or unsympathetically altered or damaged, valuable elements of Waitakere’s natural heritage resource would be lost. 	<ul style="list-style-type: none"> • This option would be the most efficient in terms of time and costs as no plan change would need to be promulgated. • However this option would not be the most efficient or effective in terms of achieving the objectives of the District Plan as it would result in the potential loss of notable and historic trees that would no longer be protected in the District Plan.
Option B – Schedule these items	<ul style="list-style-type: none"> • The existing provisions have been effective in protecting existing heritage resources. • The community is familiar with the existing heritage provisions. • The existing approach is consistent with the direction given in the Regional Policy Statement. • The STEM assessments undertaken illustrate that the proposed trees/groups of trees are assessed as having significant value and protecting them in the District Plan’s Heritage Appendix meets the purpose and principles within Part II of the RMA. 	<ul style="list-style-type: none"> • Costs associated with undertaking the Plan Change and engaging in the public submissions and hearing process after notification, both for the Council, land owners, other authorities and the wider public. • Development opportunities may be reduced by scheduling these trees/groups of trees on some sites. 	<ul style="list-style-type: none"> • This option would be the most efficient and effective in terms of achieving the objectives of the District Plan as utilises existing objectives and policies to protect notable and historic trees that would otherwise not be protected in the District Plan from 1 January 2012. It is considered that this option achieves a balance between the protection of a valuable natural heritage resource and while providing for peoples social, economic and cultural wellbeing.
Option C – Non regulatory methods	<ul style="list-style-type: none"> • Non regulatory methods could include research, education, training, providing information and brochures. The provision of information to property owners would allow them to make informed decisions and understand 	<ul style="list-style-type: none"> • Consideration of such information and protection mechanisms would be at the owner’s discretion. It is considered that implementation of these alternative methods should be done in conjunction with the proposed Plan Change 	<ul style="list-style-type: none"> • This option would be the comparatively efficient in the short term in terms of time and costs as no plan change would be promulgated. • However this option would not be the most efficient or effective in

	<p>the special nature of the significant trees and the aspects which need to be preserved.</p> <ul style="list-style-type: none"> Legal mechanisms such as consent notices and land covenants can be employed to protect trees on private properties. 	<p>rather than being the only approach taken.</p> <ul style="list-style-type: none"> Legal mechanisms such as covenants on titles do not give a clear picture to the public of the requirements and obligations of any such approach and are less transparent. 	<p>terms of achieving the objectives of the District Plan as non-regulatory methods do not guarantee protection and it would potentially result in the loss of some notable and historic trees that would no longer be protected in the District Plan.</p>
Option D – Other regulatory methods	<ul style="list-style-type: none"> Other regulatory methods might include applying a conservation area, centre plan or character overlay, re-zoning or placing a heritage order. Other regulatory methods such as applying a conservation area, centre plan or character overlay or re-zoning would allow the effects of modifications on the heritage items to be considered through a resource consent process. The council is a heritage protection authority and could consider placing a heritage order on the trees/groups of trees. This would provide interim protection of the trees until the statutory process is finalised, and then it would provide permanent protection. 	<ul style="list-style-type: none"> Conservation areas, centre plans, character overlays or re-zoning are typically applied to areas or grouping of heritage significance and would impose costs beyond the subject items and as such would not be an appropriate method to protect the individual trees and discrete groups of trees identified. Heritage orders tend to be used when the heritage values are under threat through removal or inappropriate alteration. As this Plan Change has effect from its notification date, the plan change is considered a more appropriate option. 	<ul style="list-style-type: none"> This option would be efficient as existing overlay mechanisms in the District Plan could be used to protect the additional significant trees/groups of trees (such as the schedule of Sites of Special Wildlife Interest). However this option is not considered to be an effective means of protecting the significant trees/groups of trees as the significant trees are individuals and discrete groups which would benefit more from being specifically scheduled, rather than identified in a more general overlay. Additionally an overlay would be cumbersome when property owners may wish to remove other trees within the overlay area which are not considered to be significant, but would require resource consent.
Option E – Financial incentives	<ul style="list-style-type: none"> Providing financial incentives to the owners of these trees would help with the ongoing costs and maintenance of the trees. 	<ul style="list-style-type: none"> While financial incentives are useful they do not guarantee protection of the tree/group of trees. 	<ul style="list-style-type: none"> This option would be the efficient in the short term in terms of time and costs as no plan change would be promulgated. However there would be long term ongoing costs for maintenance of the trees. Additionally this option would not be the most efficient or effective in terms of achieving the objectives of the District Plan as financial incentives do not guarantee protection and

			it would potentially result in the loss of some notable and historic trees that would no longer be protected in the District Plan.
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Scheduling these trees/groups of trees within the District Plan's Heritage Appendix (option B) is considered to be the most appropriate option to achieve Objective 12 in the District Plan.

This approach is considered the most efficient and effective of the five options assessed above and would provide protection of the significant trees/groups of trees on an ongoing basis. In consideration of the risk of 'not acting', the trees/groups of trees identified have been assessed to have considerable significance and if not scheduled, this may result in the loss of an important part of Waitakere's local natural heritage.

It is considered that the other mechanisms identified through the Section 32 evaluation would not be as effective or efficient in protecting this natural heritage resource.

Overall, scheduling of the trees/groups of trees is the most effective and efficient way of ensuring the continuing protection of Waitakere's natural heritage, and the purpose and principles of the RMA.

9.0 Conclusion

The purpose of this Plan Change is to add 240 heritage vegetation items containing significant trees/groups of trees to the District Plan's Heritage Appendix. This will give these items the level of protection afforded by Rule 3 of the District Plan's Heritage Rules.

The main conclusions of the evaluation under Part II and Sections 31, 32, 72, 74, 75 and 76 of the Resource Management Act 1991(RMA) are summarised below:

- 1) In accordance with section 72, the purpose of this Plan Change assists Council in carrying out its functions and to achieve the purposes of the RMA by protecting significant notable and historic trees/groups of trees.
- 2) In accordance with section 74(1) the notification of this Plan Change is prepared in accordance with Council's statutory functions under section 31, the provisions of Part 2 and its duty under section 32. In particular:
 - o The proposed Plan Change assists the council in carrying out its functions set out in section 31 of the RMA, particularly section 31(1)(b)(iii) which requires that effects must to be controlled for the maintenance of indigenous biodiversity.
 - o The proposed Plan Change is consistent the purpose and principals within Part II of the RMA. The Change is considered to meet the sustainable management purpose of the RMA. Specific consideration has been given to the matters of national importance in section 6(b), (c), (e) and (f), the other matters in Section 7 (a), (aa), (b), (c), (d) and (f), and the principles of the Treaty of Waitangi in section 8.
 - o The evaluation undertaken in accordance with section 32 of the RMA considers the existing objectives policies and methods and scheduling a

further 240 Heritage Vegetation items is considered to be the most appropriate means of achieving Objective 12 in the District Plan. In consideration of the risk of 'not acting', the trees/groups of trees identified have been assessed to have considerable significance and if not scheduled, this may result in the loss of an important part of Waitakere's local natural heritage. Furthermore, the cost benefit analysis undertaken considers this Plan Change the most appropriate approach and the most effective and efficient way of achieving the purpose and principles of the RMA.

- 3) The assessment of environmental effects undertaken in accordance with section 76(2) of the RMA considered that the proposed trees/groups of trees are considered to have significant value. Not scheduling these trees/groups of trees could have significant potential environmental effects if the trees were damaged, destroyed or removed. The significant trees/groups of trees should therefore be protected within the District Plan's Heritage Appendix.
- 4) Pursuant to Section 75(2) of the RMA, the Plan Change is consistent with the objectives of both the ARPS and WRHAA.