

DISTRICT PLAN DECISION NOTICE

PLAN CHANGE 28: Heritage

Outline

As a result of information presented at the meeting of 9th of March 2010, a site visit on the 18th of March and re-convened hearing on 13th of April 2010, 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 28 to the City of Waitakere District Plan.

1 INTRODUCTION

This decision notice follows the hearing that relates to **Plan Change 28** to the City of Waitakere District Plan (referred to in this decision notice as the “Plan”). Five submissions and two further submissions 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 28 modifies the Plan by listing four additional buildings in the Heritage Appendix of the Citywide Rules. As a result of the hearing and the decision of the Committee, all of the items will be listed in the Heritage Appendix. Full details of the changes are contained in Appendix A. The main effect of the Plan Change is that specific buildings are now regarded as heritage items, and the Heritage buildings rules now apply to those additional items.

2 BACKGROUND

2.1 Proposed Plan Change 28

Council’s Planning and Regulatory Committee approved Proposed Plan Change 28 and it was publicly notified on 19 June 2009. A total of five submissions were received and three further submissions.

The issues raised in submissions related to the following matters:

- Various submissions opposing or supporting the listing of the Donner House and studio at 50 Kohu Road;
- Support for the Proposed Plan Change but Council should consider listing the interiors of buildings and entire sites for heritage protection;
- A submission seeking clarification on the extent of heritage listing for the Swanson Railway Station; and
- A submission requesting that another site should have a heritage listing.

The submissions received were 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:

- 170B Hepburn Road, Glendene– legally described as Lot 1 DP 89599;Category II villa
- 50 Kohu Road, Titirangi– legally described as Lot 46 DP 19360 – Donner House (Category I) and north-eastern studio (Category II); and

- 760 Swanson Road, Swanson– legally described as Lot 3 DP 45045; Category II railway station building.

The Committee considered the submissions at a meeting on 9th of March and reconvened on 13th of April 2010.

2.2 Matters Considered in Relation to Plan Change 28: Heritage

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 28 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 three further submissions were received on Plan Change 28. Given the relatively small number of submissions, each submission is discussed individually below.

2.3.1 Submission from H Faesenkloet (submission 28/1) and Eanna Doyle (submission 28/2), further submissions P Jenkin (28/1/4 and 28/2/2)

The submitters oppose listing the Donner House at 50 Kohu Road and north-eastern studio in the heritage Appendix of the Waitakere District Plan on the basis that:

- The experimental studios have no historic value;
- The house is in poor condition and has been altered;
- The management of the house by the owner has made it an issue of ridicule,
- The house is similar to a few thousand other houses of that age in Waitakere; and
- The studios/sheds are in a dangerous condition and have no historic or other value.

The further submission by the owner of the house opposes the submissions and support the heritage listing.

Discussion

The Donner House and studios at 50 Kohu Road, Titirangi have been assessed by a heritage architect. The architect was a noted modernist architect in mid-twentieth century Auckland and the designs are well regarded. The architect left his mark on Auckland's landscape with a range of designs such as the Savage Memorial, the Ellen Melville Hall, the Civic Administration Building in Auckland City and the Parnell Baths re-development.

The Council has inspected one of the two studios on site and has issued a notice pursuant to sections 124 and 125 of the Building Act deeming it to be a dangerous building. This studio is not the one that is subject to a heritage. The Council's heritage assessment indicates that the house and the north eastern studio should be protected through a heritage listing. The studio and house are highly regarded amongst architects. The Donner house is carefully detailed to provide subtle visual effects and is a distinctive and very good example of a mid-century modern house. Like other notable modern houses, it is experimental in nature. The house and studio meet the WDP criteria for listing.

Decision:

The submissions of H Faesenkloet and Eanna Doyle be **rejected**.

The further submissions of P Jenkin be **accepted** to the extent that the exteriors only of the house and north-eastern studio are listed.

Submissions from ARC (submission 28/3/3), NZHPT (submission 28/5/2 and 28/5/3) further submissions from P Jenkins

These submitters and further submitters support the listing of the Donner House and studio but request that Council should also list the second studio and protect the interiors of the buildings. These were supported by P Jenkins, although subsequently withdrawn by correspondence.

Discussion

The Waitakere District Plan does not generally seek to protect the interiors of residential dwellings because landowners require flexibility to be able to renovate

houses for changing trends in interior decorating, or changes in family circumstances without the requirement to apply for resource consents. Applications for resource consents require scale drawings detailing the proposed modifications, building materials to be used and other matters. It is considered that residential dwellings in private ownership should not be subjected to this level of assessment by Council. The main public benefit to listing buildings is that they continue to contribute to the amenity of the area and future changes are in keeping with the exterior design. However, the public would only ever generally view a building in private ownership from the exterior because a heritage listing does not imply public access.

Similarly, the Council does not list entire sites/surrounds with heritage buildings because landowners may wish to subdivide or have another use on the land. A heritage listing over the entire land would become an economic impediment and may potentially lead landowners resisting listing rather than the preferred method of protecting the heritage feature itself.

The second studio has not been listed at 50 Kohu Road because it is known to be a dangerous building and Council cannot issue consents to repair it. However, the other studio is in good condition and clearly has heritage value and significance.

Decision:

The submissions of ARC (submissions 28/3) and NZHPT (submission 28/5) and the further submission of P Jenkins **are rejected** in so far as the interiors and entire sites of the nominated heritage items are included in the Heritage Appendix.

2.3.2 Submission from NZHPT (Submission 28/5/1) and ARC (submission 28/3/2)

The submitters seek that a property at 172 Hepburn Road should be added to the Heritage Appendix.

Discussion

When the Planning and Regulatory Committee considered a report on Proposed Plan Change 28, it recommended that Council officers should consult with landowners to obtain their approval prior to publicly advertising the plan change. Council staff contacted Delegats Wines and explained the proposed listing and its implications. Delegats Wines advised Council officers that whilst they had undertaken a restoration of the villa, they did not wish to preclude future development on the site and did not support a heritage listing of the building. On the basis of that advice from the landowner, Council did not proceed with listing the building.

It is considered that Council must act in accordance with the principles of natural justice enabling a landowner to be heard in relation to a matter concerning their land.

Decision:

The submissions of the ARC (28/3/2) and NZHPT (28/5/1) **be rejected**.

2.3.3 Submission from ONTRACK trading as Kiwirail (submission 28/4)

The submitter supports the proposal to register the Swanson Station as a Category II building but seeks clarification on the extent of the external area to be listed. The submitter seeks the following outcomes:

- That the Council specifically schedules the exterior of the station building and canopy only. The station platform and outdoor seating should be excluded; and
- That Council accurately defines the extent of the historic site.

The submitter seeks confirmation that Proposed Plan Change 28 will not impact on its ability to operate, access, maintain and renew the station platform at Swanson station.

Discussion

The heritage listing is intended to only apply to the exterior of the building and canopy. It is suggested that wording can be added to the description to clarify that matter. The heritage assessment clarifies that the building, whilst developed as a part of the Auckland rail line, was originally built at Avondale. Its history in Swanson is relatively recent. The station platform and any respective seating is not listed. The platform has been altered over time with re-surfacing occurring as part of ongoing maintenance. Any street furniture is non-original and therefore should not be included. The heritage listing does not interfere with the designation for rail purposes. The designation acts as a form of “spot zoning” that overrides other District Plan matters.

Decision:

The submission of Kiwirail (28/4) is **accepted** and the description in the Heritage Appendix should be amended to state:

“The Swanson railway station was relocated from Avondale. The exterior of the building is listed excluding the seats and surrounding platform. The original design was a Class 4 station (designed by Julius Vogel). Significance attributed to historical and architectural values.”

2.3.4 Submission from NZHPT relating to Swanson Railway Station (Submission 28/5/3)

The NZHPT has requested that not only the station but the site surrounds should have a heritage listing.

Discussion

NZHPT plays a significant role in heritage advocacy, provides authorities to alter historic sites and manages a portfolio of heritage building and sites across the country. Those sites that are owned and administered by NZHPT are generally open to the public and the interiors and entire sites are offered protection. NZHPT also has a schedule of buildings that it lists throughout the country, however, those listings do not carry any statutory weight. ONTRACK trading as Kiwirail has a designation that enables it to operate its business efficiently and acts as a “spot zoning” for rail purposes. It is considered that a heritage listing over the station surrounds would create confusion as to the extent of that listing and the range of activities that could occur in that area without resource consent. It is considered that the heritage listing should only apply to the building and specifically exclude the platform, seating and surrounds..

Decision:

The submission of NZHPT (28/5/3) is **accepted in part** in so far as the station is listed but excluding the platform and surrounds.

Submissions of NZZHPT (25/5/3) and ARC (28/3/4) relating to listing the interior of the brick villa at 170B Hepburn Road

Both submitters request that Council should list the interior of the brick villa at 170B Hepburn Road.

Discussion

The interior of 170B Hepburn Road has not been scheduled as this is consistent with the rest of the Waitakere District Plan. It is considered too restrictive on private landowners to list the interiors of dwellings. The only buildings with interiors that are protected are in public ownership.

Decision:

The submissions of the NZHPT (28/5/3) and ARC(28/4/3) are **rejected**.

3 HEARINGS

One of the submitters (Eanna Doyle) sought to be heard, and provided oral evidence at the hearing. The Planning and Regulatory Committee then proceeded to deliberate, later undertook a site visit to 50 Kohu Road and decided on the submissions.

4 CONCLUSION

Plan Change 28 lists four additional heritage buildings. 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 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 28 –Heritage 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 28 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 28.

DECISION NOTICE APPROVED FOR RELEASE:

Cr Vanessa Neeson: Chairperson

Date:

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 ~~strike through~~, and adding text shown in **bold**.

Location	Description	Category	Interior	CHI No	Legal Description
Dwelling, 170B Hepburn Road, Glendene	Brick villa, part of a group of brick villas built by the Laurie family. Significance attributed to historical and pattern values.	Category II	No	7594	Lot 1 DP 89599
Dwelling and north eastern studio, 50 Kohu Road	The Donner House and studio are distinctive and an outstanding example of modernist architecture. Significance attributed to historic and architectural values	Donner House-Category I, north eastern studio Category II	No	7592	Lot 46 DP 19360
Railway Station,	The Swanson Railway Station was relocated from Avondale. The exterior of the building is listed excluding the seats and surrounding platform. Its original design was as a Class 4 station (designed by Julius Vogel). Significance attributed to historical and architectural values.	Category II	No	7593	Lot 1 DP 188043

**Appendix B – Submitter and Further Submitter Schedule
For Proposed Plan Change 28**

<u>NAME</u>	Address for Service
Auckland Regional Council	Private Bag 92 012, Auckland 1142
ONTRACK	PO Box 593. Wellington 6140
New Zealand Historic Places Trust	Private Box 105 291, Auckland
Paul Jenkin	50 Kohu Road, Titirangi
Eanna Doyle	39 Kohu Road, Titirangi
H Faesenkloet	48 Kohu Road, Titirangi